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 CITY CLERK
 HONOLULU, HAWAII

Agency: Honolulu City Council
 Hearing Date/Time: Wednesday, February 20, 2013, 10:00 a.m.
 Place: Kapolei Hale
 Re: Testimony of the ACLU of Hawaii in Opposition to Bill 7, Relating to Nuisances on Public Sidewalks

Dear Council Chair Martin and Members of the Council:

The American Civil Liberties Union of Hawaii ("ACLU") writes in opposition to Bill 7.

The ACLU of Hawaii urges the City Council to consider spending additional funds on critical projects to address homelessness, rather than spending hundreds of thousands of dollars each year on a band-aid measure to seize, store, and dispose of homeless individuals' personal property. For example, the City ought to spend its limited resources to better fund organizations such as the Waikiki Health Center – organizations that are addressing some of the underlying causes of homelessness (housing, mental health, addiction, and so on). *See Allison Schaefer, Agency Exits City Strategy on Homeless Over Funding*, Feb. 19, 2003.

Bill 7 is particularly problematic in its breadth: enforcement will likely result in violations of the First, Fourth, and Fourteenth Amendments. The Bill would allow the police to seize banners from candidates campaigning for public office, thus violating individuals' First Amendment rights. The Bill defines sidewalk-nuisance as including "any object . . . kept . . . on or over any sidewalk," thus allowing the police to seize suitcases from tourists or large baby strollers from joggers in Kapiolani Park. While it may seem implausible that police officers would arrest tourists and joggers, if they do not – if they focus only on the homeless – then they will be liable for violating the Equal Protection Clause of the Fourteenth Amendment. Furthermore, requiring homeless individuals to pay \$200 to retrieve their belongings likely violates the Equal Protection Clause and, as a practical matter, means that seizure of property has the same impact as immediate destruction of property (which was ruled unconstitutional in *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012)). *See also 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).

Similarly, the Bill's requirement that anyone seeking to reclaim property must provide "satisfactory proof of identity and entitlement" is problematic: the ACLU of Hawaii has received numerous reports from individuals who have tried to reclaim property under Bill 54 but were turned away for having insufficient proof of ownership. It is unlikely that homeless individuals would retain receipts for each of their possessions, and Bill 7 would ostensibly allow the City to deny these individuals their property absent such non-existent "proof."

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Bill 7 does nothing to address Honolulu's homeless problem; rather, it just shuffles people from place to place, moving homeless individuals farther from service providers. Legislation like Bill 7 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.

For these reasons and more, the ACLU respectfully requests that the Council defer this measure. Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

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