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February 12, 2018

The Honorable Michelle N. Kidani  
Chair, Education Committee  
Hawaii State Senate  
Hawaii State Capitol, Room 228  
Honolulu, HI 96816

The Honorable Josh Green  
Chair, Human Services Committee  
Hawaii State Senate  
Hawaii State Capitol, Room 407  
Honolulu, HI 96816

**Re: Testimony of Peter Kamakawiwoole, Home School Legal Defense Association  
In OPPOSITION to SB 2323**

Chairwoman Kidani and Chairman Green,

My name is Peter Kamakawiwoole. I was raised here in Hawaii, and was homeschooled from kindergarten through twelfth grade. I am an attorney for the Home School Legal Defense Association in Washington D.C., where I assist families from Hawaii and across the country.

**I am OPPOSED to SB 2323**, which would mandate that homeschool families submit to background checks and receive state "approval" before they can exercise their constitutional right to educate their own keiki at home.

**I. The proposed findings in SB 2323 do not accurately characterize Hawaii's homeschool law or homeschooling community.**

Before I address areas of disagreement, I want to convey my approval of the bill's clear and unambiguous condemnation of child abuse and neglect. Keiki of all ages, backgrounds and creeds are made in God's image, and for that reason are to be protected and cared for. While I oppose the specific changes in SB 2323, I applaud the legislature's desire to protect at-risk children and to explore solutions aimed at their safety and welfare.

Unfortunately, the specific revisions in SB 2323 stem from an inaccurate assumption about homeschooling families: that they are commonly isolated in a way that fosters abusive behaviors. The truth is that the vast majority of homeschooling families are not isolated.

There are several reasons for this. First, Hawaii's homeschool law does not leave families in isolation. Parents make regular contact with school officials when they begin homeschooling, and whenever a child ages into a new school or the family moves to a different district. Parents must offer a structured, cumulative, and sequential educational program throughout the year, record their progress, and submit an annual assessment to their public school principal review. And HAW. ADMIN. CODE § 8-12-17 instructs the principal to make a report to Child Welfare Services (CWS) if he or she believes that parents are neglecting their child's education.

In addition, Hawaii's local homeschool community is far from isolated. Growing up, I cannot remember a time when my family did not meet regularly with other families. We took PE and ukulele, biology, art and chemistry, robotics, speech and debate, and (for students far more talented than I) symphony and chess. And that was twenty years ago. Today, the internet and social networking have given birth to countless activities, from coops to Classical Conversations, to say nothing of participation in churches, community groups, and even the legislative process, all of which put homeschooled students in regular contact with other adults and peers.

In 2016, the national Commission to Eliminate Child Abuse and Neglect Fatalities recommended that legislators across the country seek to identify **local risk factors** that place children in a heightened danger for abuse or neglect. The Commission identified several common ones: children who live in a household with two unrelated adults are at an increase risk for abuse or neglect, as are children in homes with drug addictions, mental illnesses, or domestic violence. Information sharing between state welfare and law enforcement agencies is a persistent problem, and states don't classify child welfare information consistently or uniformly.

Noticeably absent from these factors is any mention of homeschooling. Nor was homeschooling identified as a risk factor by the Mayo Clinic, the American Psychological Association, the US Centers for Disease Control and Prevention, or the World Health Organization, all of whom have published common risk factors for child abuse. In fact, one constant risk factor suggests that merely regulating homeschooling is unlikely to affect most at-risk children: in the majority of abuse and neglect fatalities, the victim is an infant or a toddler: half are younger than 1, and three quarters are younger than three. This is well below school age.

## **II. SB 2323 would have unintended consequences on both state officials and the homeschooling community.**

SB 2323 would fundamentally alter Hawaii's homeschool law by adding an "approval" requirement. Only two other states in the country—Rhode Island and Massachusetts—require approval, and their statutes are fundamentally different from the novelty proposed here. In Rhode Island, parents have to submit certain documents to their school committee. If they do, the law says their homeschool program "shall" be approved; if not, they have additional time to provide the missing information before their program is denied. Massachusetts's approval statute is similar, and places the burden on the **school district** to prove that the homeschool program was properly denied. *See Care and Protection of Charles*, 504 N.E.2d 592, 601 (Ma. 1987).

SB 2323, by contrast, says the superintendent "may" approve the homeschool program if none of the conditions in subsection (e) are present, and "may" deny the notice if they are. The only ministerial duty is the directive that the superintendent **shall** request a CWS records check

and background check. What the superintendent **does** with those checks is a matter of discretion. The superintendents may deny a homeschool program that “has any disqualifying information,” but the bill never defines what constitutes “disqualifying information.”

Nor does SB 2323 define what constitutes a “history of child abuse or neglect.” A child welfare report can have three possible outcomes in Hawaii: substantiated, unsubstantiated, and indicated. All three outcomes will show up on a records check, as will families who receive child services. Criminal background checks may pick up any number of records, ranging from convictions and nolo contendere to plea bargains and moving violations.

And Hawaii's records are just the tip of the iceberg: SB 2323 requires superintendents to parse not just state records, but federal records and even records from all other states where **any** parent or other adult in the home has previously resided. But states have no uniform system for codifying, classifying, or characterizing child welfare information. They use different terms and even assign different meanings to common terms.

Even if the Department of Education or Human Services could issue guidance to superintendents on how to interpret Hawaii's own records, they are hardly in a position to issue guidance on the nuances of forty nine other state systems, or to demand that superintendents collect such voluminous information for themselves. Yet SB 2323 would hold superintendents responsible for decoding this disparate information, and create a legal cause of action where superintendents could be **sued** for decisions that were “not reasonable.”

Superintendents only have five business days to collect records on the families of an estimated 7000 students. Even if each homeschooling family has seven children and just one parent, superintendents would still have to sift through 1000 record checks—state, out-of-state, and federal. The vast majority of checks would occur in the brief two-month period from July through August, when superintendents are trying to get their districts off the ground. And this is just the minimum. The number of checks doubles if families have two parents. It more than quadruples if the average number of children drops from “7” to “3.” And of course child welfare agencies in mainland states cannot be legally held to deadlines codified in Hawaii law. This is why Vermont and New York allot up to four weeks to exchange information: public servants have many duties, especially at the start of the school year. Discharging those duties takes time.

### **III. SB 2323 requires that parents give up important privacy rights before they can exercise their constitutional right to homeschool.**

SB 2323 would make Hawaii the first state in the nation where every parent is **required** to waive important privacy rights as a condition of exercising their constitutional right to homeschool. A refusal to consent—by parents or any adult living in the home, even recently graduated adult siblings—can be grounds for a discretionary refusal.

The proposed findings in SB 2323 refer to the Coalition for Responsible Home Education, which has argued that two other states—Arkansas and Pennsylvania—have similar restrictions. But this is simply not true. In Pennsylvania, parents sign an affidavit stating that they have not been convicted of certain enumerated criminal offenses. PA. CODE § 13-1327.1(b)(1). Although an affidavit has teeth—perjury is illegal in Pennsylvania as it is in Hawaii—it is far

less intrusive or time consuming than the multi-state, multi-departmental records checks mandated in SB 2323. As for Arkansas, its only restriction is on registered sex offenders; in other words, you cannot homeschool if you have been convicted in a court of law of a particularly heinous crime, and are already subjected by court order to extensive monitoring (including mandatory electronic tracking) if not incarceration. ARK. CODE § 6-15-508. Treating **every** parent as a suspected abuser—unless a mandatory records check absolves them from guilt and proves them innocent—is an entirely different matter.

It is one thing to condition consent to an extensive records check after a criminal conviction, or as a condition for employment or the receipt of state services. It is quite another to make that consent a condition for exercising a constitutional right. Yet SB 2323 draws no distinction between fit parents—who are presumed to act in the best interests of their keiki—and unfit parents (like Peter Boy’s parents, or parents in Arkansas or Pennsylvania who have been convicted of crimes) who have forfeited that presumption. SB 2323 would pervert this constitutional standard by placing all of the burdens on parents, whether they are fit or not.

Finally, unlike Rhode Island, where parents can appeal a denial to a state hearing officer and then to the Commissioner of Education, SB 2323 says parents can only challenge the superintendent’s decision by filing a petition in family court. The **parent** (not the State) bears the burden of proving by clear and convincing evidence that homeschooling is “appropriate for the child.” And the family courts are given no standards for judging what is “appropriate” for the child. Like the superintendent, they are vested with broad discretion over the educational decisions of fit parents. This is contrary to the Constitution.

#### **IV. The Senate should reject SB 2323 in favor of evidence-based alternatives.**

Rather than adopting SB 2323, I encourage the Senate to follow the recommendations of the national Commission and “undertake a retrospective review of child abuse and neglect fatalities to help them identify family and systemic circumstances that led to child maltreatment deaths in the past five years.” The report highlighted two success stories where communities empirically reduced child abuse fatalities by adopting this evidence-based approach:

- After a spike in childhood deaths in Hillsborough County, Florida, officials closely examined all open social services reports in the county. Based on their review, they were able to identify families with multiple known risk factors (none of which including homeschooling) and target them with intensive assistance and services. As a result of this evidenced-based approach, abuse-related deaths in the county dropped to zero.
- Officials in Wichita, Kansas, took a long look at their child welfare system after a steep upswing in child deaths galvanized the community to action. The data they collected showed that most deaths came from specific zip codes, so the government devoted extra energy and resources to those zip code areas, and enlisted the cooperation of over 60 organizations in those local communities. The strategy proved extremely effective: in the three years from 2011 through 2013, there were no maltreatment deaths.

The Senate should follow the example of Hillsborough and Wichita, and call for a detailed analysis of Hawaii’s child welfare system to “identify constellations of circumstances

that might serve as future red flags to caseworkers, law enforcement officers, health care professionals, educators, and others who work with children and families.” Indeed, the legislature has already begun to pursue innovative solutions to these problems that are far more likely to enact meaningful change than the problematic proposals in SB 2323.

- **SB 2276** would establish a pilot program on Hawaii to hire additional support staff in order to cap the number of active social service cases to twenty per social worker, instead of the current **forty to fifty** cases. This makes far more sense than SB 2323, which would add thousands of records checks to social workers.
- **SB 499** would provide continued support to Hawaii's "Zero to Three Court." Unlike SB 2323, this proposal is aimed at a primary risk group (keiki three years or younger) and enables tailor-made solutions to problems rather than a one-size-fits-all policy.

Any of these alternatives would be preferable to—and far more strategic than—the drastic revisions in SB 2323.

**V. The Senate should seek a dialogue with the local homeschooling community.**

Parents who choose to teach their children at home overwhelmingly take that choice very seriously. They live on a single wage. They pay taxes for public education without receiving a penny from the government in assistance or tax breaks. They give up careers so they can spend their primary wage-earning years with their keiki. They do this because they love them, want what's best for them, and believe that homeschooling is best.

Given these facts, I was surprised to learn that SB 2323 was drafted and introduced without a single discussion with the local homeschooling community. That community was ideally placed to tell the Senate whether the bill's basic assumption about isolation was true, and whether these proposed revisions would have unforeseen consequences.

It is difficult to imagine a scenario where the Senate would not have at least consulted with public or private school teachers if SB 2323 imposed new requirements on them. Just because **homeschool teachers** perform a public good without pay doesn't mean they don't have a stake in the laws that govern them. The length and breadth of responses to this bill is a strong indication that local homeschooling families have a strong, vibrant, connected community, and care a great deal about the future of homeschooling in Hawaii. They are extremely willing to dialogue with legislators on these important issues, if only they are given a seat at the table.

Sincerely,



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