



“The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government -- lest it come to dominate our lives and our interests.”

Patrick Henry

The ACLU of Hawai'i strongly OPPOSES amending the Hawai'i State Constitution as a knee-jerk response to prevailing social issues. The Constitution is the framework that holds up the House of Democracy. Every time the Constitution is amended, it is akin to taking an axe to the center beam of the House of Democracy. Each cut weakens the integrity of the structure and makes our system of government more vulnerable to forces that may not be operating in the people's best interests. The Constitution should only be amended to expand our rights.

Protect and Defend our Constitution!

CONSTITUTIONAL AMENDMENT # 4 INFORMATION CHARGING - VOTE *NO*

“Shall Hawai'i's constitutional provision regarding the initiation of criminal charges be amended to permit criminal charges for felonies to be initiated by a legal prosecuting officer through the filing of a signed, written information setting forth the charge in accordance with procedures and conditions to be provided by the state legislature?”

Myth: Information Charging supports victims' rights

Fact: Many people working in the domestic violence field have found that when the police are called to a home, the perpetrator of the violence is often the one with the 'defensive' marks - scratches, bruises, etc. - resulting in the actual victim being charged. This has resulted in abused women being charged. So, is it really a 'victims' rights' amendment?

Myth: In 2002, the Honolulu Prosecutor told communities that 38 states have some form of Information Charging

Fact: This exaggerated claim was made by the Honolulu Prosecutor in 2002. Only eleven states currently have some form of Information Charging, with nine of those states having some form of meaningful confrontation of one's accusers, which is not included in the proposed amendment.

Myth: The other states are considering it

Fact: This change to our Constitution is an old idea that the majority of states have rejected and continue to reject.

Myth: Information Charging does not interfere with due process rights

Fact: Hawai`i's proposal does not give the accused the right to face his/her accuser, thus it does diminish due process protections. The current system provides safeguards to protect the innocent.

Myth: Information Charging will not diminish rights

Fact: The process of adversarial scrutiny (currently in force) adds to the credibility of our criminal justice system. This proposal will change the existing system of checks and balances with the judicial process.

Myth: Information Charging will reduce the number of court cases

Fact: This amendment would result in more costly trials because it would reduce the incentive to plea bargain.

Myth: Information Charging will relieve the overburdened court calendar

Fact: This amendment will result in more trials since there will be fewer plea bargains.

Myth: Information Charging will lower court costs

Fact: The savings are illusory since Information Charging will result in even more trials since the accused will request a court hearing after being charged by written information. None of the biggest states with the busiest criminal calendars use this shortcut because it does not save money; instead it costs more in the end.

Myth: Information Charging will save time

Fact: Information Charging will only delay witnesses' testimony until further along in the process.

Myth: Information Charging will not waste Police officers' time waiting around in Court

Fact: In states that have Information Charging the police and defense attorneys love it because it is so lucrative - the police are paid overtime (time and one-half) for court appearances and the defense attorneys have more cases.

WHO IS 'VICTIMS VOICE'?

Victims Voice is a 'noncandidate committee' formed in 2002 to advocate for the passage of Constitutional Amendments. According to records of the Campaign Spending Commission (they are not listed with the Department of Commerce and Consumer Affairs,) the current Chair is James Fulton (Honolulu Prosecutor's Executive Assistant) and the Treasurer is Judith Carlisle (Honolulu Prosecutor's wife) the 'other director' listed is James Fulton (same person). They have received donations of about \$20,000, which they've used for mailings, television ads, t-shirts, and radio spots. The Honolulu Prosecutor's Office was listed as donating almost \$6,000 in printing and office supplies.

VOTE *NO* ON CONSTITUTIONAL AMENDMENT #4



This information is provided as a public service by the American Civil Liberties Union of Hawai`i



“Our Constitution was not written in the sands to be washed away by each wave of new judges blown in by each successive political wind.”

Hugo Black

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CONSTITUTIONAL AMENDMENT # 2

SEX OFFENDER REGISTRY - VOTE *NO*

"Shall the Constitution of the State of Hawaii be amended to provide that the public has a right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses, and that the legislature shall determine which offenses are subject to this provision, what information constitutes registration information to which the public has a right of access, the manner of public access to the registration information, and a period of time after which and conditions pursuant to which a convicted person may petition for termination of public access?"

Myth: All sex offenders are pedophiles

Fact: Just as with other criminal offenses, there are degrees or classes of sex offending ranging from predatory pedophilia to exposing oneself in public. Should these acts be treated the same?

Myth: This amendment will protect children

Fact: Hawai'i raised the age of consent to 16 years of age, which poses serious questions about young people having consensual sex being branded as sex offenders for life, impacting their educational, housing, employment and social opportunities.

Myth: This amendment will protect children

Fact: The 2003 Bureau of Justice Statistics (BJS), a division of the U.S. Department of Justice, study - the most comprehensive sex offender study ever conducted, entitled "Recidivism of Sex Offenders Released from Prison in 1994" - reports that 70% of men in prison for a sex crime victimized a child and, sadly, in half of those cases the child was the prisoner's own son or daughter or other relative.

Myth: People cannot protect their children because they don't know if there is a sex offender living in their neighborhood

Fact: Of the 50,000 child victim cases the Bureau of Justice Statistics (BJS) reviewed for their November 2003 study, only 6.7% of the victims had been assaulted by a stranger; 66% had been victimized by a parent, stepparent or other relative or friend.

Myth: Once a sex offender, always a sex offender

Fact: Research has shown that this is not true. National statistics suggest that 11% of sex offenders who receive treatment and are released from prison will commit a new sex crime within two years of their release. However, according to the Hawai'i Department of Public Safety's 2003 Annual Report, since 1988 fewer than 1% of Hawai'i's sex offenders who received treatment have returned to prison for new sex crimes.

Myth: The Hawai'i Supreme Court was wrong to discontinue the Sex Offender Website and is now allowing sex offenders to go free

Fact: According to the Department of Public Safety's 2003 Annual Report, Hawai'i is the only state with lifetime tracking of its released sex offenders, which allows the department to collect long-term recidivism data.

Myth: The hearing process is costly and time consuming, resulting in a 1900 case backlog

Fact: The hearing process improves the quality of justice in that it provides a way for the offender to prove, before a judge, that he/she is no longer a threat to public safety. No hearings were held in 2002 and 2003, resulting in this enormous backlog. No hearings were held because prosecutors were not filing petitions in those years, even though they could have. In 2004, the hearings have been averaging about 10 minutes. Was this a strategy to create a backlog to over-dramatize the situation?

Myth: The people should decide, through the Legislature, which crimes are subject to this provision

Fact: It is not appropriate to have the Legislature determine each person who will be placed on the sex offender list. Each case has its unique circumstances that should be dealt with by a judge or hearings officer, with the prosecutor and defendant present, and with all the facts on the table.

Myth: The sex offender website would improve the quality of justice

Fact: This seemingly innocent proposed amendment would - for better or worse - change the existing system of checks and balances within the judicial process, a quality that ranks the American justice system the best in the world. The process of adversarial scrutiny adds to the credibility of our criminal justice system.

VOTE *NO* ON CONSTITUTIONAL AMENDMENT #2



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