



Committee: Committee on Transportation
Hearing Date/Time: Tuesday, January 27, 2015, 2:30 a.m.
Place: Room 229
Re: Testimony of the ACLU of Hawaii in **Support of S.B. 130, With Amendments**, Relating to Statewide Traffic Code

Dear Chair Nishihara, Vice Chair Harimoto, and Members of the Committee on Transportation:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **support** of S.B. 130, but respectfully requests that the Committee **amend the bill to repeal subsection (a)** of HRS § 291C-77.

As currently written, S.B. 130 proposes the repeal of subsection (c) of HRS § 291C-77 only. This subsection was ruled unconstitutional in 1975¹ and has not been enforced since that time, such that its removal is merely a housekeeping matter.

The ACLU of Hawaii also respectfully requests that the Committee amend the bill to repeal subsection (a) of HRS § 291C-77. Section 291C-77(a) contains language that is nearly identical to that struck down by the Ninth Circuit Court of Appeals (en banc) in 2011, such that its removal will avoid unnecessary future litigation. In *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir. 2011) (en banc), *cert. denied*, 132 S.Ct. 1566 (2012), the Ninth Circuit held that a city ordinance – remarkably similar to HRS § 291C-77(a)² – was facially unconstitutional. In reaching this conclusion, the Ninth Circuit reasoned that such laws restrict significantly more speech than necessary to achieve the city’s purported traffic safety goals, insofar as these laws apply to lemonade stands, volunteers fundraising for disaster

¹ *Aiona v. Pai*, 516 F.2d 892 (9th Cir. 1975).

² The Redondo Beach, California ordinance prohibited individuals from “stand[ing] on a street or highway and solicit[ing], or attempt[ing] to solicit, employment, business, or contributions from an occupant of any motor vehicle.” *Comite de Jornaleros*, 657 F.3d at 940 (citing Redondo Beach Municipal Code § 3–7.1601(a)). As set forth above, HRS § 291C-77(a) is nearly identical (if not broader), prohibiting individuals from “stand[ing] in, walk[ing] along, or otherwise occupy[ing] a portion of a highway for the purpose of soliciting a ride, employment, business, or contributions from the occupant of any vehicle.”

relief, and school children shouting “carwash” at passing vehicles; the court held that there were alternative ways to address traffic concerns that did not impose the same unconstitutional burdens on speech.³

We respectfully ask that the Committee amend S.B. 130 to repeal subsection (a) and pass it out of Committee. Thank you for your attention to this matter.

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

³ *Redondo Beach*, 657 F.3d at 948-950. See, e.g., HRS §§ 291C-73(c) (forbidding jaywalking); 291C-76 (forbidding pedestrians from obstructing traffic); 291C-111 (allowing counties to restrict areas for stopping, standing, or parking of vehicles).