



Agency: City Council of the City and County of Honolulu
Hearing Date/Time: Wednesday, December 7, 2011, 10:00 a.m.
Place: City Council Chamber
Re: Testimony of the ACLU of Hawaii in Opposition to City & County of Honolulu Bill No. 54 (2011), Relating to Stored Property

Dear Council Chair Martin, Vice Chair Anderson, and Council Members:

The American Civil Liberties Union of Hawaii (ACLU of Hawaii) stands in opposition to Bill 54, which makes it unlawful to “store” personal property on City property. This Bill is likely facially unconstitutional, in that it intrudes on protected First Amendment rights. Furthermore, this Bill essentially makes it unlawful to be homeless and have any possessions of any kind; it is yet another misguided attack on the homeless, and will expose the City to expensive and protracted litigation for myriad constitutional violations.

First, this Bill is likely facially unconstitutional. As a general rule, the First Amendment allows an individual to stand on the public sidewalk with a sign to have her or his voice heard, and the First Amendment allows all of us to hold 24-hour vigils for causes that are important to us. As written, however, Bill 54 prohibits this activity throughout the entire County. This is not a valid time, place, and manner restriction: the bill not only purports to allow the police to confiscate an individual’s sign, it would – on its face – permit police to confiscate *all* property from an individual holding a 24-hour protest, *including the clothing that the person was wearing* (along with the person’s wallet, phone, medication, and any other items the person was carrying). This Bill is not just about the homeless – it is an attack on the fundamental right of every person in Honolulu to speak freely on issues that are important to us.

Second, Bill 54 is a particularly egregious attack on the homeless: its purpose is to force homeless individuals to move from one place to another, making it more difficult for individuals to find (and keep) steady employment. The proposal, by its very nature, will yield no net improvement to Oahu of any kind, because any decrease in the number of homeless living in McCully or Downtown will simply be offset by an increase in homeless living in Pearl City or the North Shore. Furthermore, by ejecting homeless individuals from public places – and authorizing the police to seize their property if they do not find housing within 24 hours – the City and County of Honolulu is exposing itself to litigation for a number of constitutional violations. *See Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2006), *vacated pursuant to settlement*, 505 F.3d 1006 (9th Cir. 2007). Under this proposal, a homeless individual with any kind of personal property whatsoever could be cited in Waianae, then again

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in Nanakuli, and be forced to choose between forfeiting all her property or paying “storage” fees to the City. Where homeless individuals have no choice but to live in public areas, this represents a violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, the corresponding provisions of the Hawaii Constitution, as well as the spirit of Article IX, § 10 of the Hawaii Constitution, “the law of the splintered paddle.”

To be clear, this Bill – if enacted – will likely lead to protracted and expensive litigation. In the late 1980s, the ACLU of Florida sued the City of Miami for its treatment of the homeless. Miami had many practices similar to those the City and County of Honolulu has implemented (and, like Bill 54, is considering implementing); the litigation lasted nearly a decade and cost Miami over \$1,000,000, including a \$600,000 fund for the homeless individuals targeted by Miami’s actions, attorneys’ fees to the ACLU of Florida, fees for contempt of court when individual police officers failed to obey court orders, and untold government resources spent defending these unconstitutional practices.

We are disappointed that the City Council continues to try to eradicate the homeless instead of eradicating homelessness. Legislation like Bill 54 is precisely the reason why Honolulu was named one of the ten meanest cities in the United States in its treatment of the homeless by The National Law Center on Homelessness & Poverty and The National Coalition for the Homeless, the two preeminent national organizations on homeless policy. *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, available at http://www.nationalhomeless.org/publications/crimreport/CrimzReport_2009.pdf. Making homelessness a crime will only exacerbate the problem: punitive actions like Bill 54 only make the lives of homeless individuals more difficult by moving them away from services, turning them into criminals (just for engaging in life-sustaining activities in public), and giving them a criminal record, making it more difficult to obtain employment and housing.

In sum, the ACLU respectfully requests that the Council defer this measure.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

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Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. M. Gluck', written in a cursive style.

Daniel M. Gluck
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ACLU of Hawaii

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