

SARAH ALLEN

BONNIE KAHAKUI

STATE OF HAWAII STATE PROCUREMENT OFFICE

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
WAYS AND MEANS
Thursday, February 20, 2020 at 10:35 AM

SB 2490, SD1
RELATING TO RETIREMENT SAVINGS

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB2490 SD1. The State Procurement Office (SPO) appreciates the intent of the bill.

The SPO, however, has strong concerns on the request to exempt the procurement of a third-party consultant (Section 2, Page 4, lines 10-12). There are many consulting firms that would be able to compete for this work.

The Hawaii Public Procurement Code (code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both HRS chapter 103D and 103F conveys a sense of disproportionate equality in the law's application.

Exemptions to the code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code

SB2490, SD1 Senate Committee on Ways and Means February 20, 2020 Page 2

are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

When public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year, new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Thank you.

SB-2490-SD-1

Submitted on: 2/16/2020 8:44:35 PM

Testimony for WAM on 2/20/2020 10:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
GARY SIMON	Testifying for Hawaii Family Caregiver Coalition	Support	No

Comments:

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Honorable Members of the Senate Committee on Ways and Means:

I am Gary Simon, President of the Hawaii Family Caregiver Coalition, whose mission is to improve the quality of life of those who give and receive care by increasing community awareness of caregiver issues through continuing advocacy, education, and training.

The Hawaii Family Caregiver Coalition strongly supports SB 2490 SD 1, which establishes the Hawaii Retirement Savings Program task force which is tasked with evaluating a retirement savings plan for non-government employees and reporting its findings and recommendations to the legislature; and appropriates funds.

We encourage you to establish the task force as soon as possible.

Employees are 15 times more likely to save when they can do so at work.

A Hawaii retirement savings program will make it easier for businesses to offer employees a way to save out of their regular paychecks, helping them take charge of their financial futures and live independently as they age.

It is their own money that they can take with them from job to job.

It is their own money that they can rely on in later years for a more secure future.

Contributions can be made with an automatic deduction from their paychecks.

Providing employees a simple way to save for retirement will mean fewer will need to rely on public assistance later in life, which will save taxpayer dollars.

We urge you to support SB 2490 SD 1, and we urge you to recommend its passage.

We thank you for seriously considering the Bill.

Very sincerely,

Gary Simon

President



LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Assess Feasibility of Hawaii Retirement Savings Program

BILL NUMBER: SB 2490, SD-1

INTRODUCED BY: Senate Committee on Labor, Culture & The Arts

EXECUTIVE SUMMARY: Establishes the Hawaii Retirement Savings Program task force, tasked with evaluating a retirement savings plan for non-government employees and reports findings and recommendations to the legislature. Appropriates funds. Task force dissolves on 3/15/2021.

SYNOPSIS: Establishes a retirement savings task force to create a Hawaii retirement savings program for private sector employees, not currently covered by an existing employer-sponsored retirement plan.

Appropriates \$400,000 to carry out the study.

EFFECTIVE DATE: July 1, 2020.

STAFF COMMENTS: The State needs to remember that it doesn't have either the resources or the expertise to be all things to all people. The governmental activity proposed by this bill is not a core function of government. The private sector offers various kinds of retirement plans including IRAs for those who either can't or don't want to participate in an employer-sponsored retirement plan. The bill explains in its preamble that it is socially desirable for people to save for retirement, but does not venture to explain how or why government would be able to offer retirement plans that are superior to those now on the market.

The State has tried savings encouragement before, by providing Individual Development Accounts sweetened with a state tax credit. The market uptake of this program was dismal, as shown in this table of IDA contribution credits claimed.

Year	Number of Taxpayers	Aggregate Credit Claimed
2000	0	0
2001	0	0
2002	0	0
2003	0	0
2004	9	\$3,000
2015	0	0

Re: SB 2490, SD-1

Page 2

2016	Suppressed to prevent disclosure of taxpayer return information	
2017	0	0

Source: Department of Taxation, <u>Tax Credits Claimed by Hawaii Taxpayers</u> 23 (2017); Department of Taxation, Tax Credits Claimed by Hawaii Individuals and Corporations (2000, 2001, 2002, 2003, 2004). If the State program proposed has a similar market uptake, we will have wasted lots of resources and time.

With many folks here in Hawaii living from paycheck to paycheck, people simply don't have excess cash to put away for their retirement. Unless we address our cost of living, we think it will be difficult for this proposed program to have much more market traction than the IDA program.

We also remind lawmakers that financial controls are necessary to keep a program like this from becoming a financial black hole and a magnet for fraud.

Digested 2/17/2020



1132 Bishop Street, #1920 | Honolulu, HI 96813 1-866-295-7282 | Fax: 808-537-2288 | TTY: 1-877-434-7598 aarp.org/hi | hiaarp@aarp.org | twitter: @AARPHawaii facebook.com/AARPHawaii

THE SENATE
Committee on Ways and Means
Thursday, February 20, 2020
10:35 a.m.
Conference Room 211

To: Senator Donovan Dela Cruz, Chair

Re: S.B. 2490 SD1, Relating to Retirement Savings

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee,

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a membership organization of people age fifty and over, with nearly 145,000 members in Hawai'i. AARP advocates for issues that matter to Hawai'i families, including the high cost of long-term care; access to affordable, quality health care for all generations; and serving as a reliable information source on issues critical to people over the age of fifty.

AARP Hawai'i <u>strongly supports S.B. No. 2490 SD1</u> which establishes a retirement savings task force to select a research entity to draft an implementation plan for a Hawai'i retirement savings program for private sector employees utilizing information from other states' experiences and educational institutions with expertise on existing programs, and study the costs involved. The task force will report the findings and recommendations to the legislature including legislation to authorize the implementation of the program.

A. Need for a government-facilitated retirement savings program for private-sector workers

Today, the typical working household has only \$2,500 in retirement assets and those close to retirement have only \$14,500. The average Social Security benefit for an older family household (age 65+) in Hawai'i is about \$17,898 a year, while they spend \$25,400 a year on food, utilities and health care alone.

In the Aloha United Way's ALICE Report, 37% of senior households qualify as ALICE families. ALICE families – an acronym for Asset Limited, Income Constrained, Employed – have income above the Federal Poverty Level (FPL), but not high enough to afford a basic household budget that includes housing, child care, food, transportation, and health care. These ALICE families include households of all ages that are struggling to make ends meet in Hawai'i. However, there is a specific reference to Hawai'i 's aging population in the report. This 2017 Report states, "there is a concern for the financial stability of aging Baby Boomer as well as the health of the wider economy as the population ages. Recent studies have shown that U.S. workers are woefully unprepared for retirement:

- o 39% of workers nationally give little or no thought to financial planning for retirement
- o 31% have no retirement savings or pension
- o 75% of Americans nearing retirement have less than \$30,000 in savings"



(Reference: ALICE: A Study of Financial Hardship in Hawai'i 2017 Report – Project of Aloha United Way)

We know that fewer and fewer people have a pension plan and many workers – **about 216,000 people in Hawai'i** — currently have no easy access to a 401K, or other ways to save for retirement at work. Without an easy access way to save at work, a secure retirement is out of reach for about half of Hawai'i's private-sector workers, especially those who work for small business.

While individuals can establish and contribute to a retirement savings program on their own; many do not. The fact is only **1 in 20 people** will go out on their own to do the research and complete the process to set up IRAs (Individual Retirement Account) for themselves. Studies show that workers are **15 times** more likely to save for their future if they can save through payroll deduction at work.

Many small businesses often choose not to offer retirement programs to their workers due to the costs, complexity and burden to manage this benefit. Establishing a government-facilitated program would help small businesses offer this savings option to their employees.

B. Cost-savings and benefits to taxpayers if more workers begin to save for their retirement

When people save for retirement, they are less likely to rely on public assistance programs later in life. AARP Public Policy Institute estimates Hawai'i would save \$32.7 million on public assistance programs through 2032 if lower-income retirees saved enough to increase their retirement income by \$1,000 more per year. The combined state and federal savings are more than \$160 million.(AARP Hawai'i Fact Sheet, May 2017)

C. Other states are addressing this national crisis for future retirees

Ten states have already passed legislation that improves workers' access to a retirement program, and 30 more are in progress to help their future retirees. Oregon, the first state to implement a state retirement program for private-sector employees, started enrolling eligible workers into the OregonSaves program in October of 2017. Since its inception, more than 66,000 workers have enrolled into OregonSaves and are saving for their future retirement needs. They are saving at an average rate of \$128 per month and program assets currently top \$42 million. Hawai'i must join in this national effort to identify solutions to help our working families be retirement ready, and AARP Hawai'i stands ready to work with the Legislature to do this through a Hawai'i Saves program.

D. Federal Legislation-Passage of SECURE Act

Congress recently passed the Setting Every Community up for Retirement Act of 2019 (SECURE Act) which expands access to retirement savings to over 27 million part-time workers in the U.S. The bill also makes it easier for smaller employers to join to offer a retirement program to their workers and expands the selection of lifetime income options for retirees. However, it does not have some of the key features that state automatic IRA programs do, such as plug and play retirement programs that small businesses can use without having to run or pay for it.

AARP supports the SECURE Act as part of a larger effort to improve retirement security. It <u>does not provide</u> provisions that will inhibit states from moving forward on establishing retirement savings programs. Therefore, states such as Hawai'i can and should continue to work towards establishing this program for our private sector workers. The SECURE Act does not create the framework to develop a formal savings program at the local level; it only compliments existing or future state efforts. In a recent CNBC report, J. Mary Iwry, Senior Fellow at the Brookings Institution, states, "There is no way the SECURE Act comes close to solving the coverage gap in

the United States, but the Act is a good, constructive and necessary step forward". ("New Programs aim to help the 55 million people without workplace retirement savings plans", Jan 30, 2020). Having both national and state level efforts will give more individuals access to a retirement saving program.

E. Commonly Raised Questions and Issues

The Employee Retirement Income Security Act of 1974 (ERISA) is sometimes voiced as a barrier to establishing a state-facilitated retirement program. ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these programs. However, state-facilitated retirement programs are not the same as an employer-sponsored plan which must abide with the ERISA regulations. Instead the public programs would likely fall under the 1975 safe harbor regulation providing that voluntary payroll deduction IRAs will not be treated as ERISA plans so long as they are merely *facilitated* by employers and not directly sponsored. (Source: 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975).) These programs also come within longstanding Department of Labor guidance: (1999 DOL guidance issued by Interpretative Bulletin 99-1.) Oregon's program has been live for more than two years, and there is no active challenge to ERISA.

Hawai'i has the benefit of the experiences of Oregon, Illinois, and Maryland regarding this ERISA question. In all these states, laws to start a payroll deduction IRA plan were enacted over the objections of American Council of Life Insurers (ACLI), and each program is currently or will be accepting contributions by the end of 2020. ERISA concerns have not stopped them from helping their residents save for retirement.

A common misconception is that lower-income workers are unable to contribute to a retirement savings program because they don't have any extra money once they pay for their basic household necessities.

State programs are designed to put the worker in the driver's seat. The worker always decides if they want to save, how much they want to save and what they want to save in. They may opt out because of income concerns, but most are likely to stay in once enrolled. OregonSaves is demonstrating that lower income workers will participate. The average income of Oregon's new savers **is \$29,000** and the average amount saved is \$128 a month. Since its inception in 2017, 70 percent of eligible workers have signed up for OregonSaves and \$42 million has been saved collectively by the participants.

Some of the questions raised by opponents, however, are not intended to solve the problem at hand, which is: how do you help Hawai'i's workers save for their retirement? Opponents to a Hawai'i Saves program raise objections with no alternative solution – in essence, the opponents advocate for a **status quo** approach to address a crisis that is growing in Hawai'i and across the Nation.

The Hawai'i Financial Health Pulse: 2019 Survey Results shows that the 69% of people in Hawai'i are facing financial challenges due to various factors such as the high cost of living. This makes it harder for people to spend, save, borrow and plan for their future that would allow them to be resilient and financially sound. If working families are struggling now, imagine what their financial outlook will be when they retire and have not saved sufficiently.

The report recommends "different actionable solutions that Hawai'i 's stakeholders such as the financial institutions, employers, colleges and universities, and policymakers should take to improve the financial health of Hawai'i's people. One key recommendation is that policy makers can promote initiatives that help Hawai'i residents to save, access affordable credit, manage finances and plan for retirement." This bill offers a solution.

Yes, there are still questions that need to be studied and answered, and that is the purpose of having a task force to oversee an implementation plan. The plan will include a study to evaluate the costs involved, propose an implementation plan with timelines, and explore the use of interstate partnerships and agreement. Ultimately, the plan will propose the best retirement savings program that can be successfully operational and sustainable for Hawai'i 's people.

Thank you for the opportunity to testify in **strong support** of S.B.2490 SD1.

Attachments:

AARP Fact Sheet: Hawai'i Could Save \$32.7 Million by Helping People Save for their

Own Retirement, May 2017.

ALICE: A Study of Financial Hardship in Hawai'i 2017 Report - Project of Aloha United

Way (Excerpt)

Fact Sheet: Hawaii

Hawaii Could Save \$32.7 Million by Helping People Save for Their Own Retirement

William Shiflett and Catherine Harvey AARP Public Policy Institute

When individuals save for retirement they are less likely to rely on public assistance programs later in life. State-facilitated retirement savings plans for small-business employees would help people save more for retirement and, in turn, save significant taxpayer dollars for programs like Medicaid, Supplemental Security Income, the Supplemental Nutrition Assistance Program, and housing assistance. More than 30 states are considering creating retirement plans for private-sector workers whose employers do not already offer one. New research finds that Hawaii would save \$32.7 million on public assistance programs between 2018 and 2032 if lower-income retirees save enough to increase their retirement income by \$1,000 more per year.

Fiscal Savings to States of \$1,000 More in Retirement Income for the Bottom Two Retirement Income Quintiles

	Total Savings,	
	Combined Federal and State,	Savings to State,
State	2018-32	2018-32
Alabama	\$156,459,591	\$17,652,790
Alaska	\$40,947,013	\$13,051,329
Arizona	\$396,596,440	\$89,210,583
Arkansas	\$129,450,257	\$27,611,939
California	\$5,383,081,091	\$1,393,743,339
Colorado	\$472,289,002	\$154,864,156
Connecticut	\$421,454,107	\$89,974,509
Delaware	\$69,140,518	\$18,176,268
Florida	\$1,404,379,386	\$290,543,822
Georgia	\$338,628,931	\$52,545,035
Hawaii	\$160,312,439	\$32,749,675
ldaho	\$54,198,256	\$11,508,077
Illinois	\$758,140,927	\$139,013,992
Indiana	\$268,263,150	\$55,927,866
lowa	\$264,687,543	\$67,574,339
Kansas	\$195,565,665	\$51,724,322
Kentucky	\$319,759,599	\$46,163,299
Louisiana	\$201,858,462	\$32,884,222
Maine	\$135,574,464	\$22,980,536
Maryland	\$331,624,472	\$69,676,767



State	Total Savings, Combined Federal and State, 2018-32	Savings to State, 2018-32
Massachusetts	\$1,318,605,436	\$333,548,142
Michigan	\$496,846,112	\$81,681,041
Minnesota	\$796,004,880	\$257,527,390
Mississippi	\$195,911,435	\$29,494,258
Missouri	\$403,926,297	\$99,087,689
Montana	\$46,325,459	\$8,374,620
Nebraska	\$130,684,259	\$40,763,572
Nevada	\$127,056,172	\$24,048,205
New Hampshire	\$62,650,543	\$15,672,254
New Jersey	\$809,192,172	\$193,934,233
New Mexico	\$49,319,790	\$7,424,601
New York	\$4,952,709,650	\$1,467,056,431
North Carolina	\$617,668,545	\$127,363,525
North Dakota	\$26,421,294	\$5,652,108
Ohio	\$1,093,070,035	\$240,600,349
Oklahoma	\$83,792,496	\$20,526,999
Oregon	\$453,533,958	\$98,930,353
Pennsylvania	\$1,359,355,285	\$330,156,349
Rhode Island	\$171,075,417	\$25,439,603
South Carolina	\$212,798,415	\$37,450,871
South Dakota	\$81,640,098	\$14,053,954
Tennessee	\$1,142,228,011	\$260,188,825
Texas	\$1,381,708,267	\$340,644,794
Utah	\$147,106,849	\$26,089,868
Vermont	\$53,543,140	\$12,722,408
Virginia	\$481,686,611	\$135,330,635
Washington	\$1,030,924,340	\$297,935,294
West Virginia	\$132,024,966	\$17,217,926
Wisconsin	\$684,324,456	\$139,334,771
Wyoming	\$50,305,916	\$17,966,328
United States	\$32,978,295,282	\$7,793,556,409

Source: AARP Public Policy Institute analysis of Philip Trostel, The Fiscal Implications of Inadequate Retirement Savings in Maine (Orono, ME: The University of Maine Margaret Chase Smith Policy Center, February 2017), https://mcspolicycenter.umaine.edu/wp-content/uploads/sites/122/2017/03/final-aarp-report.pdf.

Fact Sheet 463, May 2017

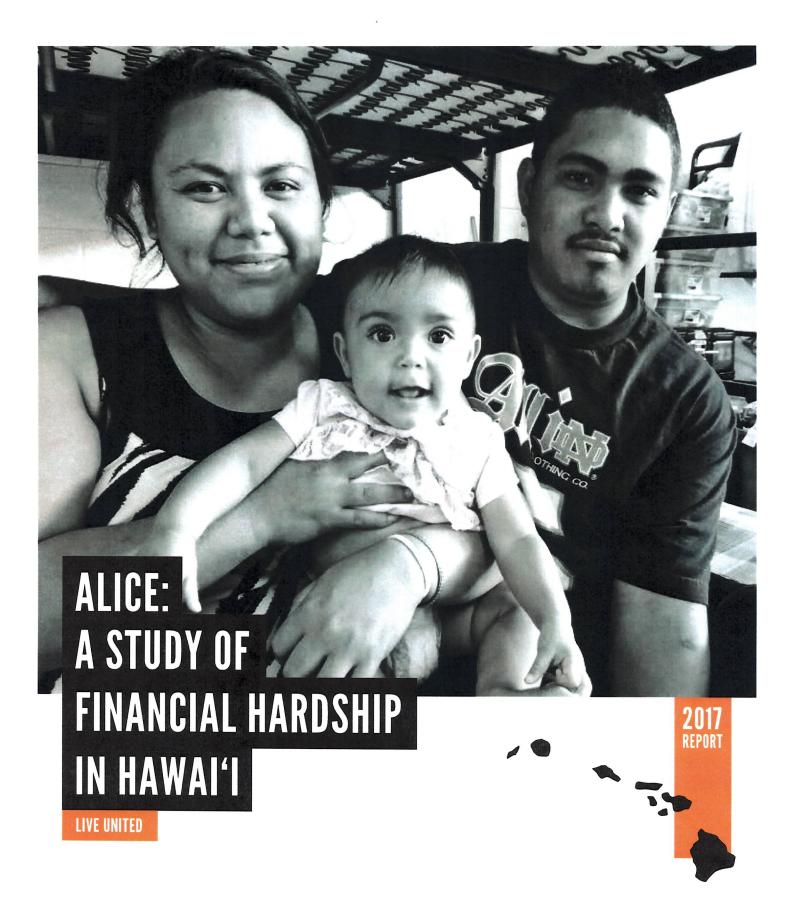
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UNITED WAY ALICE REPORT - HAWAI'I

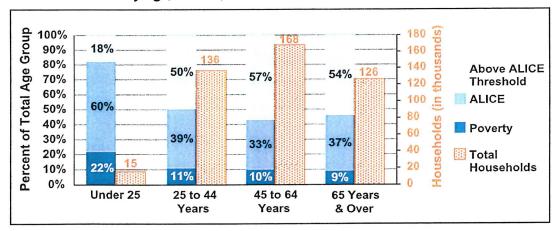
Apart from for a few notable exceptions, ALICE households generally reflect the demographics of the overall state population. Differences are most striking for those groups who traditionally have the lowest wages: women; lesbian, gay, bisexual, and transgender (LGBT) people; recent immigrants who are undocumented, unskilled, or in limited English-speaking households (all household members 14 years old and over have at least some difficulty with English); people with low levels of education; people with a disability; formerly incarcerated people; and younger veterans. County statistics for race/ethnicity and age are presented at unitedwayalice.org/hawaii.

"Apart from for a few notable exceptions, ALICE households generally reflect the demographics of the overall state population."

Age

There are ALICE households in every age bracket in Hawai'i (Figure 7). Within each age bracket, the number of ALICE households and households in poverty generally reflect their proportion of the overall population. Where they differ, the youngest are overrepresented in both poverty and the ALICE population.

Figure 7. Household Income by Age, Hawai'i, 2015



Source: American Community Survey, 2015, and the ALICE Threshold, 2015

Within the youngest Hawai'i age group (under 25), 22 percent are in poverty, while an additional 60 percent are ALICE households. As households get older, a smaller percentage of them are in poverty and are ALICE. Middle-aged households (25 to 44 years) have the second highest percentage of ALICE households, and those aged 45 to 64 years have the lowest. Senior households (65 years and older) are less likely to be in poverty (9 percent) but still have a high share of ALICE households (37 percent).

The comparatively low rate of senior households in poverty (9 percent) provides evidence that government benefits, including Social Security, are effective at reducing poverty among seniors (Haskins, 2011). But the fact that 37 percent of senior households qualify as ALICE highlights the reality that these same benefits are often not at a level that enables financial stability. This is especially true in Hawai'i, where the cost of living is high. This is reinforced by the fact that many senior households continue to work, some by choice and others because of low income. In Hawai'i's 65- to 74-year-old age group, 26 percent are in the labor force, as are 7 percent of those 75 years and over (American Community Survey, 2015).

INITED WAY ALICE REPORT - HAWAI'I

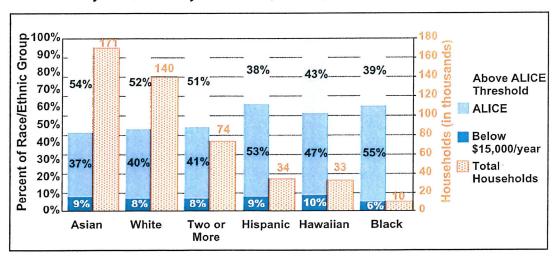
"Earning enough income to reach the ALICE Threshold is especially challenging for young households in Hawai'i, as illustrated by the high numbers of younger households below the ALICE Threshold."

Earning enough income to reach the ALICE Threshold is especially challenging for young households in Hawai'i, as illustrated by the high numbers of younger households below the ALICE Threshold. The same is true in many parts of the country, and the response has typically been a decrease in the number of households headed by someone under the age of 25 as young workers move back in with their parents or find roommates to save money. From 2007 to 2015, the number of Hawai'i's households headed by someone under 25 decreased by 21 percent (Vespa, Lewis, & Kreider, 2013; American Community Survey, 2007, 2010, 2012, and 2015).

Race/Ethnicity

Of Hawai'i's 445,900 households, 37 percent are headed by someone who is Asian (Asian alone, not Hispanic or Latino, U.S. Census classification), 30 percent by someone who is White, 16 percent by someone reporting Two or More Races, 7 percent by someone who is Hispanic, 7 percent by someone who is Native Hawaiian and Other Pacific Islander, and 2 percent by someone who is Black. At least 46 percent of households in each racial/ethnic group have income below the ALICE Threshold. Rates for Asians, Whites, and people of Two or More Races (a large population in Hawai'i) are between 46 and 49 percent, while rates for Hispanics, Native Hawaiians, and Blacks are 57 percent or higher (Figure 8).

Figure 8.
Households by Race/Ethnicity and Income, Hawaii, 2015



Source: American Community Survey, 2015, and the ALICE Threshold, 2015

Note: Data in all categories except Two or More Races is for one race alone. Because race and ethnicity are overlapping categories and Hawai'i is a state with many races and ethnicities, the totals for each income category do not add to 100 percent exactly. This data is for households; because household size varies for different racial/ethnic groups, population percentages may differ from household percentages. Because household poverty data is not available for the American Community Survey's Race/Ethnicity categories, annual income below \$15,000 is used as a proxy.

In terms of race and ethnicity, Hawai'i is one of the most diverse states in the country and one of the few "majority minority" states, with 70 percent of the population being non-White. Within racial/ethnic groups, there is additional diversity in national origin.

Before Captain James Cook's ships reached Hawai'i in 1778, the Native Hawaiian population was sizable, with estimates ranging from 110,000 to 1 million. Disease and war reduced that population to less than 40,000 by the turn of the 20th century. But the Native Hawaiian

UNITED WAY ALICE REPORT - HAWAI'I

Population growth in Hawai'i will vary across counties with the slowest rate of 0.5 percent annually in the City and County of Honolulu, while Hawai'i County is projected to grow at about 1.7 percent annually, Maui County at 1.2 percent, and Kaua'i County at 1.0 percent (State of Hawai'i Executive Office on Aging, 2011; Yahirun and Zan, 2016).

Hawai'i's population will continue to become both older and more diverse. The aging of the Baby Boomers has wide implications, including a smaller proportion of younger families and a decrease in the working-age population.

Hawai'i's low unemployment rate and growing economy will provide ongoing opportunities for both interstate migration and international immigration to Hawai'i, but because there are still obstacles to economic stability for immigrants, they may be harder to attract. There is more domestic migration than international immigration to the state, though the foreign-born population increased from 15 percent of the overall population in 1990 to 18 percent in 2015 (Migration Policy Institute, 2015).

An Aging Population

The composition of Hawai'i's aging population is as diverse as the overall state population but with a slightly different composition, and it varies by county. Across the state, the percentage of seniors who are Asian is 14 times the national average – 54 percent compared to 3 percent – with Japanese and Filipino ethnicities being the most common. The share of older adults who are Native Hawaiian or Other Pacific Islander is also higher than the national average, as is the share who identify as being of Two or More Races. A large percentage of Hawai'i seniors are foreign-born – 24 percent, nearly twice the national average of 13 percent. In Hawai'i, 28 percent of seniors speak a language other than English at home, and among those, 16 percent report that that they do not speak English at all or do not speak English well. Breakdown by county shows that the city and county of Honolulu contain the lowest share of White seniors (20 percent); Hawai'i County has the highest, at 47 percent (Yahirun and Zan, 2016).

Overall, in 2015 Hawai'i ranked first in the U.S. on the well-being of its 55-and-older population, particularly with regard to a sense of purpose (liking what you do each day and being motivated to achieve your goals), community (liking where you live, feeling safe and having pride in your community), and physical well-being (having good health and enough energy to get things done daily), according to the Gallup-Healthways Well-Being Index. In addition, Baby Boomers in Hawai'i represent the healthiest and best-educated generation to retire (Gallup-Healthways Well-Being Index, 2015; State of Hawai'i Executive Office On Aging, 2011; Yahirun and Zan, 2016).

Even with these good conditions, there is concern for the financial stability of aging Baby Boomers as well as for the health of the wider economy as the population ages. Recent studies have shown that U.S. workers are woefully unprepared for retirement:

- 39 percent of non-retirees nationally give little or no thought to financial planning for retirement
- 31 percent have no retirement savings or pension
- 75 percent of Americans nearing retirement have less than \$30,000 in savings

"There is concern for the financial stability of aging Baby Boomers as well as for the health of the wider economy as the population ages. Recent studies have shown that U.S. workers are woefully unprepared for retirement."

In this landscape, the number of senior ALICE households will likely increase. During unemployment, many people draw down their retirement accounts to augment their household's cash flow. However, this strategy comes with both short- and long-term costs. Penalties are charged for early withdrawals and retirement savings are diminished, putting future financial stability at risk. In addition, retirement plan participation has continued to decrease since the Great Recession for families in the bottom half of the income distribution. Participation rebounded slightly only for upper-middle-income families from 2010 to 2013, but it did not return to the levels seen in 2007 (Bricker, et al., 2014; Barnes, 2014; Saad-Lessler and Ghilarducci, 2012).

This shift in demographics, as well as the impact of the stock market crash, falling house prices, and periods of unemployment will likely produce more senior ALICE households and increase their economic challenges. Many aging Hawai'i residents have seen the value of their homes decline and their retirement assets dwindle at the same time that their wages — and ability to save — have also decreased. The rate of homeownership for seniors is 78 percent, lower than the national average of 81 percent. A recent AARP report on working-age adults (18 to 64 years old) found that half of Hawai'i's private sector employees work for an employer that does not offer a retirement plan; more than 80 percent of these employees earn less than \$40,000 per year (Federal Reserve, 2015; Yahirun and Zan, 2016).

More of the ALICE seniors will be women. Generally, women have worked less and earned less than men, and therefore have smaller or no pensions and lower Social Security retirement benefits. And since women generally outlive their male counterparts, they are more likely to be single and depend on one income as they get older. In Hawai'i, 48 percent of senior women were married compared to 71 percent of senior men — close to the national rate of 46 percent of women and 73 percent of men (Waid, 2013; Bureau of Labor Statistics (BLS), 2015; Hounsell, 2008; U.S. Census Bureau, 2012; Yahirun and Zan, 2016).

Infrastructure

The aging population, combined with other trends, will have significant consequences for ALICE households and the wider community. First, there will be increased pressure on the state's infrastructure, especially the housing market for smaller, affordable rental units. These units will need to be close to family, health care, and other services, or transportation options will need to be expanded for older adults who cannot drive, especially those in rural areas. Unless changes are made to Hawai'i's housing stock, the current shortage will increase, pushing up prices for low-cost units and making it harder for ALICE households of all ages to find and afford basic housing. In addition, homeowners trying to downsize may have difficulty realizing home values they had estimated in better times, which they had thought would support their retirement plans (U.S. Department of Transportation, 2015; State of Hawai'i Executive Office On Aging, 2011; Kupuna Education Center, 2013).

Senior Living and Eldercare

The second consequence of Hawai'i's aging population will be increased demand for geriatric health services, including assisted living and nursing facilities and home health care. But without sufficient savings, many families will not be able to afford these services. The median annual cost of a private room in a nursing home in Hawai'i is \$145,270, representing 263 percent of the median household income for seniors in the state, according to the AARP Scorecard on Long-Term Services and Supports. In terms of other aspects of access to long-term care, Hawai'i compares

"The second consequence of Hawai'i's aging population will be increased demand for geriatric health services, including assisted living and nursing facilities and home health care. But without sufficient savings, many families will not be able to afford these services."

UNITED WAY ALICE REPORT - HAWAI'

well to the rest of the country, ranking sixth on a national index that includes information, awareness, counseling, and quality (Reinhard, et al., 2014).

The need for quality elder caregiving is already apparent. In 2014, Hawai'i's Adult Protective and Community Services Branch reported more than 800 cases of elder abuse – a term that applies to people over 60 years of age and includes treatment without consent, physical and sexual abuse, emotional abuse, neglect, and financial exploitation. Given the extent of suspected underreporting, estimates of total incidents in the state range between 10,000 and 24,000 per year, and an increasing volume of research suggests that about 10 percent of elders experience abuse over the course of their lives. Nationally, the reported incidence of abuse is increasing, even though seniors are often reluctant or unable to come forward (Quinn & Benson, Fall 2012; Anetzberger, October 2012; Lifespan of Greater Rochester et al., 2011; Galiher DeRobertis & Waxman LLP, 2014).

In terms of health services, older adults frequently don't receive recommended preventative care. In 2015, 15 percent of Hawai'i's at-risk adults (who are age 50 or older, in fair or poor health, or have ever been told they have diabetes or prediabetes, acute myocardial infarction, heart disease, stroke, or asthma) had not visited a doctor for a routine checkup in the past two years, slightly better than the national average of 13 percent (McCarthy, Radley, & Hayes, 2015).

Aside from the predictable decline in physical health, seniors in Hawai'i can be susceptible to mental health issues, but less so than many other areas of the country. According to the 2011 Behavioral Risk Factor Surveillance System (BRFSS) survey, in Hawai'i, 11 percent of 50- to 64-year-olds and only 4 percent of those 65 and older report mental distress, lower than the national averages of 13 percent of 50- to 64-year-olds and 7 percent of those 65 and older. These seniors are also more likely to report poor or fair physical health (Substance Abuse and Mental Health Services Administration in partnership with the U.S. Administration on Aging, 2012).

Caregiving

The third trend as Hawai'i's population ages will be an increasing need for caregivers, both paid home health aides and unpaid family members, and both are more likely to be ALICE. Nursing assistants are in the top 25 growth jobs in Hawai'i, followed by personal care aides and home health aides. These jobs involve substantial responsibility for the health of vulnerable clients, yet they pay only about \$13 to \$14 per hour and are not well regulated. They also require the worker to be there in person, which can mean travelling great distances even in bad weather and with variable hours (O'Keeffe and Wiener, 2011; Bercovitz, Moss, Park-Lee, Jones, & Harris-Kojetin, 2011; Redfoot, Feinberg, & Houser, 2013; Hardway, et al., 2011).

Hawai'i has one of the lowest rates of professional caregivers per senior. From 2010 to 2012, there were only 19 personal care, psychiatric, and home health aide direct care workers per 1,000 seniors – the second lowest rate in the country, and well below the national average of 40 per 1,000. Except for Honolulu, most of the Hawai'i is considered to be medically underserved and is designated a Health Professions Shortage Area by the U.S. Department of Health and Human Services (Reinhard, et al., 2014; Hardway, et al., 2011).

"The third trend as Hawai'i's population ages will be an increasing need for caregivers, both paid home health aides and unpaid family members, and both are more likely to be ALICE."

"Hawai'i is actually attracting large numbers of college students; some return home with their degrees, but many stay, work, and have children."

ALICE families in Hawai'i will likely take on more caregiving responsibilities for their own relatives, often because they cannot afford other care options. Currently, approximately 20 percent of U.S. households have a family caregiver, with half of those reporting income less than \$50,000, or close to the ALICE Threshold. The demand for caregivers is projected to rise across the country. At the same time, fewer family members are likely to be available to provide care because of the financial burdens that caregiving imposes. The Caregiver Support Ratio, which measures the number of people in Hawai'i aged 45 to 64 for each person aged 80 and older, was 6.1 in 2010 and is projected to fall to 2.0 by 2030 and 2.3 in 2050. This means that the overall pool of middle-aged people who could potentially serve as caregivers to Hawai'i's seniors is shrinking significantly (AARP Public Policy Institute, 2015; Redfoot, Feinberg, & Houser, 2013).

There are serious health and financial consequences for caregivers. In addition to the toll that caregiving takes on mental and physical health, caregivers also risk future financial instability because of both reduced work opportunities and lost Social Security benefits and reduced pensions. This reality is reflected in the high percentage of caregivers who report stress: A recent study found that in Hawai'i, more than a quarter of caregivers (27 percent) reported high levels of stress, or were not well-rested — and this large percentage is actually the lowest rate in the country (Reinhard, et al., 2014).

The 5.5 million military caregivers in the United States are especially vulnerable. Military caregivers helping veterans from earlier eras tend to resemble civilian caregivers in many ways; by contrast, post-9/11 military caregivers (accounting for 20 percent of military caregivers) differ systematically, according to a RAND Corporation survey. These caregivers are more likely to be overseeing a younger individual with a mental health or substance use condition. The caregivers themselves tend to be younger (more than 40 percent are aged 18 to 30), non-White, also a veteran of military service, employed, and perhaps most significantly, not connected to a support network (Ramchand, et al., 2014).

Migration

The perception of Hawai'i is often as a state with a low immigration rate and small population growth, facing a brain drain and an outflow of income. However, the large flows of people coming into and out of the state, broken down by age group, tell a different story (Figure 42). Hawai'i is actually attracting large numbers of college students; some return home with their degrees, but many stay, work, and have children. Some older residents of Hawai'i leave their high-paying jobs there for jobs in other states, but most stay in Hawai'i and retire. These population flows present both opportunities and challenges for ALICE families.

In 2015, the largest movement of people in Hawai'i was among those aged 18 to 24 years old. That year, 15,583 people aged 18 to 24 moved to Hawai'i, 19 percent of them from outside the U.S. (light blue portion of the inflow bar in Figure 42). Another 14,671 people in this age group left the state. Only 13 percent of Hawai'i's migrants were college students, while almost a quarter of those leaving (24 percent) were high-school graduates going to college in other states (National Center for Education Statistics, 2014; American Community Survey, 2014; Stone, 2015).



Senate Committee on Labor, Culture and the Arts February 20, 2020 – 10:35 pm – Room 211

SB 2490, SD1: Relating to the Hawaii Retirement Savings Program

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee, my name is Cynthia Takenaka representing NAIFA Hawaii, an organization of life insurance agents and financial advisors throughout Hawaii who primarily market life, annuities, long term care and disability income insurance products.

The purpose of SB 2490 , SD1, is to establish the Hawaii Retirement Security Task Force to select a research entity to draft an implementation plan for the yet to be established Hawaii Retirement Savings Program for private sector employees who are not currently covered by an existing employer sponsored retirement plan. The task force members are from government, financial services industry, small business, retirees, employees and a consumer group. There's a \$400,000 appropriation for fiscal year 2020-2021 expended by Department of Budget and Finance. The task force shall report to the Legislature prior to the convening of the regular session of 2021 and dissolve on March 15, 2021.

We respectfully do <u>not</u> support SB 2490, SD1.

We understand the importance of retirement security and acknowledge that many Americans are not saving enough for retirement. However, we do not believe that a state-run plan that competes with private market plans is the answer. Availability and access to retirement savings options are not the problem. There already exists a strong, vibrant private-sector retirement plan market that offers diverse, affordable options to individuals and employers. If a retirement plan is not offered at work, employees have ready access to low-cost IRAs through local financial advisors and financial institutions. There simply is no need for a state program to compete with the private sector.

In addition, the existence of a state-run retirement plan could result in employers with strong existing 401k and other types of plans dropping them and allowing the state-run program to take the place of the existing plan. This would lead to more plans with lower contribution limits and a loss of matching contributions by employers.

There are many reasons - other than a lack of access to retirement plans - for why people aren't saving enough for retirement. These reasons include the fact that many people simply do not have enough dollars left after paying their monthly bills to also save for retirement, as well as a

lack of understanding of how important it is to put money away for the future. Policymakers should analyze why people aren't saving enough before enacting solutions.

We believe that states would be better served by using scarce state resources for education and outreach efforts designed to educate their citizens about the importance of saving for retirement, rather than implementing their own costly state-run plans.

In December 2019 Congress enacted the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and the President signing it into law. The SECURE Act as passed by Congress was a bipartisan, bicameral package attached to the end of year appropriations bill.

The SECURE Act has a number of provisions to incentivize retirement planning, diversity the savings options and increase access to tax-advantaged savings program. The act aims to encourage employers to start offering retirement savings plans to improve retirement savings for their employees by reducing administrative costs and burdens. With the SECURE Act in place let's give Hawaii's employers and employees the chance to start their retirement savings rather than implementing a new state program for retirement savings.

We respectfully request that if this measure moves forward that the research entity be required to research the implications and benefits of the SECURE Act.

More importantly, we'd like to bring your attention to a current federal lawsuit in California – **Howard Jarvis Taxpayers Association et al. vs The California Secure Choice Retirement Savings Program filed back in 2018.** The plaintiffs maintain that the California plan is subject to ERISA and therefore is in violation of its provisions.

In September 2019, the U.S. Department of Justice filed an amicus brief challenging the legality of California's Secure Choice Program citing preemption by ERISA and that the program does not qualify for "safe harbor" status under ERISA regulations. Having a state law requiring participating employers to set up an employee retirement plan that may be subject to or preempted by ERISA will depend on how the courts will interpret the plan design. We should await the outcome of this litigation which may go up to U.S. Supreme Court.

We also respectfully request that if this measure moves forward that the research entity include their evaluation of this lawsuit in the proposed study.

Thank you for allowing us to share our views and respectfully ask that this measure be held in committee.



Testimony of the Hawai'i Appleseed Center for Law & Economic Justice
In Support of SB 2490 SD1 – Relating to the Hawaii Retirement Savings Program
Senate Committee on Ways and Means
Thursday, February 20, 2020, 10:35 AM, in conference room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **SB 2490, SD1**, which would establish the Hawaii Retirement Savings Task Force, which would evaluate a retirement savings plan for non-government employees.

According to the U.S. Census Bureau's supplemental poverty measure, Hawai'i's senior poverty rate is 15.7 percent, the 8th highest rate in the nation. Nearly half (47.0 percent) of Hawai'i's seniors have incomes below 200 percent of the supplemental poverty measure, which is the 7nd highest rate among the states.

Meanwhile, 85.3 percent, or nearly 261,000, Hawai'i residents aged 65 or older received Social Security benefits in 2018, which was lower than the national average of 89.9 percent. Hawai'i seniors received a median monthly Social Security benefit of \$1,429.00, just below to the national average of \$1,440.50, while having to contend with the highest cost of living among all the states.

With our ever-growing senior population facing statistics like that, encouraging and enabling our working-age population to save for retirement is crucial to prevent more poverty among our seniors and to protect our state's future economic health.

According to the AARP, half of our state's private sector workers do not have access to an employer-sponsored retirement plan, and very few who are eligible to contribute to an individual retirement account actually do so. Low-wage workers are especially unlikely to have a retirement plan available to them at their workplace.

The vast majority of Hawai'i registered voters polled by AARP wish that they had more retirement savings, are concerned that some of their fellow residents will end up on public assistance programs in retirement, and agree that lawmakers should do more to make it easier for small business owners to offer their employees a way to save for retirement.^{iv}

Dozens of states have been considering the ways that they could help their workers save more via state-managed retirement plans. In fact, eight states – California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Oregon, and Washington – already passed laws for automatic enrollment retirement savings programs for their workers.^v

According to the Center for Economic and Policy Research, one major advantage of state plans is that workers could keep their accounts with them when they change jobs. vi In addition, the fees of statemanaged plans would likely be just a fraction of those levied by private 401(k)s:

This may seem like a small difference, but it adds up over a worker's career. Imagine a person earning \$60,000 a year and putting 6 percent of their pay, or \$3,600 a year, into a 401(k) for thirty years. At the end of thirty years, the difference between a plan with annual administrative costs of 0.3 percent and a plan with costs of 1.0 percent would be almost \$30,000. (This calculation assumes a 5.0 percent average annual nominal return.)

The difference would be even larger if we factored in that private accounts are likely to charge between 10 to 20 percent of savings to convert the sum into an annuity when workers retire. A public plan would charge considerably less.

Another important feature of many of these types of plans is automatic enrollment. According to the AARP, 90 percent of those who are participating in employer-sponsored retirement programs state having their savings automatically deducted from their paychecks makes it easier for them to save. As a possible remedy to the lack of retirement savings, automatic enrollment can affect senior poverty levels and, by reducing the number who would need to rely on public assistance, state budgets.

We need to start now to ensure that as few of our future retirees as possible end up struggling in poverty. Mahalo for your consideration of this testimony.

i https://www.kff.org/report-section/how-many-seniors-live-in-poverty-tables/

ii https://www.ssa.gov/policy/docs/statcomps/oasdi sc/2018/table01.html

iii https://www.ssa.gov/policy/docs/statcomps/supplement/2019/5j.html#table5.j6

ivhttps://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2016/2016-Hawaii-Work-and-Save-Onepager-AARP-res-econ.pdf

v https://www.corpay.com/state-retirement-plans-now-mandatory-in-8-states/

vi http://cepr.net/blogs/beat-the-press/the-paul-ryan-small-savers-tax



February 19, 2020

The Honorable Donovan M. Dela Cruz, Chair The Honorable Gilbert S.C. Keith-Agaran, Vice Chair Senate Committee on Ways and Means 415 S. Beretania Street Honolulu, HI 96813

RE: SB 2490 SD 1 – Hawaii Retirement Savings Program; Legislative Reference Bureau; Study; Appropriation.

Dear Chair Cruz, Vice-Chair Keith-Agaran and Members of the Senate Committee on Ways and Means:

The Securities Industry and Financial Markets Association¹ is a national trade association which brings together the shared interests of more than 340 broker-dealers, banks and asset managers. Many of our members have a strong presence in Hawaii where they provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.

SIFMA appreciates the opportunity to provide feedback on SB 2490, which would create a task force to design a state-sponsored retirement program for private sector workers. We commend the bill sponsors for their commitment to improving retirement savings, and we agree that there is a retirement savings challenge in this country. However, we are concerned that the proposed study is too narrow to identify the best initiatives for Hawaii and its residents.

States across the country are considering a wide variety of approaches to assist residents in saving for retirement. These include education efforts, ways to encourage businesses to adopt strong, robust retirement plans,² establishing online marketplaces or state-run multi-employer plans,³ or even whether access to retirement savings products is a leading cause of under-saving in Hawaii.

As you discuss this legislation and potentially move forward with this task force, we urge you to consider the following:

• Current Access to Retirement Savings. The market for retirement savings products in Hawaii is robust and highly competitive and has seen notable growth over recent years. More than 16,000 people are employed in the finance and insurance industries, which provide numerous, fairly-priced retirement savings options, including 401(k), 403(b), 401(a) and 457(b) plans, as well as SIMPLE, SEP and traditional and Roth IRAs. Where an employer does not provide a plan, IRAs are readily available on-line and at most financial institutions. We believe lack of access to retirement savings products is not a problem. We would encourage you to explore the issue further.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit www.sifma.org.

² Such as a Washington State- like Marketplace program <u>outlined</u> by the U.S. Department of Labor or Utah's tax benefit initiative.

³ Such as the Vermont Multiple Employer Plan or Massachusetts' 401(k) for small non-profits.

- Factors, Other Than Access, are Creating Underlying Obstacles to Savings. With a variety of options already available, factors other than access may be keeping people from saving. It is important that any state proposal address some of the underlying issues with retirement undersaving, including, for example, competing financial needs and a lack of understanding about the importance of saving over time. In fact, an AARP survey has found that "No money left after paying bills" was the leading obstacle to retirement savings. Additionally, a study by the California Secure Choice Retirement Savings Investment Board (the "Online Survey of Employees Without Workplace Retirement Plans") concluded "the leading reasons for not saving more for retirement are not making enough money or needing to pay off debts." Indeed, not earning enough, paying off debt, unexpected expenses and a focus on helping family were the top four responses, affecting 74% of all respondents.
- Whether Any Proposed Plan Would Encourage Employers with Strong Retirement Plans to Re-evaluate, Thereby Lowering Overall Retirement Saving. There is great concern over any initiatives that could encourage employers with strong existing plans to drop their current plan in favor of a state alternative. Employers often contribute up to 6% of an employee's gross salary directly to his or her retirement account. Any state program could curb the use of employer contributions if employers with strong retirement savings plans move to the program adopted by the state for ease of compliance, lower costs or because they place trust in the state ultimately leading to lower account balances. In fact, a market feasibility analysis of one proposed state-run plan in Connecticut showed that only 48% of employers with existing plans would not consider moving to a state-sponsored plan.
- The Cost of a Proposed Solution. States have estimated that the start-up costs or up-front financing costs of a program that centers around a state-run auto-IRA can range anywhere from \$8 million to over \$170 million dollars, depending on the type of plan and the size of the state. Conversely, the marketplace start-up costs in Washington State, described below, were roughly \$500k and the estimated cost of the Utah tax credit, as well as certain education initiatives that some states have explored, would all have a lower fiscal impact.
- When Assessing Cost, it is Important to Not Overstate Projections. Oregon's plan (OregonSaves) is currently the most robust, operative, state-run, mandatory-on-employer auto-IRA in the country (California and Illinois also have plans that have opened relatively recently). It has been operating for roughly two years and all employers with 5+ employees are currently required to participate. The early results are not very encouraging. In the program's initial feasibility study, the state estimated a participation rate between 75 and 80%. A recent analysis puts the participation rate at 48%. The study estimated annual contributions over \$600m/year by Year 3. Only about \$22m had been saved as of June 2019 (two years from the plan's inception), and those savers with an account balance have saved an average of \$550. In fact, one analysis found that roughly 19% of accounts had a \$0 balance and the participants had stopped contributing each of these no-balance accounts carries a cost that must either be absorbed by the state or passed onto other participants. The state even had to re-evaluate the number of potentially eligible workers from its early assumptions. Any errors in the starting estimates of any proposed ongoing program could significantly understate the cost to the state, the length of time the state would need to break-even or develop a self-sustaining program, or even the efficacy of the program.

⁴ See: Analysis of the plan by the Boston College Center for Retirement Research.

⁵ See: Oregon Retirement Savings Board <u>Meeting Minutes</u>, August 6, 2019, at p.25.

⁶ See: Analysis by the Boston College Center for Retirement Research.

⁷ See: Oregon's initial feasibility report and updated feasibility report, presented to the program's Board in March 2018.

Potential Liabilities for the State. There are several liability and litigation risks with certain state-sponsored retirement programs for private sector workers. The federal Employee Retirement Income Security Act of 1974 governs the liability of plan sponsors. According to the U.S. Department of Labor, "[p]ension plans covered by ERISA are subject to various statutory and regulatory requirements These include reporting and disclosure rules and stringent conduct standards derived from trust law for plan fiduciaries." Such requirements increase an entity's costs and liabilities but also provide substantial investor protection.

To help facilitate the creation of a certain type of state-run plan, the DOL finalized a <u>rule</u> in 2016 that gave states a limited safe harbor from ERISA. Citing investor protection and other concerns, Congress <u>repealed</u> the rule in 2017. As such, states with qualifying plans – as this proposal would likely create – will be subject to the full range of federal requirements. They, for example, may face penalties in administrative actions or may be civilly liable for violating federal law, including failing to comply with document production deadlines, investment-related requirements and other obligations. States may also be subject to other litigation challenges. For example, a lawsuit was filed (and settled) in Oregon alleging that its state-run auto-IRA represents an overreach of the state's authority, and the U.S. Attorney General recently weighed in on a California lawsuit, <u>claiming</u> that California's mandatory-on-employer auto-IRA was preempted by ERISA.

Conversely, under a marketplace program (also discussed by the U.S. Department of Labor in an Interpretive <u>Bulletin</u>), because the state is merely acting as an educator and facilitator, it would face minimal to no liability while ensuring participating residents receive full, robust consumer protections. The same would be true for Utah's tax <u>credit</u> or any education-focused initiatives.

Potential Harm to Participants. A state-run plan for private sector workers also poses some risks to participants. ERISA is a vital investor protection law that has been effectively protecting investors since the 1970s. Any complete study must take into consideration the value of the protections afforded by ERISA – particularly to women, children and heirs of deceased account holders and what is potentially lost if a plan seeks to go outside the ERISA umbrella.

Bankrate recently <u>reported</u> that 60% of people couldn't handle \$1000 unexpected expense without borrowing money or going into debt. A study should consider the potential risks of encouraging workers to save for retirement before establishing emergency savings accounts.

A state-run auto-IRA program could also harm investors who have IRA eligibility issues. There are several (often complicated) reasons why someone might be ineligible, including having a spouse with access to a workplace plan or being married and filing taxes separately. This could mean that too many residents, through no fault of their own, could find themselves penalized by the IRS.

- A Wide Variety of Possible Solutions Exist. As previously mentioned, there are a wide variety of potential solutions to the retirement savings crisis which a study should consider. For instance:
 - In May 2015, Washington State enacted and funded the first voluntary small business retirement plan "Marketplace" in the nation, which works with private providers and establishes a web-portal structure to connect private sector employers with qualifying plans.

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⁸ Wealth Management, "First state run retirement plan faces legal challenge," October 2017. Available at: http://www.wealthmanagement.com/retirement-planning/first-state-run-retirement-plan-faces-legal-challenge.

This program officially launched on March 19, 2018 and is available at www.retirementmarketplace.com. The platform was built to host other marketplaces, meaning that the Hawaii marketplace could utilize this existing infrastructure at a significantly reduced cost;

- Vermont enacted a law authorizing the development of a multiple employer plan; and
- Massachusetts <u>established</u> a 401(k) for small non-profits.

Hawaii could also pursue additional education efforts, tax breaks to encourage businesses to participate in retirement plans, the establishment of emergency savings accounts for all Hawaiians, or a unique initiative not addressed here.

In short, while we applaud you for seeking to address Hawaii's retirement crisis, we respectfully suggest you explore a variety of solutions to best address the needs of Hawaii residents.

We appreciate your willingness to consider our concerns. If you have any questions, please contact me at kchamberlain@sifma.org or 202-962-7411.

Sincerely,

/s/

Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA

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⁹ Similar bills are under consideration by other states.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS IN OPPOSITION TO SB 2490. SD 1. RELATING TO THE HAWAII RETIREMENT SAVINGS PROGRAM

February 20, 2020

Honorable Senator Donovan M. Dela Cruz, Chair Committee on Ways and Means State Senate Hawaii State Capitol, Room 211 415 South Beretania Street Honolulu, Hawaii 96813

Dear Chair Dela Cruz and Committee Members:

Thank you for the opportunity to testify in opposition to SB 2490, SD 1, Relating to the Hawaii Retirement Savings Program.

Our firm represents the American Council of Life Insurers ("ACLI"). The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 of the industry assets in the United States. ACLI members represent 95 percent of industry assets in the United States. Two hundred eighteen (218) ACLI member companies currently do business in the State of Hawaii; and they represent 95% of the life insurance premiums and 99% of the annuity considerations in this State.

Section 2 of the bill establishes a retirement savings task force to:

- 1. Create a Hawaii Retirement savings program for private sector employees, not covered by an existing employer-sponsored retirement plan. Sections 2(a), lines3 through 6, at page 3
- 2. Select a research entity to draft an implementation plan for the State's own retirement savings program. Section 2(b), lines 7 through 9, at page 3.
- 3. Submit to the legislature prior to the next legislative session a report and proposed legislation to implement the State's own retirement savings program. Section 2(d), lines 5 through 8, at page 4.

The stated premise for the bill is that many small businesses do not have access to affordable retirement plans for their employees. As a result many individuals do not have access to an employer sponsored retirement plan.

ACLI strongly believes that access to workplace retirement plan coverage is critical to helping workers meet their retirement savings challenges.

However, ACLI disagrees that these plans are not available.

EMPLOYERS HAVE ACCESS TO AFFORDABLE RETIREMENT PLANS

- Affordable Retirement Vehicles Already Exist.
- Many inexpensive and accessible retirement vehicles are already available to small employers:
 - IRAs
 - SEPs
 - SIMPLE IRA plans
 - 401(k) and 403(b) plans are available as part of an association or pooled employer plans
- The passage of the SECURE Act and other law changes have created more access to affordable retirement savings plans for employers.
- On 12/20/19 Congress passed into law the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act). This Act is expected to dramatically increase the number of small employers adopting retirement plans and the participation of their employees.
 - New Laws Allow for More Multiple Employer Plans (MEPs)
- On 7/29/19 the US Department of Labor (DOL) promulgated its Association Retirement Plan (ARP) Regulation. Employers in the same trade, industry, line of business or profession or in the same geographic area can now establish an ARP.
- The SECURE Act now supplements the DOL's ARP Regulation by authorizing unrelated employers to band together to create a multiple employer plan (a "MEP") which will reduce an employer's cost to establish and administer a retirement plan for its employees.
 - New Employer Tax Incentives
- To reduce the costs of starting a retirement plan the SECURE Act gives new tax incentives to small businesses to establish retirement plans for their employees.
- Small business employers are given a tax credit of up to \$5,000 each year for 3 years.
- The amount of an employer's tax credit is the greater of (a) \$500, or (b) the lesser of (1) \$250 credit for each non-highly compensated employee eligible to participate, or (2) \$5,000.

- Thus, a small employer having only one employee is entitled to a \$500 tax credit; and an employer having 20 or more employees gets a \$5,000 tax credit.
- The credit applies to small employers having no more than 100 employees over a 3 year period.
- The credit applies to SEP, SIMPLE, 401(k) and Profit Sharing plans.
- If the plan has auto enrollment, the employer gets an additional \$500 tax credit per year up to 3 years. Thus, small employers having an auto enrollment plan and 20 employees get a tax credit of \$5,500.

THE SECURE ACT ENABLES MANY MORE EMPLOYEES TO PARTICIPATE IN THEIR EMPLOYER'S RETIREMENT PLAN

- Part-time employees can now join their employers' 401(k) plans.
- The Act now REQUIRES employers to offer any employee working more than 1,000 hours a year or 500 hours each year for 3 consecutive years to participate in their 401(k) plan.
- Thus, a part-time employee working at least a 20 hour week each year, for example, or at least a 10 hour week each year over 3 consecutive years can now participate in their employer's 401(k) plan
- B. THE MANDATE TO DRAFT AN IMPLEMENTATION PLAN AND PROPOSED LEGISLATION TO ESTABLISH THE STATE'S OWN HAWAII RETIREMENT SAVINGS PROGRAM IS PREMATURE AND ILL ADVISED

The SECURE ACT was only passed into law a little more than a month ago. It will take some time for the DOL to implement the Act's provisions and for the marketplace to respond.

Accordingly, ACLI submits that the drafting of an implementation plan and proposed legislation by a Retirement Savings Task Force to establish the State's own retirement saving program and proposed legislation is premature. Indeed, whether Hawaii would want or even need to establish its own retirement savings program before knowing the full impact of the SECURE ACT's provisions may be questioned.

By way of background, SB 2490 is one of several bills introduced by the bill's proponents over the years seeking to create a state sponsored retirement savings plan for private sector employees. The proposed retirement plan is an AARP branded state-run retirement plan called "Work and Save" or "Secure Choice" which is an auto-enrollment IRA plan.

Since 2012 seven states have adopted this plan, namely, California, Connecticut, Illinois, Maryland, New Jersey, Oregon and most recently, New York. Massachusetts and Vermont have

adopted a different plan, a voluntary 401 (k). Only four states have begun enrollment – California, Massachusetts, Oregon and Illinois. Implementation in all these states has been a costly struggle.

These plans are expensive – the estimated startup costs for Illinois are \$18M and California \$170M. Oregon has already spent \$5.2M; and its total estimate is \$23M. Just in December of last year, the Hartford Courant reported on the Connecticut plan: "New state retirement authority is almost broke, suspends further expenditures".

These plans are likely preempted by ERISA.

The U.S. Chamber of Commerce has received a definitive legal opinion that the State sponsored retirement plans currently in existence in California, Connecticut, Illinois, Maryland, New Jersey and Oregon, will likely be determined to be an employer-sponsored plan subject to and governed by ERISA. The opinion also concludes that the plan's provisions will most likely be found to be pre-empted by ERISA.

Indeed, the California plan, now called CalSavers, is under serious legal threat from a lawsuit filed in a Federal District Court in California on May 31, 2018. The US Justice Department and Department of Labor have issued a Statement of Interest in that case supporting the plaintiffs' assertion that the plan is preempted by ERISA and subjects employers to ERISA liability, in violation of the authorizing statute. A copy of the Government's filed Statement of Interest is attached for your information. If the lawsuit is successful, it would undermine the premise of the other State sponsored retirement plans that have already adopted them.

Accordingly, considering the establishment of Hawaii's own state sponsored retirement saving program at this time would be ill advised. Prudence and common sense would dictate that Hawaii should await the outcome of the current litigation; and determine the full impact of the SECURE ACT's provisions in addressing employees' access to an employer sponsored retirement plan.

For the foregoing reasons ACLI must respectfully oppose SB 2490, SD 1, and urges this Committee to defer passage of this bill.

LAW OFFICES OF OREN T. CHIKAMOTO A Limited Liability Law Company

Oren T. Chikamoto 1001 Bishop Street, Suite 1750 Honolulu, Hawaii 96813 Telephone: (808) 531-1500 E mail: otc@chikamotolaw.com

¹ Howard Jarvis Taxpayers Association, et al. vs. The California Secure Choice Retirement Savings Program, et al, No. 2:18-cv-01584 MCE-KJN, Dist. Ct, Eastern Dist., CA.

1 2	JOSEPH H. HUNT Assistant Attorney General Civil Division	<i>Of Counsel:</i> KATE S. O'SCANNLAIN Solicitor of Labor
3	BRAD P. ROSENBERG Assistant Branch Director Federal Programs Branch, Civil Division	G. WILLIAM SCOTT Associate Solicitor
5 6 7	CHRISTOPHER R. HEALY Trial Attorney (DC Bar 219460) Civil Division, Federal Programs Branch United States Department of Justice 1100 L St. NW, Washington, DC 20005 Tel. (202) 514-8095; Fax (202) 616-8470	THOMAS TSO GARRETT N. TRAUB Attorneys Office of the Solicitor
	Email: christopher.healy@usdoj.gov	U.S. Department of Labor
8	Attorneys for the United States	
9		S DISTRICT COURT ICT OF CALIFORNIA
11		
12	Howard Jarvis Taxpayers Association et al.,	Case No. 2:18-cv-01584-MCE-KJN
13	Plaintiffs,	
	V.	STATEMENT OF INTEREST OF THE
14 15	California Secure Choice Retirement Savings Program <i>et al.</i>	STATEMENT OF INTEREST OF THE UNITED STATES
14	California Secure Choice Retirement	
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The United States submits this Statement of Interest¹ for the purpose of advancing a correct and uniform interpretation of the extent of ERISA preemption and in order to further Congress's intent of promoting the voluntary establishment of employer-sponsored retirement plans with nationally uniform standards of administration. *See* 29 U.S.C. § 1144(a). The United States has a heightened interest in finding the Secure Choice Act preempted because the Act is among the first of a number of similar state auto-individual retirement account (IRA) laws to be challenged. *See* National Conference of State Legislatures, State-Facilitated Retirement Savings Programs for Private Sector Workers (Sept. 26, 2018), *available at* http://www.ncsl.org/research/fiscal-policy/state-facilitated-retirement-savings-programs-for-private-sector-workers.aspx.

INTRODUCTION

The Employee Retirement Income Security Act of 1974 (ERISA) is a "comprehensive and reticulated statute" reflecting Congress's careful policy choices. *See Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993) (quoting *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 259, 261 (1980)). Among those choices is Congress's intentional decision to give employers the freedom to choose whether to establish a retirement plan. "Nothing in ERISA," the Supreme Court has observed, "requires employers to establish employee benefits plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). "Congress enacted ERISA to ensure that employees would receive the benefits they had earned, but Congress did not require employers to establish benefit plans in the first place." *Conkright v. Frommert*, 559 U.S. 506,

¹ 28 U.S.C. Section 517 provides that the "Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517. A submission by the United States pursuant to this provision does not constitute intervention under Rule 24 of the Federal Rules of Civil Procedure.

516-17 (2010). The Court "[has] therefore recognized that ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the *encouragement of the creation* of such plans." *Id.* (emphasis added).

The California Secure Choice Retirement Savings Trust Act ("Secure Choice Act" or "Act") takes away the freedom of choice that lies at the core of ERISA by forcing employers either to establish their own ERISA plan or to maintain an equivalent plan under the Act. Employers face only these two stark options. In taking away this choice, the Secure Choice Act disregards Congress's careful determination that employers should not be required to maintain employee pension benefit plans. Because the Secure Choice Act disregards and runs afoul of ERISA's statutory scheme by effectively requiring employers to maintain such plans, it is preempted by ERISA's broad, express preemption provision that disallows any state laws that "relate to any employee benefit plan." 29 U.S.C. § 1144(a).

BACKGROUND

The Secure Choice Act, Cal Gov't Code § 100000 et seq., requires California employers with five or more employees to have retirement savings programs for their employees through automatic enrollment in IRAs managed by the state's CalSavers Board. See § 100032. It implements this regime in stages—California employers with more than 100 employees must have such IRA plans in place by June 2020; employers with more than 50 employees must have such IRA plans in place by 2021; and all eligible employers must have such IRA plans in place by 2022. See Cal. Code Regs. tit 10 § 10002(a). Employers are exempt if they offer an "employer-sponsored retirement plan" or an "automatic enrollment payroll deduction IRA" that qualifies for "favorable income tax treatment under the federal Internal Revenue Code." See Cal. Gov't Code § 100032(g)(1). Thus, private, non-church employers who sponsor these types of ERISA-covered retirement plans are exempt from CalSavers. See generally ERISA tit. II, Pub. L. 93-406 (amending the Internal Revenue Code with respect to retirement plans covered under ERISA). However, employers who provide ERISA-covered retirement plans that do not fit

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within the exemption (such as employers who offer payroll deduction IRA programs without automatic enrollment) are still required to register for CalSavers. *See* Cal. Code Regs. tit 10 § 10000(1),(o),(x).

Under the CalSavers Act and its implementing regulations, as recently amended, nonexempt employers must provide contact information for their eligible employees to CalSavers, which then distributes enrollment materials directly to employees. Cal. Gov't Code § 100014(f); Cal. Code Regs. tit. 10 § 10003(c). Because the plain text of the Act provides that certain classes of employees are ineligible for CalSavers (such as employees for whom contributions are made to a multiemployer plan, see Cal. Gov't Code § 100000(c)(2)(B), or employees engaged in interstate commerce, § 100000(c)(2)(A)), employers must continually determine which of their employees are "eligible employees" for whom reporting to CalSavers is required. Cal Gov't Code § 10000(c). Employers must also determine on an ongoing basis whether they are an "eligible employer" by determining whether any retirement plans they offer qualify as a "tax-qualified retirement plan," see Cal. Code Regs. tit. 10 § 10000(l), (x); § 10001, or whether their average number of employees has fallen below the statutory amount, see § 10002(a), as calculated by the average number of employees reported to the State for the quarter ending December 31 and the previous three quarters of available data. Eligible employers must then withhold contributions from the eligible employees' wages at a specified contribution rate, and remit them to an IRA set up for each employee by CalSavers, unless CalSavers instructs the employer otherwise because the employee opted out of the program. Cal. Code Regs. tit. 10 §§ 10003-10004; see Cal. Gov't Code § 10032. Employers are required to update the contributions withheld for each employee as the applicable contribution rate changes. See Cal. Code Regs. tit. 10 § 10003(d). CalSavers maintains a single pooled fund of IRA assets, which are invested according to enumerated guidelines. Cal Gov't Code at §§ 100002, 100004.

Although the statute provides for optional employer contributions if doing so "would not cause the program to be treated" as an ERISA-covered plan, § 100012(j), such contributions are prohibited by regulation. See Cal. Code Regs. tit. 10 § 10005(c)(1). The Secure Choice Act

specifically provides that the CalSavers Board shall not implement the program "if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act." *Id.* § 100043(a).

ARGUMENT

THE SECURE CHOICE ACT IS PREEMPTED BY ERISA SECTION 514(a).

ERISA section 514(a) provides that ERISA supersedes any state laws that "relate to any employee benefit plan." 29 U.S.C. § 1144(a). The Supreme Court has identified two separate threads of ERISA preemption—"reference to" preemption and "connection with" preemption. Shaw v. Delta Airlines, Inc., 463 U.S. 85, 96-97 (1983); accord, e.g., Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936, 943 (2016). A state law inappropriately makes "reference to" an ERISA-covered plan if (1) the law "specifically refers" to ERISA covered plans, District of Columbia v. Greater Washington Bd. of Trade, 506 U.S. 125, 130 (1992); (2) if it acts "immediately and exclusively" upon ERISA plans; or (3) if the existence of ERISA plans is "essential to the law's operation." Cal Div. of Labor Stds. Enforcement v. Dillingham Const., N.A., 519 U.S. 316, 325 (1996). A state law has an impermissible "connection with" ERISA plans if it "governs a central matter of plan administration" or "interferes with nationally uniform plan administration." Gobeille v. Liberty Mut. Ins Co., 136 S. Ct. 936, 943 (2016) (citing Egelhoff v. Egelhoff, 532 U.S. 141, 148 (2001)). Under either thread, the pre-emption provision "displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." Mackey v. Lanier, 486 U.S. 825, 829 (1988) (citing Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985)).

I. The Act Makes Improper "Reference to" ERISA Plans Because the Law Presents Employers with the False Choice of Establishing an ERISA Plan or Maintaining California's Equivalent.

Under the "reference to" inquiry, the Supreme Court has held preempted a law that "impos[ed] requirements by reference to [ERISA] covered programs," *Dist. of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 131 (1992); a law that specifically exempted

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ERISA plans from an otherwise generally applicable garnishment provision, *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 828, n. 2, 829–830 (1988); and a common-law cause of action where the existence of an ERISA plan was a "critical factor" in establishing liability, *Ingersoll–Rand Co. v. McClendon*, 498 U.S. 133, 140 (1990); *see also Cal. Div. of Labor Stds. Enf't v. Dillingham Const.*, *N.A., Inc.*, 519 U.S. 316, 324–25 (1997). Indeed, the Court has taken it "virtually . . . for granted that state laws which are designed to affect employee benefit plans are pre-empted under § 514(a)." *Mackey*, 486 U.S. at 829 (1988) (internal quotations omitted). "Even if the law is not specifically designed to affect such plans, or the effect is only indirect," a state law will nonetheless be preempted if it has such an effect. *See Ingersoll-Rand*, 498 U.S. at 139.

This preemption regime, of course, is not boundless. Where a state law is indifferent as to the ERISA coverage of plans within its scope, such as where the law affects a broad class of arrangements that may incidentally contain ERISA plans, such a law does not make "reference to" ERISA plans. See e.g. Dillingham, 519 U.S. at 325-28; N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 656 (1995). Furthermore, where a law does not act upon ERISA-covered plans at all, but rather acts upon plan participants, see e.g. Mackey, 486 U.S. at 830-38, or upon one-time payments that do not constitute plans, see e.g., Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11 (1987), such laws similarly do not make an improper "reference to" ERISA.

Because CalSavers falls squarely in the category of cases holding state laws preempted because of their improper reference to ERISA plans. Indeed, ERISA plans are essential to the operation of the Secure Choice Act's regulatory framework—the Act forces California employers who do not offer the State's preferred types of ERISA plans (certain tax-favored employer-sponsored retirement programs and automatic enrollment IRAs) to adopt equivalent automatic-enrollment IRAs through CalSavers. *See* Cal. Gov't Code § 100032(g). Such heads-I-win-tails-you-lose state regulations cannot survive under the Court's "reference to" jurisprudence.

The case law is instructive here. In *Mackey*, the Court struck down a Georgia law that specifically exempted ERISA plans from a generally applicable garnishment procedure. 486 U.S. at 828 n. 2, 829–830. The Georgia law specifically referred to ERISA by requiring that "[f]unds or benefits of a pension, retirement, or employee benefit plan or program subject to [ERISA]" be exempt from garnishment. *See id.* at 828 n.2. Because the law "single[d] out" ERISA-covered plans for different treatment under state garnishment through this express reference to ERISA plans, the law was preempted. *See id.*

Similarly, in *Greater Washington*, the Supreme Court held that ERISA preempted a District of Columbia law requiring employers to provide the same health benefits to workers' compensation recipients that they provided to their active employees through ERISA plans. *See* 506 U.S. at 125. Because the active employees' health insurance plans were ERISA-covered plans, the Court found that the statute's mandate that health insurance be provided at the "same benefit level" as the existing insurance "specifically refer[red]" to ERISA plans. *See id.* at 130-31. That statute, too, was preempted.

In contrast, the Court in *Dillingham* found that a state law that referenced an entire class of plans that incidentally *included* ERISA plans was not preempted. There, California had enacted a law providing that public works contractors could pay an apprenticeship wage to apprentices in apprenticeship programs that met national standards. *See Dillingham*, 519 U.S. at 319. Noting that the regulated "apprenticeship programs need not necessarily be ERISA plans," *id.* at 325, the Court rejected the argument that the law improperly made reference to ERISA—the law remained valid because it referred to a class of plans that included some ERISA plans; it did not make specific reference to ERISA plans. *Id.*

Likewise, in *Fort Halifax*, a Maine law that required employers to pay one-time severance payments to employees laid off by plant closures was not preempted. 482 U.S. at 1. The payments did not suffice to constitute a "plan" for ERISA purposes because they simply involved the writing of a single check to all affected employees—they did not require "an

ongoing administrative program to meet the employer's obligation" under the statute, which was necessary for the regime to constitute a "plan." *See Fort Halifax*, 482 U.S. at 11.

Crucially, the *Fort Halifax* Court expressly rejected the reasoning of the Maine Supreme Court in its decision below, which had found that the Maine statute was not preempted because the severance mandate was a state-created benefit plan, not one created by employers. *See Dir. of Bureau of Labor Standards v. Fort Halifax Packing Co.*, 510 A.2d 1054, 1059 (Me. 1986). The United States Supreme Court recognized that the Maine court's approach "would permit States to circumvent ERISA's pre-emption provision, by allowing them to require directly what they are forbidden to regulate." *Fort Halifax*, 482 U.S. at 16. "[T]he purpose of ERISA pre-emption makes clear why the mere fact that a plan is required by a State is insufficient to fend off pre-emption." *Id.* at 16-17. Indeed, the Supreme Court recognized that "[t]he requirements imposed by a State's establishment of a benefit plan would pose a formidable barrier to the development of a uniform set of administrative practices." *Id.*

Under the Secure Choice Act, California singles-out employers who decline to sponsor the state's preferred ERISA plans, forcing them to enroll their workers in plans that function just like the plans they have chosen not to offer. This is invalid under the case law discussed above. Just as the statutes in *Mackey* and *Greater Washington* invalidly made specific reference to ERISA plans, so, too, does the Secure Choice Act: It requires employers who do not offer a qualifying "employer-sponsored retirement plan" or "automatic enrollment payroll deduction IRA" to register for CalSavers. *See* Cal. Gov't Code § 100032(g)(1). As in *Mackey*, CalSavers includes a provision that specifically exempts ERISA plans from coverage. *See Mackey*, 486 U.S. at 828 n. 2, 829–830. The statute's mandate to create alternative equivalent plans are "measured by reference to the existing . . . coverage provided by the employer." *Greater Washington*, 506 U.S. at 130.

Moreover, the employer-sponsored plans that exempt employers from the Secure Choice Act's requirements are *all* ERISA-covered plans. *See* 29 U.S.C. § 1002(2)(A). Unlike in *Dillingham*, the Secure Choice Act is not a statute that references some larger class of plans that

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happens to include ERISA plans. *See Dillingham* 519 U.S. at 325. Nor is *Fort Halifax* a barrier to preemption. As in that case, the fact that state law, rather than employers, has created CalSavers is irrelevant to its preemptive scope, *see Fort Halifax* 482 U.S. at 16-17, and unlike the Maine statute in *Fort Halifax*, the Secure Choice Act's reference to ERISA operates with respect to *plans*, not participants or one-time benefits. *See Fort Halifax*, 482 U.S. at 11; *see also Mackey*, 486 U.S. at 830-38.

Further, the Secure Choice Act, unlike the Fort Halifax statute, requires "an ongoing administrative program to meet the employer's obligation" under the statute. Fort Halifax, 482 U.S. at 11. The Secure Choice Act establishes an ongoing program and requires that employers continually update their payroll deductions to reflect changes to their workforce of eligible employees, their employer eligibility, and the fluctuating contribution rate for each employee. See Background, supra at 3; cf. Simas v. Quaker Fabric Corp., 6 F.3d 849, 852-53 (1st Cir. 1993) (a Massachusetts statute that required employers to make one-time severance payments at varying times and amounts for different terminated employees based on complex eligibility criteria required an "ongoing administrative program," and was preempted). The required CalSavers plans are, in every relevant sense, equivalent to the ERISA plans that non-exempt employers have decided not to offer. Just as a typical ERISA retirement savings account would operate, CalSavers sets-up IRAs for retirement savings for employees, and the contributions to those IRAs are collectively invested by a fiduciary. Cal. Gov't Code §§ 100002, 100004. Whether the employees invest the money with a state-managed vehicle or private entities does not change the simple fact that CalSavers is an employment-based pension plan, which, aside from the state's involvement, would be indistinguishable from other ERISA-covered plans.

This fact distinguishes this case from *Golden Gate*, in which the Ninth Circuit held that a San Francisco ordinance that set minimum health care spending requirements on employers in the City was not preempted. *See Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 546 F.3d 639 (9th Cir. 2008). The Ordinance at issue in *Golden Gate* imposed fixed per-employee health care spending requirements on San Francisco employers, which could be satisfied by

either funding ERISA plans maintained by the employers in the required amount, or by paying the same amount instead to the City's Health Access Program (HAP), which provided health care benefits for uninsured city residents. The Ninth Circuit found that this did not constitute an improper reference to ERISA, because covered employers could discharge their obligation under the ordinance by making payments to the HAP without ongoing administrative maintenance or management. *See Golden Gate*, 546 F.3d at 652. The HAP was distinguishable from the employers' ERISA health care plans—it was a "government entitlement program available . . . regardless of employment status," funded primarily by taxpayer dollars. 546 F.3d at 653. In contrast, CalSavers creates a nearly identical replacement for the ERISA plans employers have elected not to provide.

A state law may not reference ERISA plans in order to trigger ERISA-equivalent coverage. Because the Secure Choice Act does exactly that, this Court should determine that the law is preempted on that basis.

II. Because the Secure Choice Act Requires Employers to Maintain CalSavers Plans, Those Plans are Themselves ERISA Plans to Which the Secure Choice Act Improperly Refers.

The Secure Choice Act is alternatively preempted because an employer's ongoing maintenance of CalSavers Plans makes them ERISA-covered plans. *See Golden Gate*, 546 F.3d at 648 (if a city ordinance "creates an ERISA plan," then "the ordinance almost certainly makes an impermissible 'reference to' an ERISA plan."). ERISA defines a "pension benefit plan" as "any plan, fund, or program . . . established *or maintained* by an employer . . . to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program— (i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond." 29 U.S.C. § 1002(2)(A) (emphasis added). Thus, in order to find that employers subject to the Act create ERISA-covered plans, this Court must first determine whether the CalSavers arrangement is a "plan, fund, or program" of the type described in 29 U.S.C. § 1002(2)(A), and second, whether

the level of employer involvement in "establish[ing] or maintain[ing]" the arrangement is sufficient to create ERISA-covered plans. These are separate and distinct inquiries. *See Donovan v. Dillingham*, 688 F.2d 1367, 1367 n.11 (11th Cir. 1982) (en banc) ("Department of Labor regulations recognize that an employer may be involved in a plan, fund, or program without establishing it or maintaining it."). In this case, both criteria are satisfied.

A. CalSavers is a "Plan, Fund or Program" under 29 U.S.C. § 1002(2)(A).

The requirements to establish a plan are minimal. See Credit Managers Ass'n of S. Cal. v. Kennesaw Life & Acc. Ins. Co., 809 F.2d 617, 625 (9th Cir. 1987) ("An employer, however, can establish an ERISA plan rather easily."). Indeed, an ERISA-covered plan can exist even if funded solely with employee contributions. See Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 439 (1999). "In determining whether a plan, fund, or program (pursuant to a writing or not) is a reality, a court must determine whether from the surrounding circumstances a reasonable person could ascertain the intended benefits, beneficiaries, source of financing, and procedures for receiving benefits." Id. The Ninth Circuit has repeatedly relied on Donovan.² See, e.g., Modzelewski v. Resolution Tr. Corp., 14 F.3d 1374, 1376 (9th Cir. 1994).

It is plain that the payroll-deduction arrangements mandated by the Secure Choice Act meet the test set forth in *Donovan*. The "intended benefits" are the retirement income from tax-

This Court did not apply the *Donovan* test in its March 29, 2019 Order on the Motion to Dismiss, noting that the Ninth Circuit in *Golden Gate* had declined to apply the test when considering government mandates on employers. Dkt. No. 24 at 15. The Ninth Circuit appears to have mistakenly concluded that the *Donovan* analysis applies both to whether a "plan, fund or program" has been established *and* whether that plan, fund, or program is "established or maintained" by employers. *See Golden Gate*, 546 F.3d at 651-52. The test actually applies only to the former inquiry. *See Donovan*, 688 F.2d at 1367 n.11. It is unsurprising, then, that the *Golden Gate* court expressed doubt with regard to the application of the *Donovan* test where the court had found that employers had neither established nor maintained the plan—under the ordinance (and unlike CalSavers) the court found that employers had no ongoing obligation to the city once they made required payments, much like a payroll tax. *See* 546 F.3d at 652. In any event, that court did not actually reach the question of whether *Donovan* applied, because it found that the *Donovan* criteria were not satisfied. *See Golden Gate*, 546 F.3d at 652.

deferred contributions provided by the IRAs required by the Act, the "beneficiaries" are the employees whose wages are withheld, the "source of financing" is the automatic payroll deductions, and the "procedures for receiving benefits" are those provided through the IRA product. See *Donovan*, 688 F.2d at 1373. If the identical functions of the CalSavers Board were instead performed by a third party administrator and investment manager voluntarily hired by an employer plan sponsor, this arrangement clearly would fall within the scope of ERISA. *Compare Silvera v. Mut. Life Ins. Co. of New York*, 884 F.2d 423, 427 (9th Cir. 1989) (rejecting the notion that a government employer delegating tasks to a private insurer, who "stepped into the employer's shoes," changes the fact that the plan was established as a governmental plan under ERISA). A CalSavers payroll-deduction arrangement is therefore a "plan, fund or program."

B. Employers Participating in CalSavers, at the Very Least, "Maintain" ERISA-covered Plans under 29 U.S.C. § 1002(2)(A).

Determining that the CalSavers program constitutes a "plan, fund, or program" to provide retirement benefits does not end the analysis. *Donovan* emphasizes that a plan "only falls within the ambit of ERISA if [it] covers ERISA participants because of their employee status in an employment relationship, and an employer or employee organization is the person that establishes or maintains [it]." 688 F.2d at 1371. The arrangements created by the Secure Choice Act require employers to "maintain" CalSavers plans.

The Secure Choice Act specifically requires employers to maintain CalSavers plans by setting up the payroll-deduction arrangements, ensuring the enrollment of their employees, deducting money from employees' pay, and sending the payroll deductions to the CalSavers program administering the IRAs. *See* Cal. Gov't Code, § 100032; Cal. Code Regs. tit. 10 § 10003(c). By requiring employers to deduct contributions from eligible employees' wages on an ongoing basis, and to forward the contributions for deposit into IRAs established for each enrolled employee, the Secure Choice Act requires the employers to maintain an employer-based program providing "retirement income to employees" or resulting "in a deferral of income by

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employees for periods extending to the termination of covered employment or beyond." 29 U.S.C. § 1002(2)(A). Therefore, the Act requires the covered employers to maintain "ongoing administrative programs" to pay employee benefits. *Fort Halifax* 482 U.S. at 11.

Employers subject to the Act must make ongoing determinations regarding their eligibility, the eligibility of employees, and the associated contribution rate. Specifically, employers must monitor and make determinations on an ongoing basis regarding: whether any benefit provided is or becomes a "tax-qualified retirement plan" under California regulations such that the employer becomes exempt from coverage, Cal. Code Regs. tit. 10 § 10000(1), (x); whether any employee has elected to change his or her contribution rate, or whether the CalSavers Board has changed the default contribution rate, see id. § 10005; whether any particular employee is or becomes exempt by virtue of the fact that he or she is "engaged in interstate commerce," Cal. Gov't Code § 100000(c)(2)(A); whether the employee is or becomes exempt because contributions are required on that employee's behalf to a multiemployer plan pursuant to a collective bargaining agreement, § 100000(c)(2)(B); whether an employee is or becomes exempt due to coverage under the Railway Labor Act, § 100000(c)(2)(A); and whether the employer's average total employees for the quarter ending December 31 and the previous three quarters of available data has fallen below the Act's current coverage minimum, Cal. Gov't Code § 100000(d)(1). Such determinations must also be made for all new hires, and then on an ongoing basis for all existing employees, including even short-term employees. These determinations may not be straightforward, particularly given that they are subject to government "investigation and audit" and any subsequent penalties. Cal. Unemp. Ins. Code § 1088.9(d).

The First Circuit recognized in *Simas* that, when a state law requires such ongoing eligibility determinations in combination with an ongoing administrative scheme, then the employer's required activities will be sufficient to establish or maintain an ERISA-covered plan. *Simas*, 6 F.3d at 852-54. The Eighth Circuit has similarly recognized that an employer's need to make eligibility determinations can be sufficient to establish or maintain an ERISA-covered plan. *Petersen v. E.F. Johnson Co.*, 366 F.3d 676, 679-80 (8th Cir. 2004) (finding plan existed

when it was necessary for the "company to engage in a case-by-case review of employees to determine eligibility for benefits.")

Defendants have argued in their Motion to Dismiss that recent modifications to the Act effective June 27, 2019, made by S.B. 83, 2019 Cal. Legis. Serv. Ch. 24, and associated emergency regulations effective July 25, 2019, mean that the role of employers is "purely ministerial." Dkt. No. 38 at 6. Under the amended Act, employers do not provide materials to their employees directly; rather, employers must provide contact information for their employees to CalSavers, which then sends materials to employees. Cal. Gov't Code § 100014(f); Cal. Code Regs. tit. 10 § 10003(c). Yet even under these modifications, employers must still make ongoing determinations as to which employees are "eligible employees" under the Act as a threshold matter. For example, an employee of a multistate employer may cease to become an "eligible employee" after being transferred from a California office to an Oregon office under the Act's interstate commerce exemption at Cal. Gov't Code § 100000(c)(2)(A). Or, an employee may cease to be an "eligible employee" after entering a bargaining unit for whom contributions are made to a multiemployer plan under Cal. Gov't Code § 100000(c)(2)(B). Under the Act's reporting structure, these initial eligibility determinations would necessarily be made by the employer, not CalSavers.

The fact that employers do not voluntarily create these ERISA plans does not alter the conclusion that they are still "employers" as defined by ERISA who "maintain" the plan, notwithstanding any attempt by state law to redefine the role of employers. The Supreme Court has held that when an employer acts in an ERISA capacity, state laws regulating that activity may not diminish the entity's status as an ERISA actor. *See Unum v. Ward*, 526 U.S. 358, 379 (1999) (California law that would have rendered invalid a contractual provision governing an employer's status as an agent of its insurer was preempted by ERISA because it regulated plan administration). ERISA still operates and has consequences even if the employer's conduct is dictated by a third party. *See Fort Halifax*, 482 U.S. at 12, 16-17. The Ninth Circuit has followed this reasoning in finding that state laws mandating that employers provide certain

benefits to their employees are preempted when the employer would need to establish an ERISA-covered plan to comply with the law. *Aloha Airlines, Inc. v. Ahue*, 12 F.3d 1498 (1993).

In sum, each private employer that participates in the CalSavers program maintains an employee pension benefit plan covered by ERISA, regardless of the role of the state mandate in creating the withholding arrangements.³

III. The Act's Arrangements Do Not Satisfy the Department of Labor's 1975 IRA Safe Harbor.

Defendants have argued that even if the CalSavers IRAs are ERISA plans, they fall within the 1975 IRA Safe Harbor Regulations at 29 C.F.R. § 2510.3-2(d). This safe harbor is part of a regulation that "clarifies the limits of the defined terms 'employee pension benefit plan' and 'pension plan' for purposes of title I of the Act . . . by identifying specific plans, funds and programs which do not constitute employee pension benefit plans for those purposes." 29 C.F.R. § 2510.3-2(a). The safe harbor regulation provides that ERISA does not cover a payroll-deduction IRA arrangement otherwise covered by ERISA so long as four conditions are met: (1) the employer makes no contributions; (2) employee participation is "completely voluntary"; (3) the employer does not endorse the program and acts as a mere facilitator of a relationship between the IRA vendor and employees; and (4) the employer receives no consideration except for its own expenses. "[A]ny failure under [the conditions in the regulation] establishes that the Plan is an employee pension benefit plan for purposes of ERISA," assuming the plan was otherwise covered. *Cline v. Indus. Maint. Eng'g & Contracting Co.*, 200 F.3d 1223, 1230 (9th

³ Although the Court need not decide the question, certain employers may be deemed to have "established" ERISA plans in addition to "maintaining" them. In particular, although the Act mandates participation by employers that do not offer another retirement plan, it also contemplates voluntary participation by any California employer, such as, for example, if the employer registers before the law becomes mandatory for employers of their size. *See* Cal. Gov't Code §100032. For these employers who voluntarily set up CalSavers, this may suffice to "establish" an ERISA plan. *See*, *e.g.*, *Donovan*, 688 F.2d at 1373 (a plan has been "established" by an employer when a "decision [to provide benefits] has become a reality"). Indeed, if anything, this provides further reason to find that all employers "maintain" ERISA plans under the Act, since it would be counterintuitive to find the Act preempted for those employers who *voluntarily* sign up for CalSavers, but not for those who are forced to do so.

Cir. 2000). Because CalSavers' automatic-enrollment IRAs are not "completely voluntary," they are not exempt from ERISA within the 1975 IRA Safe Harbor.

The Court correctly decided in its decision on the First Motion to Dismiss that the CalSavers arrangement is not "completely voluntary." Dkt. No. 24 at 12-13. As mentioned by the Court, it was for this reason that the 2016 Safe Harbor that had excepted savings arrangements such as CalSavers (and which was later disapproved by Congress and rescinded pursuant to the Congressional Review Act, 5 U.S.C. § 801 et seq.), had been necessary. See Dkt. No. 24 at 13.

Cases discussing the "completely voluntary" requirement in other ERISA safe harbors, while not involving opt-out provisions, have focused on whether the employees' participation was voluntary or automatic, which at least implies that an affirmative choice by the employee is needed to make participation "completely voluntary." ** See, e.g., Kanne v. Conn. Gen. Life Ins. Co., 867 F.2d 489, 492 (9th Cir. 1998) (analyzing group welfare plan safe harbor, court focused on "whether Kanne's participation was voluntary or automatic"); Carter v. Guardian Life Ins. Co., Civil No. 11-3-ART, 2011 WL 1884625 (E.D. Ky. 2011) ("Courts have held that employees' participation is not 'completely voluntary' if their enrollment in the plan is 'automatic'"). In addition, cases in other contexts have also held that opt-out arrangements, like the one in CalSavers, are not "completely voluntary." See e.g., Doe v. Wood Co. Bd. of Educ., 888 F. Supp. 2d 771, 775-77 (S.D. W. Va. 2012); Schear v. Food Scope Am., Inc., 297 F.R.D. 114, 125 (S.D.N.Y. 2014). To protect participant choice and further ERISA's protections of

⁴ Defendants contend that there is no distinction between "voluntary" and "completely voluntary," and that the terms "appear redundant." See Defs.' Supplemental Statement, Dkt. No. 22, at 5 n.8. This reasoning conflicts with general principles of statutory interpretation. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (holding that it is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant") (internal quotation marks omitted). By adopting an opt-out regime, the IRA arrangements required under the Act fail to meet the 1975 Safe Harbor.

participants, the safe harbor requires a "completely voluntary" rather than a merely "voluntary" choice, and this heightened protection bars opt-out regimes from the 1975 Safe Harbor.⁵

IV. The Secure Choice Act is Preempted Because it Has an Impermissible "Connection With" ERISA-Covered Plans.

The Secure Choice is also independently preempted under "connection with" preemption. Under "connection with" preemption, a state law is preempted if it "mandate[s] employee benefit structures." *Travelers*, 514 U.S. at 658. Additionally, a state law has an impermissible "connection with" ERISA plans if the state law either "governs . . . a central matter of plan administration" or "interferes with nationally uniform plan administration." *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. at 943 (citing *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001)). The *Gobeille* Court emphasized that "ERISA preempts a state law that regulates a key facet of plan administration even if the state law exercises a traditional state power." 136 S. Ct. at 946. Thus, in *Gobeille*, a Vermont law requiring that information about benefit payments and plan demographic data be reported to a centralized healthcare database was preempted by ERISA because reporting and disclosure are core functions of ERISA plan administration.

This Court previously ruled that "CalSavers does not govern a central matter of an ERISA plan's administration, nor does it interfere with nationally uniform plan administration." Dkt. No. 24 at 8. The Court reasoned that the program only applies to employers without existing retirement plans, does not require employers to make any promises to employees, and imposes only ministerial duties on employees. *Id.* at 7. The United States respectfully urges the Court to reconsider its analysis of "connection with" preemption in light of *Gobeille*.

⁵ The inverse proposition does not hold, of course—*i.e.* opt-out arrangements are not inherently nonconsensual or involuntary. *See, e.g.*, Fed. R. Civ. P. 23(c)(2)(B)(v) (members of Rule 23(b)(3) class are included in settlement unless they "request exclusion"); *Circuit City Stores v. Najd,* 294 F.3d 1104, 1109 (9th Cir. 2002) (failure to object to arbitration agreement is considered consent). Instead, the IRA safe harbor regulation requires a "completely voluntary" choice, a heightened standard that requires more than mere consent or mere voluntariness. Automatic enrollment is inconsistent with that heightened standard.

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The Secure Choice Act governs a central matter of plan administration and mandates employee benefit structures by requiring the maintenance of ERISA plans in the manner specified in the Act. As discussed earlier, California's Secure Choice Act requires employers who do not have ERISA plans to maintain ERISA-covered plans. The Secure Choice Act also controls the benefits, design, and administration of the mandated plan. See Cal. Gov't Code § 100000-100050. The Act interferes with nationally uniform plan administration by potentially subjecting multi-state employers to numerous disparate retirement plan laws. In that regard, a decision by this Court to allow the Secure Choice Act to survive would allow for the creation of a patchwork of different state laws regulating the provision of retirement benefits to employees. This danger is exacerbated because the Act applies to employers to the extent they do business in California regardless of where the company is headquartered or specific employees are located. Cal. Gov't Code § 100000(d). A multi-state employer would not only have to keep track of payroll deductions, rates, and eligibility for CalSavers, but also for myriad other states' automatic-enrollment IRA programs. This is exactly the kind of disuniformity that ERISA § 514(a) was designed to avoid. See Gobeille, 136 U.S. at 949 (Breyer, J., concurring) ("failure to find pre-emption here would subject [ERISA] plans to 50 or more potentially conflicting information reporting requirements. Doing so is likely to create serious administrative problems.").

V. The Secure Choice Act is Preempted Under Traditional Conflict Preemption Principles.

Finally, CalSavers is still preempted under traditional preemption principles, as articulated by the Supreme Court. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987) (holding that ERISA's civil enforcement remedies preempted conflicting state law in part because of "the deliberate care" and "balancing of policies" undertaken by Congress in drafting the statute); *Boggs v. Boggs*, 520 U.S. 833, 841 (1997) (holding that ERISA preempted state law under conflict preemption principles without needing to analyze whether the state law related to a plan under ERISA section 514(a)). Where a state law "stands as an obstacle to the

accomplishment and execution of the full purposes and objectives of Congress," the law may be preempted under those principles. *Gade v. Nat'l Solid Waste Mgmt. Assoc.*, 505 U.S. 88, 98 (1992). Conflict preemption analysis is "informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l For. Trade Council*, 530 U.S. 363, 373 (2000).

As the case law interpreting the express preemption doctrine makes clear, "[f]he purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." *Aetna Health, Inc., v. Davila*, 542 U.S. 200, 208 (2008). Congress, through ERISA, carefully refrained from mandating "what kind of benefits employers must provide if they choose to have such a plan." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). ERISA's "comprehensive and reticulated" regime does not "require employers to establish benefit plans in the first place." *Mertens*, 508 U.S. at 251; *Conkright*, 559 U.S. at 516-17. ERISA's provisions do not mandate plans, but include specific provisions to encourage the creation of plans, and then to apply its requirements to those plans. *See, e.g., Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014) (discussing application of ERISA to employee stock ownership plans). The Court "[has] therefore recognized that ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the *encouragement* of the creation of such plans." *Conkright*, 559 U.S. at 515-16. (emphasis added).

Because CalSavers, unlike ERISA, *forces* (rather than encourages) employers to have an ERISA-covered pension plan, or else provide an equivalent through CalSavers, *see supra* Section I, it conflicts with ERISA even if CalSavers does not create ERISA-covered plans itself. However, because CalSavers *does* create ERISA-covered plans by requiring employers to maintain a "plan, program, or fund," *see supra* Section II, it conflicts with numerous substantive requirements of ERISA as well—CalSavers has its own administrative regime, fiduciary obligations, reporting procedures, and enforcement mechanisms, entirely apart from those set forth in or required by ERISA. *See* Cal. Gov't Code §§100000 *et seq*. These provisions clearly conflict with ERISA and are therefore preempted.

CONCLUSION 1 2 Because the CalSavers Act is preempted by ERISA, this Court should deny Defendant's 3 motion to dismiss Plaintiff's First Amended Complaint. Respectfully submitted: 4 Date: September 13, 2019 5 JOSEPH H. HUNT 6 Assistant Attorney General Civil Division 7 BRAD P. ROSENBERG Of Counsel: 8 Assistant Branch Director KATE S. O'SCANNLAIN Federal Programs Branch, Civil Division 9 Solicitor of Labor /s/ Christopher R. Healy 10 CHRISTOPHER R. HEALY Trial Attorney (DC Bar 219460)
Civil Division, Federal Programs Branch
United States Department of Justice
1100 L St. NW, Washington, DC 20005
Tel. (202) 514-8095; Fax (202) 616-8470 G. WILLIAM SCOTT **Associate Solicitor** 11 **THOMAS TSO** 12 GARRETT N. TRAUB Email: christopher.healy@usdoj.gov 13 Attorneys Attorneys for the United States Office of the Solicitor 14 U.S. Department of Labor 15 16 17 18 19 20 21 22 23 24 25 26

Written Testimony before the Hawaii Senate Committee on Ways and Means

by Hank Kim, Esq.

Executive Director and Counsel

National Conference on Public Employee Retirement Systems (NCPERS)

February 20, 2020

Introduction

Good morning. My name is Hank Kim and I am the Executive Director and Counsel of the National Conference on Public Employee Retirement Systems (NCPERS). I want to thank Chair Dela Cruz, Vice-Chair Keith-Agaran and Members of this Committee for the opportunity to submit written testimony in support of **SB# 2490 SD1** Hawai'i Saves.

NCPERS is the largest trade association for public sector pension funds, representing 500 plans, plan sponsors, and employee groups, including the Fire & Police Pension Association of Colorado, throughout the United States and Canada. It is a unique non-profit network of public trustees, administrators, public officials, and investment, actuarial and legal professionals who collectively manage more than \$4 trillion in pension assets. Founded in 1941, NCPERS is the principal trade association working to promote and protect pensions by focusing on advocacy, research and education for the benefit of public sector pension stakeholders. Further, NCPERS promotes retirement security for *all* workers by advocating for state-facilitated retirement savings programs and plans to those who do not have access to an employer plan.

In addition to serving as Executive Director and Counsel for NCPERS, I currently serve as Vice-Chair of the Fairfax County Uniform Retirement System, a \$1.8 billion public employee retirement system providing pension coverage for the Fire & Rescue Department, Sheriff's Department, and certain other sworn employees of Fairfax, Virginia. Additionally, I serve as Treasurer of the National Institute on Retirement Security, a Washington, D.C. based think tank focusing on retirement security.

I am also an Editorial Advisory Panel member of the *Benefits Law Journal*, a quarterly law journal that for over 20 years has featured the most respected and accomplished employee benefits professionals who have shared their expertise. Each quarterly issue

offers in-depth analysis of new legislation, regulations, case law, and current trends governing employee benefits: pension plans, welfare benefits, executive compensation, and tax and ERISA issues.

Hawai'i Saves

This is the fifth year in a row that the Hawaii State Legislature has considered bills to help private-sector workers save for retirement. Hawaii's interest in the topic reflects a trend that is playing out across the nation. Cities and states can see that millions of workers are inadequately prepared for retirement. They are concerned that if they fail to intervene, unprepared retirees will place added stress on social welfare programs and reduce the tax base.

Other speakers today have or will address the scope of the very real retirement crisis in America. I won't dwell on this, except to say that Americans have good reason to be worried about their ability to achieve financial security and make it last through retirement.

I will note, however, that Hawaii's numbers underscore the need to prompt action: Half of the state's private sector workers lack access to a workplace retirement savings plan, and the situation is worse for employees of companies with fewer than 100 employees. As I noted, Hawaii is far from the only state concerned with its citizens' retirement security. Policymakers and stakeholders from across the political spectrum have been considering for years how to give Americans greater confidence in their financial future. Payroll deduction is widely considered to be the most effective savings method. And the starting point is small businesses, which drive local economies and power innovation but often lack the scale to provide robust benefits.

In September 2011, NCPERS laid out the rationale for a state- and city-facilitated approach in a white paper, "The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector." Like the plans currently under consideration in Hawaii, the Secure Choice idea gives workers a way to build a retirement nest egg through automatic enrollment in an individual retirement account or similar offering. States and cities would leverage their existing expertise and savings mechanisms in the form of pooled investment vehicles.

Since 2011, we have seen tremendous progress in the Secure Choice movement. Nearly two years ago, Oregon became the first state in the nation to implement such a program, launching OregonSaves in July 2017. California followed suit in July 2019. Numerous other programs have launched or are in the pipeline.

Most states began the process with the same step Hawaii is now considering—by conducting a feasibility study to examine precisely how an automatic IRA program

would fit the needs and requirements of Hawaii's workforce. SB 2490 SD1 would create a Hawaii Retirement Security Task Force, which is a prudent starting point.

Conclusion

NCPERS wishes to thank the Committee for this opportunity to testify in support of **SB# 2490 SD 1** Hawai'i Saves. We congratulate members of this committee and other legislative sponsors for their leadership in this area. We believe that through this hearing Hawaii is providing leadership in addressing the retirement crisis our nation faces. NCPERS stands ready to assist you with facts, research, and expertise as you delve into policy discussions on retirement security. We invite this body to contact us should you need additional information. Thank you.



Date:

February 20, 2020

To:

Chair Donovan Dela Cruz

Senate Committee on Ways and Means

From:

Joanna Amberger, 3 Financial Group LLC

Subject:

Support for SB 2490 SD1 Relating to the Hawaii Retirement Savings Program

Good morning Chair and Committee Members. My name is Joanna Amberger. I'm a CERTIFIED FINANCIAL PLANNER™ and owner of **3 Financial Group LLC**, a local small business. I'm writing to request your support of SB 2490 SD1, relating to the Hawaii Retirement Savings Program. This legislation would establish a task force to look how small business and workers in the private sector can save for retirement through payroll deduction and facilitate the establishment of an "Auto-IRA" retirement savings program.

With the high cost of living in Hawaii, it is often hard for people in the low- and middle-income brackets to save for the future. Hawaii is a state of small businesses and government workers. While the government workers have many opportunities to save and invest, the private sector small business employees do not. Because of this, there is a deep disparity among Hawaii's workers, which threatens the future of individuals and our communities.

Hawaii's private sector workers need more opportunities and incentive to save. "Hawaii Saves" could help. In looking at the "Oregon Saves," model, I note that the average income of those who have participated is less than \$30,000 a year. This income group is underserved by the financial industry because they are not viewed as profitable customers.

Therefore, I want to reassure the committee that a financial planner, I'm not concerned about the proposed "Hawaii Saves," legislation taking business away from me. The group that would be most helped by this legislation is not a group that would typically look to me for services. I wholeheartedly support this avenue of helping Hawaii's private sector workers achieve financial security in retirement. Further, I note that if this group starts to invest, they will become eligible for the IRS's "Savers Credit," a special tax credit designed specifically for low and moderate-income taxpayers to help encourage saving more for retirement.

I respectfully urge you to support Hawaii Saves.



CERTIFIED FINANCIAL PLANNER™



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Senate Committee on Ways and Means February 20, 2020 10:35 am, Room 211 Testimony in Support of Senate Bill 2490 SD 1

Dear Senator Donovan Dela Cruz, Chair, and Committee Members:

My name is Jon Iha and I am the chef/owner of the Gochi Grill on Bishop Street. I love cooking and I love to have been able to open my own restaurant. It's a lot of work to open your own business and unfortunately there's not enough time or energy left over to figure out how to offer your workers a savings plan.

I am in strong support of SB 2490 SD1.

I want to help my workers and I want to be competitive and be able to offer them retirement savings. But it's not easy. It's complicated, expensive and time consuming, especially when you are starting up a new small business.

If the state were to offer an easy, no cost way for small businesses like mine to offer a retirement savings program, I would take it. I understand the OregonSaves program is working and helping small businesses and workers there. Why can't we have a similar program here?

The lack of retirement savings means many Hawai'i workers will retire into poverty. What will happen to them? Will they become homeless? It will be difficult, if not impossible for them to survive on Social Security alone without some kind of help from the government for housing, food and medical assistance.

Saving through payroll deduction is the most effective way to get people to save.

Let's take a step in the right direction now to help people help themselves and start saving. Waiting means less time for people to save and more workers will be in danger of retiring poor.

Thank you for the opportunity to testify.

Jon Iha Gochi Grill 1111Bishop Street Suite #112 Honolulu, HI 96813 (808) 585-8558

Testimony in Support of Senate Bill 2490 SD1

February 20, 2020

Aloha Chair Dela Cruz and members of the Senate Committee on Ways and Mean,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action – Hawai'i, I would like to voice my strong support for SB 2490 SD1, which establishes a task force and lays the groundwork to implement a Hawai'i retirement savings program similar to the OregonSaves program.

Oregon was the first to start a state-facilitated retirement savings program to help private-sector workers and small businesses with an easy way to save at work. From July 2017 to Dec. 2018, 22,000 Oregon workers have saved nearly \$11 million. The program is working and other states are following. California's CalSavers and Illinois' Secure Choice are in the pilot phase and at least seven other states should roll out their programs soon.

Hawai'i needs to catch this wave and join other states in helping workers and small business and we need to move quickly. The time to act is sooner rather than later. The alternative – doing nothing – means more people will age into poverty.

Studies consistently show that people are 15 times more likely to save if it comes out of their paychecks and 20 times more likely to save if they are auto-enrolled and given the option to opt out. But about half of Hawai'i's private-sector workers can't save at work because their employers don't offer 401Ks or other payroll deduction savings plans.

Contrary to what some might have you believe, millennials understand the importance of saving early for their retirement. We currently witness the distress of many elderly citizens who struggle to survive on social security payments, and we also recognize the threats to the continuation of these benefits in the long run.

Understanding the need to save for retirement, however, is just the starting point, and government action is needed to help private-sector workers to participate in a valid and sustainable retirement savings program.

Young people will benefit most from having access to savings because of compounding. A 20-year-old who starts with \$100 and saves \$100 a month (the average amount OregonSaves workers contribute) for the rest of his or her working life will have over \$1 million at age 67, assuming a 10 percent annual return. And that doesn't count additional contributions you might make as you make more money.

But all generations will benefit from starting to save and getting into the savings habit. And fewer people retiring into poverty means we will all pay less taxes for social services programs that kupuna living on just Social Security will need.

Hawai'i must take action now and join in the movement to find ways to help our future retirees to be retirement-ready.

Please help us to protect our future, and pass this bill.

Priam's Automotive

Service & Repair, Inc. 2002 Pauoa Rd Honolulu, Hawaii 96813

Testimony in Support of Senate Bill 2490 SD1

February 20, 2020
Chair Donovan Dela Cruz and Members of the Committee
Senate Committee on Ways and Means
10:35 am, Room 211

My name is Sharon Stewart and I am the owner, along with my husband, of Priam's Automotive Service & Repair, Inc., a small business in Pauoa.

Like many small businesses, we value our employees and want to take care of them. We would love to offer a retirement savings program to help our workers save for their retirement so they don't have to work forever.

But we have enough paperwork to deal with already just keeping our business going. We don't have a human resources department and we don't have the time nor money needed to create a retirement savings program. I think we're too small for banks or insurance agents to bother with and besides, we don't have the money to spend on an expensive 401K plan.

That's why creating a Hawai`i Saves program, similar to the OregonSaves program that's helping small businesses and workers in Oregon, makes sense. If it's easy and inexpensive for businesses to participate, then we will participate. If it's easy for workers, they'll participate too.

As taxpayers, we are also concerned about the large number of people who have no retirement savings. Who is going to pay for what Social Security doesn't cover? Social Security alone is not enough for people to live on in Hawai'i. That burden, I fear, is going to fall on taxpayers. So anything we do now to help people save their own money for their own futures, will pay off in the long run.

Thank you for your consideration.

Sharon Stewart
Vice President
Priam's Automotive Service & Repair
2002 Pauoa Road
Honolulu, HI 96813-1516
808-537-1919
Priams_Auto@yahoo.com

February 20, 2020

Testimony in Support of SB 2490 SD 1—Related to Retirement Savings 10:35 am, Room 211

To: Chair Donovan Dela Cruz, and Members of the Senate Committee on Ways and Mean

My name is Dean Ueda.

I strongly support Senate Bill 2490 SD1 regarding a Hawai'i Saves Retirement Savings Program.

From what I've learned, the bill is a win-win-win for small business, workers and taxpayers.

About half of all private sector workers do not have access to payroll savings, the easiest and most effective way to get people to save. Experience in the OregonSaves program shows that if workers are given access, they will participate and start saving. About 70 percent of workers offered a chance to save took advantage of the opportunity. They are saving their own money for their own futures, it's not a state handout.

Seventy percent of Hawai`i small business owners surveyed support a privately managed, retirement savings program because in many cases it's too expensive, complicated and time consuming for them to offer a plan to their workers. About the same percentage of businesses say they would offer the savings program to their employees if it existed.

In addition, it is estimated that Hawaii Saves could save taxpayers \$32.7 million in public assistance programs in less than 15 years if retirees save enough to generate \$1,000 in extra income each year.

Let's make saving, and retirement in Hawai'i, easier for our workers and small business and save money for taxpayers.

Thank you for your support.

Dean Ueda 1347 Kapiolani Boulevard Honolulu, HI 96814 808-228-8209

Testimony in Support on Senate Bill 2490 SD1

February 20, 2020

Senate Committee on Ways and Mean

TO: Chair Donovan Dela Cruz, and Members of the Committee

My name is Larry Stenek and I am the owner of Art Nelson Sailmaker/Ullman Sails Hawaii and I am writing in strong support of Senate Bill 2490 SD1.

We need to make it easy for workers to save for retirement. Payroll savings is the easiest way to save. But it's not easy for small business owners like myself. In fact, it's expensive and time-consuming for a business owner to set up a payroll savings plan. Our company is small. We don't have a human resources department and I don't have the time nor money to research all of the plans that are out there, nor do I have the time and money to do everything needed to keep the program going. All my time and energy and my worker's time and energy is focused on making the best sails and rigging possible and delivering quality products to our customers.

Having a state-facilitated savings plan, that we could implement into our payroll system easily, at little or no cost, would give my workers a common-sense way to save at work and make us more competitive as an employer.

Too many people in Hawaii are unprepared for retirement and have little or no savings. One of the reasons for that is the lack of access to payroll savings plans. About half of private sector workers, according to AARP, are not able to save easily at work.

What will happen to them if they get sick or can't work anymore? It's likely that we as taxpayers will have to help them with rent, food and medical care.

To me, it's a no brainer. We have to do something to make it easier for people to save or workers won't save and we will all pay for that down the line. The longer we wait to create a program like Hawai'l Saves, the less time there is for people to save and that will mean a bigger bill for taxpayers in the future.

Sincerely,

Larry Stenek Art Nelson Sailmaker/Ullman Sails 419 Waiakamilo Road #2d Honolulu, HI 96817 (808)593-9958 Senator Donovan Dela Cruz and members of the Senate Ways and Means Committee Hearing 10:35 am
Feb. 20, 2020
Room 211
via email LABtestimony@capitol.hawaii.gov

Testimony on Senate Bill 2490 SD1 from Mike Hernandez-Soria

Dear Chair Dela Cruz and Members of the Committee:

My name is Mike Hernandez and I am the general manager of Hawaiian Cool Water. I am in strong support of Senate Bill 2490 SD1.

Like about half of the private-sector businesses in Hawai'i, we do not offer a retirement savings plan to our workers even though I want to help them save and it would make us more competitive to hire and keep workers.

I've looked into offering retirement savings plans for my workers and the options are just too expensive and would require too much time and effort to implement for a small, growing company like ours.

Our workers are large part of the reason for our success and we want them to be successful later in their later years. That's why a program like Hawaii Saves makes sense. Studies show that workers are 15 times more likely to save if they can save through payroll deduction. They are 20 times more likely to save if they are auto-enrolled and have the option to opt out.

A state-facilitated program – run by a private, reputable financial services company offered at no cost and little effort to businesses would allow us to help our workers save. The state's help is needed to create the economy of scale to make a plan like this a success.

I know I am not the only small business that feels this way. An AARP survey of small businesses owners and decision makers showed 63 percent do not offer a retirement savings plan and 69 percent would likely offer a Hawaii Saves option if it was available.

The same survey showed 76 percent of small business owners say more should be done to encourage Hawaii residents to save for retirement and 80 percent agree that lawmakers should support a Hawaii Saves plan.

I urge you to pass a Hawai'i Saves program this year. About half of the private-sector workforce – 216,000 workers in Hawaii -- are not able to save for retirement at work. The longer we wait to set up a program, the less money workers will save. Nearly half of Baby Boomers and Gen X workers already lack the income to meet basic retirement expenses and health care costs.

If these worker were able to save enough money to generate \$1,000 in extra income during retirement, one study shows the state will save \$32.7 million over 15 years in reduced public assistance program costs and combined state and federal savings would be more than \$160

million in lower rental subsidies, food assistance and medical costs. The savings to the taxpayer would grow as more workers saved.

Please help workers, small business and taxpayers. Start a Hawai'i Saves program.

Mike Hernandez-Soria Hawaiian Cool Water 1718 Hau Street Honolulu, HI 96819 (808)954-9638 mike@hawaiiancoolwater.com To: Chair Donovan Dela Cruz and Members of the Senate Committee on Ways and Mean Re: SB 2490 SD1 -Relating to Retirement Savings 10:35 a.m., Thursday February 20 ,2020 Room 211

Testimony in Support of Senate Bill 2490 SD1

We need to create a Hawaii Saves program and I am in strong support of Senate Bill 2490 SD 1. My name is Elizabeth Hata-Watanabe and I own Burgers on Bishop. We pride ourselves on making the best burgers and desserts in town and our success is due to the hard work my employees and I put into our craft. So I want to help my employees succeed. I want them to save for retirement and I want them to be able to retire.

But I can tell you as a small business owner that it's not easy to help workers save. I cannot afford to offer them a payroll savings plan, even though I know they are 15 times more likely to save if the money comes out of their paychecks. Not only is it expensive and complicated to hire a financial advisor, possibly a lawyer and then pay fees to set up payroll savings, but it's also time-consuming. And I don't have time to set up a program and manage it. I'm too busy running a restaurant.

So a state-facilitated retirement program like Hawaii Saves is the easiest way for me to offer savings to my employees and the best chance they have of actually saving. If I can add it to my payroll system at little or no cost and have my employees' funds managed by a private, reputable financial service company selected by the state, similar to the way the state runs college 529 savings plans, I would enthusiastically participate. It would help me keep my employees happy and compete against larger businesses that can offer savings plans.

One of the reasons I'm passionate about supporting this program is because as a woman business owner I know women are much more likely to retire into poverty and this program will help women save. On average women live longer so their retirement savings needs to go further. They also make less money, which means lower savings and lower Social Security benefits. So it's critical that women have access to payroll savings and a retirement account that is their own that can travel with them no matter where their life takes them.

Many of my workers are young and they will benefit most from starting retirement savings early because of compounding – the fact that, if invested properly and not withdrawn, their money will likely double every seven to ten years. So \$2,000 invested at age 20 could become more than \$176,000 by age 67 if you averaged a 10 percent annual return. And that doesn't even count the additional money workers would save over the course of their lifetime. But even older workers would benefit from a Hawaii Saves program. The key is to get into the savings habit and without an easy way to save, too many workers do not save.

This is not a government handout. This program is about helping workers save for their own futures.

As a taxpayer, I worry about the ticking time bomb cost of all the workers who are not saving now. The average retirement savings for workers is \$2,500 and the average worker close to retirement has saved only \$12,000. We as taxpayers will have to pay for them when they get old and cannot work anymore. What will our homeless situation be like if we have kupuna who cannot pay for their housing because

their Social Security payments can't cover medicine, food and rent? How many of these older homeless will be women?

The time to act is now. We cannot do nothing. Please pass Senate Bill 2490 SD1.

Elizabeth Hata-Watanabe Burgers on Bishop 745 Fort Street, #130 Honolulu, HI 96813 (808)586-2000

The Senate Committee on Ways and Means Feb 20, 2020

Room 211, 10:35 a.m. Testimony in Support for SB 2490 SD1-Relating to Retirement Savings

Attention: Chair Donovan Dela Cruz and Members of the Committee

Aloha, I strongly support Hawaii Saves bill (SB 2490, SD1) on Thursday. Feb. 20,2020.

Kay Smith Waianae, Hawaii

Senate Committee on Ways and Means February 20, 2020 Room 211, 10:35 am

Testimony in Support of SB 2490, SD 1

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee:

My name is Jodi Bistodeau and I live in Waianae, HI. I support Bill SB 2490, SD1 regarding the savings program for all employees. Too many people are unable to retire at a reasonable age, due to insufficient savings. When forced to live on a fixed income, many are unable to afford the cost of living and therefore, must continue to work to make ends meet.

This Bill (S.B. 2490, SD1) would provide a means for all people to begin saving for retirement early in their careers. This money would continue to grow and build over time, allowing for a larger savings at retirement. It is my hope that the legislative committees will support this Bill also and allow it to become a reality.

Sincerely,

Jodi Bistodeau 84-550 Farrington Hwy Waianae, HI 96792

Senate Committee on Ways and Means February 20, 2020, Room 211 10:35 a.m. Chair Donovan Dela Cruz and Committee Members

Testimony of Carl Takamura in support of SB 2490, SD1

My name is Carl Takamura and I am in strong support of SB 2490, SD 1.

The establishment of a retirement saving plan that will provide access to an employer-based payroll deduction plan for the 50% of Hawaii's private sector workers who currently do not is critical to the economic security of not just the affected workers, but also to the future economic health of Hawaii.

About half of all working Americans have nothing saved for their retirement, and thus, when they retire, they will need public assistance for housing, food and medical care. This is an important issue that does not just affect me as a taxpayer (who is fortunate enough to have retirement income), but my children and all future retirees who will struggle to keep up with Hawaii's high cost of living. Enabling more people to save for their retirement through automatic payroll deduction is a no-brainer and has been proven in other states, such as Oregon, to work.

The task force that would be established in this bill to study and recommend an approach best suited to Hawaii is an important first step to addressing this very significant issue.

Please pass this important bill.

The Senate Committee on Ways and Means February 20, 2010 Room 211, 10:35 a.m.

Testimony in Support of SB 2490, SD1

We started Kapahulu Auto Repair 12 years ago in a one-car garage and have built the business over the years from just the two of us to having nine employees.

When we worked as mechanics for larger companies, we had 401K plans and were able to save. When you can take money out of your paycheck before you get a chance to spend it, you don't miss the money.

Even though we have nine employees, we don't have a human resources department and we aren't able to offer our employees a payroll savings benefit. We're mechanics, not financial planners. But we recognize the value of saving money and would like to help our employees save their own money to have a better life in the future. It is vitally important for a small business to take care of your employees.

The only way we can offer our employees a payroll savings benefit is if a savings program is simple, low cost and easy for us to administer. A Hawai`i Saves program seems like the solution. In Oregon, businesses have that option — a way to give workers a payroll savings program that doesn't cost the business anything, is easy to sign up and doesn't require the business to do more than provide educational materials and a way to forward the money saved to a private company so it can be invested.

If the state can find a way to combine all the small businesses into a bigger pool so that we can help our employees, why shouldn't we do it? It would certainly help us be more competitive in keeping employees so we can offer that benefit instead of having our employees move to another company or to other states that have the program.

We also have a concern as taxpayers that if too many people retire broke, our taxes will have to go up to pay for the social services that will be needed to help kupuna without money pay for housing, food and health care. We all know that Social Security alone is not enough for anyone to live on.

We urge you to pass legislation to at least study how a Hawai`i Saves program can help small businesses like ours and how it might also benefit workers and taxpayers.

Ernest Moriwake and Mike Sonoda Owners Kapahulu Auto Repair 3131 Castle Street Honolulu, HI 96815 808-738-5577 kapahuluauto@hotmail.com Testimony in Support of Senate Bill 2490, SD1 Senate Committee on Ways and Means Feb. 20, 2020 Room 211, 10:35 a.m.

My name is Deborah Miura. I am 67 years old and I am still working even though I could technically retire. The reason I continue to work is that I do not want to be a burden to my family. I cannot live on Social Security alone without my family having to help me financially and I do not want to put the burden of supporting me on my kids as long as I am able to work and save money. I work for Kapahulu Auto Repair as an office manager. It's a small business that employs nine people, including myself and the two owners. I can tell you as an office manager that we don't have the time to go through the paperwork to create a payroll deduction savings program for myself and the other workers. It's too expensive and complicated for us to offer a 401K. But if the Legislature could help small businesses like ours by offering a simple and lowor no cost savings program for our employees, we would likely participate and I would definitely participate. I believe you're never too old to start saving. Any money that I save is going to help my family if I get sick and am no longer able to work. I also look at the young people I work with and think about how much they will benefit from a savings program. Because of compounding interest, if people in their 20s like my son (who also works here as a mechanic), saved a portion of their paycheck now, the amount would double every ten years if invested properly and he would have hundreds of thousands saved by the time he retires. It's just easier to save if the money comes out of your paycheck before you get a chance to spend it. I have seen statistics that show people are 15 times more likely to save if they have payroll deduction. I know I would save if I could do it at work. My son would save and I believe most of the other employees would save if it was easy. I respectfully ask that you pass a Hawai'i Saves bill to take the first steps to setting up a savings program that all Hawai'i workers could participate in.

Thank you for your time and consideration.

Deborah Miura Kapahulu Auto Repair





HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211 THURSDAY, FEBRUARY 20, 2020 AT 10:35 A.M.

To The Honorable Donovan M. Dela Cruz, Chair; The Honorable Gilbert S.C. Keith-Agaran., Vice Chair; and Members of the Committee on Ways and Means,

TESTIMONY IN SUPPORT OF SB2490 RELATING TO THE HAWAII RETIREMENT SAVINGS PROGRAM

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our support of SB2490.

Over the decades, it has been widely recognized that fewer people are saving than they used to and the lack of savings impacts us over our lives. Without savings, people are less able to afford a home if they have no down payment saved, opportunities can be missed when they arise, and struggle when running into major medical or retirement issues.

We think creating avenues to help employees have their own retirement savings is valuable. However, we have questions on how the state can implement and run this program, given the broken ERS system. Therefore, we support this bill to establish a task force to study the feasibility and implications of creating a state retirement savings program.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

Pamela Tumpap

Pamela Jumpap

President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

Submitted on: 2/15/2020 3:36:26 PM

Testimony for WAM on 2/20/2020 10:35:00 AM

Submitted By		Organization	Testifier Position	Present at Hearing	
	Mark A. Koppel	Individual	Support	No	

Comments:

Aloha honorable Chairman Dela Cruz and honorable committee members,

This is in STRONG SUPPORT of the Hawaii Saves program. Without it, thousands of Hawaiians wil retire with no savings, thus becoming a burden on state taxpayers.

This program costs the State almost nothing, yet will produce tremendous dividends.

Without my 403b, I would not be able to afford to continue living in Hawaii. I was lucky. Many people do not have this option. THIS bill will let them save for a decent retirement.

Mahalo

Mark Koppel

Umauma

Submitted on: 2/17/2020 3:49:54 PM

Testimony for WAM on 2/20/2020 10:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Maureen Garry	Individual	Support	No

Comments:

Dear Senators,

I am self-employed, after many years of being an employee and taking advantage of my employers' 401(k) plans. I loved that I never saw the money or had to keep track of investing on a regular basis.

Now I find it somewhat difficult to keep to a savings schedule amidst trying to stay on top of everything else. From my perspective it would be much easier to have an option for an automatic deduction.

I have the advantage of being trained to save, but most small business employees have not been so lucky. The State does not want to support all the folks who retire with insufficient savings, which is where we're heading if we don't try to offer incentives to save today.

Please support helping those in small businesses have the savings advantage those in larger businesses enjoy.

Respectfully,

Maureen Garry

Submitted on: 2/17/2020 5:49:48 PM

Testimony for WAM on 2/20/2020 10:35:00 AM

Submitted By		Organization	Testifier Position	Present at Hearing	
	Linda Muralidharan	Individual	Support	No	

Comments:

Senator Dela Cruz,

I am eager for SB2490 SD1 to pass.

For many years I worked in human services and though I changed employers several times I always was able to contribute to a payroll savings plan. As a retiree I now can supplement my meager Social Security check with accumulated savings.

I was naive at the time and thought that everybody had a plan they could opt to pay into through payroll. Now I know that way too many employees in Hawaii cannot automatically save, if they choose, through a plan at work. Small businesses often cannot or will not foot the expense to set up a plan. It can be both expensive and time consuming to do so, but many small businesses in HI have responded favorably to surveys asking if they would like such a plan for their employees if they did not have to set it up themselves.

This bill sets up a process by which the State of Hawaii can expedite payroll deduction savings for such employers. We can increase the rate of savings by offering automatic plans. Such plans would cost relatively little for the state to expedite and the state would ultimatly be paid back out of eventual participants' investments.

I hope we can thus invest in our future as a state and keep future taxpayers from having to subsidize retirees who have too little or no savings since we know that Social Security is important but not enough to live on securely in our state.

Linda Muralidharan

Aiea. HI

Submitted on: 2/17/2020 6:05:14 PM

Testimony for WAM on 2/20/2020 10:35:00 AM

Submitted By		Organization	Testifier Position	Present at Hearing	
	Esther Ueda	Individual	Support	No	

Comments:

Please support Senate Bill 2490 S.D.1.

People are not saving enough for retirement.

The potential savings program that would be developed under this proposal will help many employees save more for retirement. I have been retired for over 20 years and I know how expensive reirement can be--there are lways unexpected expenses and inflation concerns.

I am fortunate to have a pension from my employer, however, I know that many of the workers today will need to save for retirement on their own, through their own savings efforts. This bill will potentially provide a vehicle for them to do this.

February 18, 2020

To: Committee on Ways and Means

Re: SB 2490 SD1 (Retirement Savings) – **Testimony in SUPPORT**

Hearing: February 20, 10:35am, Room 211

Honorable Senator Donovan M. Dela Cruz, Chair, and Vice-Chair Senator Gilbert S.C. Keith-Agaran:

Please vote affirmative to fund the task force needed to analyze the establishment of a Retirement Savings Program for Hawaii workers who do not have a plan and are not currently saving for retirement.

We have a retirement savings CRISIS for over 200,000 workers in Hawaii. These workers have NO retirement funds and NO initiative to self-fund on their own. This bill will work in the right direction to help people save a little each week--in a seamless way-with an automatic deduction from their paycheck directed to their private IRA. (If workers have an IRA or want to opt out of automatic deduction, this bill provides these options.)

One asks why the small company owners are unable to setup and provide this service? Because they cannot afford the setup fees, insurance and on-going legal advice needed to provide a 401K or similar product for an employee savings plan. However, a statefacilitated Retirement Savings Program would solve the problem for thousands of workers.

Hawaii is not alone in needing a self-funding plan for their non-state employees. This task force will have access to the studies done by other states and be able to review the success of their programs too. (See one of the successful programs in place now in Oregon: OregonSaves.com)

Please support SB 2490 SD1. It will reduce the need for Kupuna Care costs in the future and allow the under-served workers to have their own Retirement IRA, an IRA that moves with them from job to job.

Sincerely, Christine Olah Honolulu resident Senate Committee on Ways and Means Chair: Senator Donovan Dela Cruz February 20, 2020

Room 211

Time: 10:35 a.m.

Re: S.B. 2490 S.D.1 Relating to Retirement Savings

Aloha Chair. Dela Cruz and Members of the Committee,

My name is Linda Dorset, as a citizen of Wailuku, Maui and a member of AARP. I thank you for the opportunity to submit written testimony regarding SB2490 S.D.1. I am happy to hear you are taking an interest in this matter. I believe it is good for any steps to be taken to make a retirement savings plan a reality. I was fortunate to have a retirement savings plan with my employer, but I stubbornly started late and it may not be enough; so I personally know that education is not enough; once you have money in hand it's hard to give it up even if you know better. So, I'm not speaking for myself, but for my son and others of his generation; I worry that he will wind up on public assistance. Also, if the Hawaii follows the Oregon model workers will have the additional benefit of having professional help making financial decisions and managing the plan.

According to research by AARP Public Policy Institute, Hawaii Could Save \$32.7 Million by Helping People Save for Their Own Retirement; if between 2018 and 2032 lower-income retirees save enough to increase their retirement income by \$1,000 more per year and avoid depending on some form of public assistance.

Studies are important though so I hope you will at least pass this bill and move one step closer. I think,instead of waiting for the outcome of the California/ERISA lawsuit, you could add those issues to the study and be continuing to move forward.

Thank you for your consideration.



SB2490 Relating to the Hawaii Retirement Savings Program

February 20, 2020 10:35 a.m. Room 211

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and committee members

This bill calls for the establishment of a task force to study the feasibility of a program to help small business employees to save for retirement through payroll deduction. Such a task force would look at models (public-private partnerships, partnering with another state which has already established a program, deciding which governmental agencies may be involved and to what extent, etc.)

We are only "kicking the can down the road," when we fail to enact legislation to help the two-thirds of Hawaii's small business employees to save for their futures through payroll deduction.

Please support SB2490 to get the ball rolling on sorely needed assistance to those who work for small businesses.

Governor Ige made it clear in the State of the State address that he wants to prioritize the needs of working families. This cannot be accomplished without giving them an incentive to save for their futures.

Please support SB2490.

Mahalo!

Barbara J. Service MSW (retired)

AARP volunteer

Policy Advisory Board for Elder Affairs board member

Kokua Council board member

Hawaii Alliance of Retired Americans board member