

GM 402

TESTIMONY OF LESLIE ALAN UEOKA

NOMINATION TO THE HAWAII CIVIL RIGHTS COMMISSION

SENATE COMMITTEE ON JUDICIARY AND LABOR

March 7, 2008

Chair Taniguchi, Vice Chair Hee and members of the Senate Committee on Judiciary and Labor, thank you for affording me the opportunity to let you know about myself and why I would like to serve another term as a member of the Hawaii Civil Rights Commission. On February 14th, I received Chair Taniguchi's letter asking me to respond to questions that would assist the Committee in the fulfillment of its review. On February 19th, I submitted my response, and because it discusses much of what I would have included here, I am attaching it to my statement and incorporating it to avoid any repetitiveness.

In addition to what I have stated in my February 19th letter, I would like to say that it has been a privilege to serve for the past three years on the HCRC. It is a dynamic agency with a committed staff, and the work that it performs is vital to the quality of life that each of us enjoys in Hawaii. I was and remain committed to serving the State as best as I can on the HCRC. To that end, I make every effort to attend every meeting; to be fully informed on the issues on the agenda; to attend functions that maintain the HCRC's connection with fellow civil rights agencies, both public and private; to support the HCRC's education initiative and to reach out to all constituents, including HR organizations, the Hawaii State Bar and American Bar Associations, and organizations whose members are those whose rights are protected within the HCRC's jurisdiction.

The commissions are charged with adjudicating cases, making policy and planning decisions in conjunction with staff and promulgating rules. The issues that we face can be contentious and are often very difficult, with no clear-cut "right" or "wrong" answers. Accordingly, I approach each issue that we address on the HCRC impartially and listen carefully to all sides. In all matters, including deliberations, I try to work in a collaborative style with my fellow commissioners and with staff and believe that I have a good working relationship with each. Only when we have thoroughly examined and fully discussed an issue do I reach a conclusion. Recognizing that the issues that we face can have multiple resolutions, I respect the opinions of those who may disagree with me on any particular issue.

I take my duties as a member of the HCRC seriously and, if confirmed, will serve to the best of my abilities. Thank you.



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

www.hawaii.gov/labor

Phone: (808) 586-8842 / Fax: (808) 586-9099

Email: dlir.director@hawaii.gov

March 6, 2008

To: The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: March 7, 2008

Time: 10:00 a.m.

Place: Conference Room 016, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**GM 402 – LESLIE ALAN UEOKA
Hawaii Civil Rights Commission ("HCRC")**

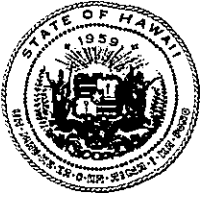
The Department of Labor and Industrial Relations ("Department") strongly supports the confirmation of Mr. LESLIE ALAN UEOKA.

Mr. Ueoka meets the requirements of HRS § 368-3 of having “knowledge and experience in civil rights matters” and “a demonstrated commitment to the preservation of the civil rights of all individuals.” He has served as a Commissioner of the HCRC since 2005, and has substantially contributed to the work and mission of the HCRC through his demonstrated commitment and service.

Mr. Ueoka currently serves as the Assistant General Counsel at Hawaiian Telcom. As an Assistant General Counsel to Hawaiian Telecom, Mr. Ueoka provides legal advice and expertise to the executive members to ensure strict compliance with state and federal employment discrimination laws. He also provides legal advice on sexual harassment and other employee/employer issues in order to facilitate fair and just resolutions of complaints.

Additionally, Mr. Ueoka is a trustee for the 442nd Regimental Combat Team Foundation, which is dedicated to keeping alive the legacy of the 442nd. Mr. Ueoka's work with the Sons and Daughters of the 442nd has engendered an appreciation for the discrimination that those veterans faced and fought, and a determination to protect others against discrimination. Mr. Ueoka is also a member of the Metro and Community Boards of the American Heart Association working to bring awareness of cardiovascular disease to the people of Hawaii.

In summary, Mr. LESLIE ALAN UEOKA is well-qualified and deserving of confirmation to the HCRC.



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TDD: (808) 586-8692

March 7, 2008
Rm. 016, 10:00 a.m.

TO: The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair
Members of the Senate Committee on Judiciary and Labor

FROM: William Hoshijo, Executive Director, on behalf of the
Commissioners of the Hawai'i Civil Rights Commission

RE: Governor's Message 402

Nomination of Leslie Alan Ueoka
to the Hawai'i Civil Rights Commission

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai'i's laws prohibiting discrimination in employment, housing, public accommodations, and access to State and State-funded services. The HCRC carries out the Hawai'i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sect. 5.

The HCRC supports the confirmation of Leslie Alan Ueoka for a second term on the Commission. Mr. Ueoka meets the requirements of HRS § 368-3 of having "knowledge and experience in civil rights matters" and "a demonstrated commitment to the preservation of the civil rights of all individuals." He has served as an HCRC Commissioner since 2005, and has substantially contributed to the work and mission of the HCRC through his demonstrated commitment and service.

He is a trustee for the 442nd Regimental Combat Team Foundation, which is dedicated to keeping alive the legacy of the 442nd. The foundation encourages and funds projects, such as feature films, filming and archiving individual veteran's stories, and class room projects. His work with the Sons and Daughters of the 442nd has engendered an appreciation for the discrimination that those veterans faced and fought, and a determination to protect others against discrimination. Mr. Ueoka is also a member of the Metro and Community Boards of the

American Heart Association working to bring awareness of cardiovascular disease to the people of Hawaii.

Mr. Ueoka is presently Assistant General Counsel at Hawaiian Telcom. At Hawaiian Telcom, he has provided advice and counsel to executive leadership to ensure strict compliance with state and federal employment discrimination laws. He has advised on sexual harassment and other employee/employer issues in order to facilitate fair and just resolutions of complaints. Mr. Ueoka has also litigated matters before the Public Utilities Commission and cases involving the 1996 Telecom Act.


Leslie Allen Ueoka has served on the Commission since 2005. Throughout most of his initial term, the five-member Commission has been short-handed, with at least one vacant seat from March 2006 through the present. In addition, the HCRC Chair has been out of the country on a U.S. State Department deployment to Iraq for over a year. As a result, the remaining three Commissioners, Leslie Ueoka, Sara Banks, and Mark G. Valencia, must attend every meeting to make a quorum, and all three must agree on any Commission action requiring a vote. Under these demanding circumstances, Mr. Ueoka has stepped up and taken a lead role. He does more than show up at meetings. He joins in and facilitates HCRC participation in community civil rights outreach activities

When the Commission has addressed important and controversial issues regarding policy or process, Commissioner Ueoka has fostered a collaborative, deliberative, respectful, and open dynamic. He seeks and thoughtfully considers input from his colleagues and HCRC staff. In the public hearing process on proposed rules, he carefully considers public input and the legal effects and ramifications of proposed rule changes.

Leslie Allen Ueoka takes his role as an HCRC Commissioner seriously and has served the public interest and the people of Hawai'i well. We support confirmation of his nomination.

The American Heart Association mission is: Building healthier lives, free of cardiovascular diseases and stroke.

American Stroke Association
A Division of American Heart Association

American Heart Association 
Learn and Live
Serving Hawaii

February 24, 2008

The Honorable Brian T. Taniguchi
Chairperson
Senate Committee on Judiciary and Labor
Hawaii State Capitol, Room 219
415 S. Beretania St.
Honolulu, Hawaii 96813

Subject: Recommendation for Re-Nomination – Hawaii Civil Rights Commission

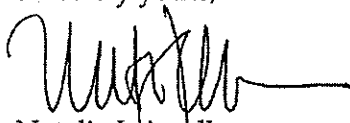
Dear Senator Taniguchi:

I am writing to give my recommendation of the re-nomination of Mr. Leslie Alan Ueoka to the Hawaii Civil Rights Commission.

Mr. Ueoka has served on the American Heart Association, (AHA) Board of Directors for the past 5 years. During this time, he has provided direction to the development and implementation of the organizations 2010 strategic plan as well as provided the leadership necessary to fulfill our local fiscal and program goals. Last August, he was honored by our affiliate for his accomplishments and received the Impact Award for his leadership efforts.

His integrity, commitment to excellence and business acumen are attributes that our organization values. It is these attributes that make him a great candidate for continued service on the Hawaii Civil Rights Commission.

Sincerely yours,



Natalie J. Arrell
Executive Director - Hawaii
American Heart Association

Serving Hawaii since 1948

For information on the AHA's educational or research programs, contact your nearest AHA office, or visit our web site at www.americanheart.org or e-mail us at hawaii@heart.org

Oahu:
677 Ala Moana Blvd, Ste. 600
Honolulu, HI 96813-5485
Phone: 808-538-7021
Fax: 808-538-3443

Maui County:
J. Walter Cameron Center
95 Mahalani Street, No. 13
Wailuku, HI 96793-2598
Phone: 808-244-7185
Fax: 808-244-7220

Hawaii:
400 Hualani Street, Ste. 15
Hilo, HI 96720-4333
Phone: 808-961-2825
Fax: 808-961-2827

Kauai:
P.O. Box 1214
Lihue, HI 96766-5214
Phone: 808-245-7311
Fax: 808-246-3631

Please remember the American Heart Association in your will or estate plan.



GREGORY HOUSE PROGRAMS

Hawaii's Statewide HIV/AIDS Housing Agency

Board of Directors

David Andreoli
President

Guy Merola
Treasurer

Akiko Hayashida
Secretary

Members

Joseph H. O'Mealy

Gennitt Simons

Les Ueoka
Leighton Yuen

Cecile Kendrick
Joe Bock

March 6, 2008

GM 402

Nomination of Leslie Alan Ueoka to the Hawaii Civil Rights Commission
Committee on Judiciary and Labor

Senate Conference Room 016, State Capital

March 7, 2008 @ 10:00 AM

Testimony of Jon Berliner, Executive Director, Gregory House Programs

I support the nomination of Leslie Alan Ueoka to the Hawaii Civil Rights Commission because I believe that he will be a tremendous asset to the Commission and to the People of Hawaii. I have known Leslie Alan Ueoka since 2007 when he joined the Board of Directors of Gregory House Programs. Gregory House Programs is Hawaii's only statewide HIV/AIDS housing services provider.

The state of Hawaii has a long history in the protection of civil rights supported through the Hawaii Civil Rights Commission, providing protection against discrimination because of race, religion, sex or ancestry in employment, public accommodation, and housing. Gregory House Programs, working with persons with HIV/AIDS, has a history itself in working with individuals and families that touch issues related issues around discrimination and their civil rights.

Leslie Alan Ueoka (Les) has been an important and active Board member of Gregory House Programs, supporting the work of the agency in providing housing services to those in need and protecting our clients civil rights and their access to housing and employment, etc. Les is diligent, thoughtful, listens to all sides of an issue, works collegially with his fellow board members and the staff of Gregory House Programs thereby benefiting the over 200 households we serve statewide each and every month. Through Board membership and participation, Les has played a key role in supporting the overall development of policy and direction for Gregory House Programs thus enhancing and protecting the myriad of services offered by the agency. I believe that these qualities and experiences will serve Les well as a Commissioner of the Hawaii Civil Rights Commission.

I strongly urge that Leslie Alan Ueoka be confirmed as a member of the Hawaii Civil Rights Commission. Thank you for the opportunity to provide testimony in support of the nomination of Leslie Alan Ueoka. If you have any questions, please don't hesitate to contact me at 592-9022 or via e-mail at jonb@gregoryhouse.org.

Sincerely,

Jonathon Berliner
Executive Director

Executive Director

Jonathon Berliner

jonb@gregoryhouse.org

GREGORY HOUSE PROGRAMS

Hawaii's Statewide HIV/AIDS Housing Agency

Gregory House Programs

March 6, 2008

GM 402

Nomination of Leslie Alan Ueoka to the Hawaii Civil Rights Commission
Committee on Judiciary and Labor
Senate Conference Room 016, State Capital
March 7, 2008 @ 10:00 AM

Testimony of George M. Nakasato, President 442nd Regimental Combat Team Foundation

I strongly urge the support of Leslie A. Ueoka to another term on the Hawaii Civil Rights Commission.

Les Ueoka deserves to be considered as a valued member of the Commission for the following reasons:

- a. His numerous experiences and deep involvement in addressing various social-economic issues confronting our community through his membership with such organizations as the 442nd RCT Foundation, the 442nd Sons and Daughters Club and community institutions. He is well informed about past and current socio-economic issues of individual liberty and freedom.
- b. His understanding and compassion toward the value of "pono," the balance and righteousness of individual freedom, is fully understood and well known among his many friends and colleagues. His pono decisions, in many cases, are fair and balance and, more importantly, strive to reach the "proper" conclusion.
- c. Like his father, a member of the 442nd RCT, he acquired such values like "giri" and "on," duty, honor and responsibility, and applies them in his daily endeavors. With our 442nd Foundation program, Les tends to be a loyal team player, a rational analyst, an effective contributor toward the process of decision-making.
- d. His professional skill, knowledge and talent are useful in defining the issues and problems, seeking alternative solutions and reaching a reasonable group decision. Being a sansei, a third-generation son of the Ueokas, he can help mold our future community setting to an acceptable standard of living, socially and economically.

For these and other reasons, I strongly recommend the nomination of Leslie Alan Ueoka to a second term with the Hawaii Civil Rights Commission.

Submitted by:
George M. Nakasato, President
442nd RCT Foundation

March 4, 2008

The Honorable Brian T. Taniguchi
Hawaii State Senate, Chairperson
Committee on Judiciary and Labor
Hawaii State Legislature
Hawaii State Capitol, Room 219
Honolulu, Hawaii 96813

GM 402
Les Ueoka, Gubernatorial Nominee to the
Hawaii Civil Rights Commission
March 7, 2008

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, I am William "Bill" Santos providing written support endorsing Mr. Leslie Alan Ueoka to serve another term on the Hawaii Civil Rights Commission.

Mr. Ueoka and I worked together a number of years at GTE/Verizon Hawaii on legislative and regulatory matters, and I have found him to be diligent, honest, fair and insightful. His strong character and work ethic and his balanced approach in thoroughly examining the issues make him an excellent fit to serve on the Commission.

I believe his recent service on the commission bear this out, and Mr. Ueoka's renomination adds emphasis to the quality of his performance on the Commission.

The Hawaii Civil Rights Commission will be better served with Mr. Ueoka, and I strongly urge you to support the renomination of Mr. Ueoka to the Commission.

Thank you for the opportunity to provide comment on this matter.

Ted T. Tsukiyama
Attorney-Arbitrator
2536 Sonoma Place
Honolulu HI 96822

The Honorable Brian T. Taniguchi
Chairperson, Committee on Judiciary & Labor
Hawaii State Senate
Hawaii State Capitol, Room 219
415 S. Beretania Street
Honolulu HI 96813

Re: GM 402, Leslie Alan Ueoka, Nominee-Civil Rights Commission.

Dear Senator Taniguchi:

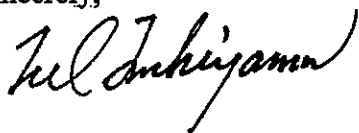
I am pleased to submit this letter of recommendation supporting the nomination of Leslie Alan Ueoka as a member of the Civil Rights Commission for a renewed term.

I have known Les Ueoka since his infancy, as his father Harold Ueoka and I have shared membership in the 522-B Chapter of the 442nd Veterans Club from post-World War II, and I have watched Les mature into a fine young man and a fine professional. I also serve as fellow Trustee with Les on the 442nd RCT Foundation where he makes significant contribution to this Foundation with his professional background and competence, and as an active member of the Sons&Daughters of 442nd. Les Ueoka has also appeared before me as an advocate representing Verizon and Hawaiian Telecom in a number of arbitrated grievance hearings where I have found him to be well prepared, fair and competent in presenting and advocating the best interests of his client. My appraisal and opinion of this character would be of the highest degree and beyond any question or reproach.

His personal and professional CV has been separately offered and made a part of his nomination which clearly reveals his background qualifications, ability and competence to serve on the Commission, but I would particularly underscore his service and role as chief legal counsel of Verizon's Executive Council and Regional Leadership Team whose work includes providing legal guidance to company employees to ensure strict compliance with State laws prohibiting discriminatory employment practices, thus possessing direct knowledge and practice in the subject and purposes for which the Civil Rights Commission was formulated.

I endorse the nomination of Les Ueoka to the Civil Rights Commission without reservation and urge your Committee's positive acceptance and approval of his nomination.

Sincerely,



LATE

**TESTIMONY OF RONALD ALBU
OPPOSING THE CONFIRMATION OF LESLIE ALAN UEOKA TO THE
HAWAII CIVIL RIGHTS COMMISSION
(Governor's Messages 402)**

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

DATE: Friday, March 7, 2008

TIME: 10:00 a.m.

PLACE: Conference Room 016

Chair Taniguchi, Vice-Chair Hee and Members of the Judiciary and Labor Committee,

Thank you for this opportunity to testify regarding the nomination of Leslie Alan Ueoka to be reappointed to the Hawaii Civil Rights Commission.

I ask that this Committee and the Senate decline to confirm this requested reappointment or at least postpone the hearing until nominations have also been made for the expiring position of Commissioner Sara Banks and the long-empty fifth seat on the Commission so that the nominees can be evaluated as to whether they represent a proper balance of community interests in protecting Hawaii's workers from discrimination in the workplace.

This nomination to reappoint Mr. Ueoka is especially troubling because Mr. Ueoka has been a leader in the effort to adopt the agenda of the Hawaii Employers Council to weaken Hawaii's civil rights laws by amending a Commission Rule that has been the law in Hawaii since even before the Commission was created by this Legislature. As Associate General Counsel for Hawaiian Telcom, it is Mr. Ueoka's job to defend Hawaiian Telcom against charges of discrimination filed by the Commission.¹

THE COMMISSION IS LACKING IN BALANCE AND REPRESENTS EMPLOYER INTERESTS.

It is disappointing that Mr. Ueoka does not reflect the interests of the persons the Commissioners are appointed to protect. Hawaii Revised Statutes §368-2

¹ The Hawaii Employers Council which petitioned for the rule change championed by Mr. Ueoka claims to represent over 800 companies in Hawaii. Unfortunately, the Council does not list its members. Mr. Ueoka be asked whether his employer, Hawaiian Telcom, is a member of the Hawaii Employers Council and, if so, whether it was proper for him to vote on the Council's petition to change the rules to the detriment of Hawaii's workers.

provides that commissioners shall be selected "on the basis of a demonstrated commitment to the preservation of civil rights of all individuals." Last year, this Committee approved the reappointment of Commission's Chair. According to the State website, the Chair is the Senior Civilian Attorney for the U.S. Army Pacific where she oversees the Personnel and Labor Law practice at Headquarters, U.S. Army Pacific Command.

The other Commissioners also have backgrounds in management or representation of employers. The newest Commissioner, also confirmed last year, is a partner in a law firm that represents employers and defends against charges of discrimination. By appointing Commissioners one-at-a-time, the Administration seeks to avoid the glaring lack of any representation by labor organizations, organizations of ethnic groups, or immigrant groups, or other groups advocating for the protection of employees from discrimination and harassment in the workplace.

Only Commissioner Sara Banks does not currently work in management, yet her nomination for reappointment is conspicuous by its absence here today. Perhaps that is because she was the only Commissioner who opposed the rule change advocated by Mr. Ueoka.

A COMMISSIONER WHO SEEKS TO END-RUN THE LEGISLATURE SHOULD NOT BE CONFIRMED.

The proposed rule change which Mr. Ueoka has been promoting seeks to undermine existing protection from discrimination. It does not "preserve" civil rights, it diminishes them. Its only purpose is to shield employers from liability for injuries suffered by employees who have been subjected to unlawful discrimination in the workplace by those employers' agents and supervisors.

The proposed rule change would weaken 25 years of sexual harassment protection in the workplace. Last year the Hawai'i Employers Council proposed a change in the Hawai'i Civil Rights Commission's Rules to delete the strict liability rule for employers whose agents, managers, and supervisors unlawfully discriminate against employees in the workplace. Following the hearings, at which the testimony was overwhelmingly opposed to the proposed changes, the Commission voted against adopting the proposed change, but only because the proposed change sought by the Hawai'i Employers Council did not go far enough. The original proposal would only have deleted a Commission rule, leaving it up to the Courts to decide whether the deletion would change Hawai'i's 25 year history of strict employer liability for sexual harassment by managers and supervisors. The new proposed amendments advocated by Mr. Ueoka specifically create new defenses for employers against claims of civil rights violations and would fundamentally change long-standing Hawai'i law.

The rule sought to be changed has been in existence since 1982, years before the Hawai'i Civil Rights Commission was even established. Furthermore, the Legislature further strengthened protection for victims of sexual harassment by enacting legislation in 1992 that gave victims of sexual harassment two years to file suit, and created an exception to the 180 day requirement to file a claim with the Hawai'i Civil Rights Commission. Hawai'i law has consistently offered greater protection to victims of sex harassment than the federal law. For example, Hawai'i does not restrict the types of employers who are subject to the civil rights laws.

Rather than come before this Legislature for such a drastic change in the law against sexual harassment, Mr. Ueoka led the charge to bypass the Legislature and try to weaken the law in favor of employers through an administrative rule change. Such action is simply inconsistent with the requirement that Commissioners have a "demonstrated commitment to the preservation of the civil rights of all individuals."

The Hawai'i Civil Rights Commission is neither a legislature nor a court, and it is not the role of the Commission to rewrite Hawai'i law. If the Hawai'i State Legislature felt that the Commission's long-standing Administrative Rule imposing strict liability for agent and supervisor harassment should be changed, it could have done so at any time since the Rules were originally adopted in 1982. Similarly, the Hawai'i Courts could have chosen to follow federal courts and re-interpret Hawai'i law to diminish the protection afforded under the Commission's Administrative Rules. The fact that this issue has never come before the Hawai'i Supreme Court during the 25 years that this rule has been in effect is a good indicator that the rule of strict liability for sexual harassment is not presenting significant problems for employers.

The Hawai'i Supreme Court has clearly indicated that, while it will look to federal courts and federal civil rights law for guidance, it is not compelled to follow federal law. Our Supreme Court has long held that ". . . federal employment discrimination authority is not necessarily persuasive . . ." See Furukawa v. Honolulu Zoological Society, 85 Haw. 7, 13, 936 P.2d 643 (1997). In the recent case of Arquero v. Hilton Hawaiian Village, LLC, 104 Haw. 423, 428, 431-32, 91 P.3d 505, 510 (2004), the Hawai'i Supreme Court specifically cited the strict liability rule, HAR Section 12-46-109, in footnote 7. Thus, the Hawai'i Supreme Court is well aware of the current strict liability provision in the rule and has not indicated any inclination to create a judicial exception to the rule.

Furthermore, the Supreme Court has routinely presumed that the Legislature is aware of existing regulations and ordinances when enacting legislation. See e.g. State v. Brantley, 99 Hawai'i 463, 56 P.3d 1252 (2002); Gardens at West Maui Vacation Club v. County of Maui, 90 Hawai'i 334, 341, 978 P.2d 772, 779 (1999); Pacific Intern. Services Corp. v. Hurip, 76 Hawai'i 209, 873 P.2d 88 (1994), fn 14; and Territory of Hawaii v. Shizuichi Yamamoto, 39 Haw. 556

(1952). Thus, the Legislature must be presumed to have been aware of the existence of the rule since it was originally adopted by the Department of Labor in 1982. (See HAR §12-23-59 of the Department of Labor adopted November 15, 1982 pursuant to H.R.S. § 378-2.)

In fact, the Legislature was clearly aware of the Department of Labor's administrative rules when it created the Hawai'i Civil Rights Commission in 1988 because it provided in H.R.S. §368-1:

... It is the purpose of this chapter to provide a mechanism which provides for a uniform procedure for the enforcement of the State's discrimination laws. **It is the legislature's intent to preserve all existing rights and remedies under such laws.**
(Emphasis added.)

Because the existing rule was specifically preserved by the Legislature when it created the Hawai'i Civil Rights Commission, the Commission does not have the authority to bypass the Legislature and Hawai'i's Courts to repeal this rule or to create an exception to the strict liability of employers for harassment by an employers' agents and supervisors.

As I testified last year, the Commission is supposed to protect against discrimination based on race, sex, religion, national origin, and age, and appointments should be made from representatives of most at risk of illegal discrimination. Thus, members from immigrant groups, women's groups, labor, and seniors should be under consideration. Surely Hawai'i's labor organizations have members who could serve with distinction. Hawai'i has a very active AARP chapter which could be consulted for possible Commissioners with an appreciation of age discrimination issues. We can do better than to appoint persons who represent employer interests to resolve charges made against employers about discrimination in the workplace. This is asking the wolves to protect the lambs.

Since this nominee has demonstrated hostility to the civil rights of victims of sexual harassment in the workplace through the pending proposal to weaken the law imposing strict liability on employers for sexual harassment by their agents, supervisors, and managers, he had demonstrated that he does not have a commitment to the preservation of civil rights. Mr. Ueoka should not be confirmed.

Thank you for this opportunity to provide testimony on this important matter.

LATE**testimony**

From: Sara Banks [sarabanks@hawaii.rr.com]
Sent: Thursday, March 06, 2008 3:46 PM
To: testimony
Subject: Committee on Judiciary & Labor

TO:
Committee on Judiciary and Labor
Hearing March 7, 10am GM 402
for Leslie Alan Ueoka confirmation
to the CIVIL RIGHTS Commission

FROM: Sara Banks, Acting Chair
Hawaii Civil Rights Commissioner

Senate Sergeant-At-Arms Office
Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Aloha Senators Taniguchi and Hee,

I have been serving as one of Hawaii's Civil Rights Commissioners for the past four years. I am submitting testimony in support of Les Ueoka serving a second term as Commissioner for the Hawaii Civil Rights Commission.

These past four years have been quite productive and eventful for the Commission. In 2005 we only briefly had all five positions filled. We operated with four Commissioners for several years until our Chair Coral Pietsch was sent to Iraq to assist with the reconstruction of Bagdad's city infrastructure.

Two years ago we had a strategic planning session where Commissioners and Commission staff mapped out plans to reduce the backlog of outstanding cases and streamline the process of handling cases to reduce the time it takes to close cases. We also strategized ways to increase HCRC's educational efforts in a variety of ways to be more proactive in preventing future civil rights complaints. The past two years, monthly reports from Deputy Executive Director, Christopher Jones to Commissioners continues to indicate that these goals have guided the HCRC staff to work more effectively to reduce the backlog of old cases and move towards the ultimate goal of closing cases in one year.

As a Commissioner, Les Ueoka has been invaluable to the team. His knowledge of law has informed and enlightened our monthly meetings. His commitment to increasing HCRC's educational efforts has been demonstrated throughout the years. He has provided support with our Annual Trainings, public relations events and our current HCRC & PBS Hawaii – Pono Art & Video Competition for Hawaii's schools.

3/6/2008

Recently the HCRC has undertaken two rulemakings, both involving whether to amend the rule that makes an employer responsible for acts of sexual harassment or ancestry discrimination committed by its agents and supervisors, regardless of whether the acts of harassment were authorized or forbidden, and regardless of whether the employer knew or should have known of acts. This was an issue that drew much public interest with passionate arguments both for and against. Our Commission was faced with serious decisions and with the diverse makeup of our Commission different viewpoints about this petition. In our first rulemaking, even though we had initially decided to open the rulemaking, the commissioners unanimously voted to keep the current rule and reject the proposed amendments. In the second rulemaking, I decided that we should not adopt the proposed amendments. The remaining commissioners are undecided. Through all the proceedings, the commissioners have remained collegial, cooperative and respectful and have demonstrated a willingness to consider all points of view.”

The decision is currently on hold until there are five commissioners serving and it has been decided that we will not take up this decision until there is a total of five commissioners serving. It was a suggestion brought up by testimony (in opposition of the HAR change) in the last public hearing and we decided that was an excellent way to regroup and once again seriously consider changing our existing civil rights protections.

Currently, with Chair Pietsch serving in Iraq, the only commissioners in-state are Commissioners Ueoka, Mark Valencia and I. Accordingly, we must attend all meetings to maintain a quorum and must be unanimous in our decision in order to conduct business. It is important to keep commissioners who have demonstrated a commitment to civil rights such as Les.

So I urge you to please confirm Les Ueoka for another term as Commissioner. For the past four years he has demonstrated commitment, an open-mind, and hundreds of hours dedicated service to our state as a Commissioner.

Mahalo for listening to my testimony,

Sara Banks, Acting Chair
Hawaii Civil Rights Commissioner

LATE

**WRITTEN TESTIMONY OF BRUCE B. KIM OPPOSING THE CONFIRMATION OF
LESLIE ALAN UEOKA TO THE HAWAII CIVIL RIGHTS COMMISSION
(Governor's Message 402)**

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

DATE: Friday, March 7, 2008
TIME: 10:00 a.m.
PLACE: Conference Room 016

Chair Taniguchi, Vice-Chair Hee and Members of the Judiciary and Labor Committee,

Thank you for this opportunity to submit written testimony regarding the nomination of Leslie Alan Ueoka to be reappointed to the Hawai'i Civil Rights Commission. I respectfully ask that this Committee and the Senate decline to confirm Mr. Ueoka's confirmation or at least postpone consideration of his nomination until nominations have also been made for the expiring position of Commissioner Sara Banks and the long-empty fifth seat on the Commission so that the nominees can be evaluated as to whether they represent a proper balance of community interests in protecting Hawai'i's workers from discrimination in the workplace.

Mr. Ueoka's nomination is especially troubling because he has been a proponent of the effort to gut existing Hawai'i's civil rights laws by amending a Commission Rule that has been the law in Hawai'i since before the Commission was created by this Legislature in 1988. As those who have followed the proposed rule changes know, Mr. Ueoka advocates the elimination of existing strict liability for supervisor harassment rules and the adoption of the Faragher/Ellerth standard for Hawaii. This ill-advised campaign to do away with long-standing civil rights protections for Hawaii's working men and women should not be tolerated.

As you know, the legislature enacted Chapter 378 to protect working men and women in Hawaii from various forms of discrimination in the workplace, including sexual harassment. The legislature did not enact the statute to protect employers from legitimate claims of sexual harassment and discrimination by imposing artificial hurdles and roadblocks intended to discourage workers from seeking relief under the statute.

Our own Supreme Court has never recognized the Farragher/Ellereth defense. In fact, our Supreme Court has consistently held that federal cases interpreting Title VII are not applicable to cases brought under our state's civil rights statute and related administrative rules. *See, e.g. Furukawa v. Honolulu Zoological Society*, 85 Haw. 7, 13, 936 P.2d 643 (1997) (a federal court's interpretation of Title VII is not binding on the Supreme Court's interpretation of civil rights laws adopted by the Hawaii legislature).

To the contrary, our Supreme Court has consistently interpreted Chapter 378 liberally to protect

workers from discrimination in the workplace as the legislature originally intended.

The [Hawaii Civil Rights Commission] provides the mechanism for enforcement of discrimination law in Hawaii. See, HRS Chapter 368; HRS § 378-4 (Supp. 1996). As a remedial statute designed to enforce civil rights protections and remedy the effects of discrimination, Chapter 368 should be liberally construed in order to accomplish that purpose.

Furukawa, 85 Haw. at 17.

What is also troubling is that Sara Banks who has been the lone dissenter on the proposed rule change and who was appointed by Governor Lingle has NOT been nominated for reappointment. Also, there is another vacancy which has been empty for 2 years and no one has yet been nominated for that position. I believe that the hearing should be postponed until nominations for all three seats can be considered so that the Senate can evaluate the balance on the Commission. Without Sara Banks, all Commissioners will be persons who make their living by representing employers and opposing civil rights claims. Leslie Ueoka is the Associate General Counsel for Hawaiian Telcom. The newest Commissioner is Mark Valencia, a partner at Case, Lombardi, and Pettit, and the Chair is Coral Wong Pietsch, Senior Civilian Attorney for the U.S. Army Pacific. In this position she oversees the Personnel and Labor Law practice at Headquarters, U.S. Army Pacific Command.

By appointing Commissioners one-at-a-time, the Administration seeks to avoid appointing any Commissioners who represent labor organizations, organizations of ethnic groups, or immigrant groups, or other groups who actually advocate for the protection of employees from discrimination and harassment in the workplace.

Thank you for allowing me to be heard on this important matter.

LATE



March 6, 2008

The Honorable Brian T. Taniguchi
Chairperson
Committee of Judiciary and Labor
Hawaii State Senate
Hawaii State Capitol, Room 219
415 South Beretania Street
Honolulu, Hawaii 96813

RE: GM 402
Nomination of Leslie Alan Ueoka to the Hawaii Civil Rights Commission
Committee on Judiciary and Labor
Senate Conference Room 016, State Capital
March 7, 2008 @ 10:00 AM

Dear Senator Taniguchi:

I am writing in support of the appointment of Les Ueoka as a Commissioner for the Hawaii Civil Rights Commission. I have known Les for many years, initially as an attorney representing another party to a transaction. Les was always ethical, careful and capable in his representation of his clients. I believe that he will be fair, thorough and diligent in his review and analysis as a commissioner.

Since April 2005, I have worked with Les in the legal department of Hawaiian Telcom. My opinion of him has not changed as a result of the change in our working relationship.

I would be pleased to answer any questions you may have regarding Les Ueoka's nomination to this commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan M. Oshima", written over a horizontal line.

Alan M. Oshima

LATE

**TESTIMONY OF CARL M. VARADY
OPPOSING THE CONFIRMATION OF LESLIE ALAN UEOKA TO THE
HAWAII CIVIL RIGHTS COMMISSION
(Governor's Messages 402)**

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair Senator
Clayton Hee, Vice Chair

DATE: Friday, March 7, 2008
TIME: 10:00 a.m.
PLACE: Conference Room 016

Chair Taniguchi, Vice-Chair Hee and Members of the Judiciary and Labor
Committee,

Thank you for this opportunity to testify regarding the nomination of Leslie Alan
Ueoka to be reappointed to the Hawaii Civil Rights Commission.

I ask that this Committee and the Senate not confirm this requested
reappointment.

As Associate General Counsel for Hawaiian Telcom, it is Mr. Ueoka's job to
defend Hawaiian Telcom against charges of discrimination filed by the
Commission. Mr. Ueoka has been one of the leading proponents of the Hawaii
Employers Council's attempts to gut Hawaii's civil rights laws by amending a
Commission Rule that has been the law in Hawaii for over a decade. The Rule
change would make it much more difficult to pursue claims of discrimination and
harassment and result in dismissals of employee cases.

I recently represented a client in a case where he had been viciously harassed at
work because of his race and then subject to extreme threats and other forms of
retaliation for reporting the harassment—including threats on his life. The
employer sought dismissal of the federal civil rights claims in the U.S. District
Court, based on the defenses embodied in the federal case law, that now are
proposed as amendment by rule to the Hawaii Civil Rights Commission's Rules.
At that same time, the employer was withholding documents and other
information that prevented my client from a full and fair defense.

The employer's motion to dismiss the case ultimately was denied, but not without
great delay, effort and cost—adding an additional year to the case before it finally
resolved. In the end the employer paid a substantial settlement, due in no small
part to the fact that the employee had claims under Hawaii's Civil Rights statute,
that were not subject to the defenses now proposed in the Employer's Council's
amendments.

Hawai'i Revised Statutes §368-2 provides that commissioners shall be selected "on the basis of a demonstrated commitment to the preservation of civil rights of all individuals." Under the current Administration the Commissioners appointed all represent the employer's interests. Mr. Ueoka does not reflect the interests of the persons the Commissioners are appointed to protect. Mr. Ueoka's re-appointment would beg the question: "Who on the Commission has demonstrated a commitment to civil rights and represents the working women and men of Hawai'i?" There simply is no balance and no fairness reflected in the current appointments.

The other Commissioners also have backgrounds in management or representation of employers. The newest Commissioner, also confirmed last year, is a partner in a law firm that represents employers and defends against charges of discrimination. Labor organizations, ethnic groups, immigrant groups, groups advocating for the protection of employees from discrimination and harassment in the workplace are not represented at all.

Mr. Ueoka has been promoting a proposed rule change that seeks to undermine existing protection from discrimination. The proposed rule change would weaken 25 years of sexual harassment protection in the workplace. It does not "preserve" civil rights, it diminishes them. Its only purpose is to shield employers from liability for injuries suffered by employees who have been subjected to unlawful discrimination in the workplace by those employers' agents and supervisors.

As an advocate for working men and women in Hawai'i, who face daily struggles for equality in the workplace, I strongly urge this Committee **not to confirm** the requested reappointment

Thank you for this opportunity to provide testimony on this important matter.

LATE

April 8, 2008

VIA FACSIMILE 586-6461

To: Senator Brian Tanaguchi, Chairman
Senator Clayton Hee, Vice-Chairman
Senate Judiciary Committee

**TESTIMONY OPPOSING NOMINATIONS OF LESTER UEOKA, JONATHAN ORTIZ
AND FRANK LAVOIE AS CIVIL RIGHTS COMMISSIONERS**

Dear Chairman Tanaguchi, Vice-Chairman Hee, and Members of the Committee:

I oppose the nominations, of Lester Ueoka, Jonathan Ortiz and Frank Lavoie to become Commissioners of the Hawaii Civil Rights Commission. I do not oppose these men as individuals. I oppose them because they do not meet the statutory requirements for Commissioners by HRS § 368-2:

The members appointed to the commission shall be selected on the basis of their knowledge and experience in civil rights matters and on the basis of a demonstrated commitment to the preservation of the civil rights of all individuals

Mr. Ortiz is a respected, competent insurance defense attorney who primarily represents State Farm insureds in automobile accident cases. To the best of my knowledge he has never appeared in a civil rights case.

I have had lunch at the restaurant owned by Mr. Lavoie, Cafe Europa in downtown Honolulu. I do think it is useful for a small business perspective to be on the Commission, but I do think that a Commissioner who represents small business, must also have a background and

expertise in civil rights. I am informed that Mr. Lavoie works on the staff of Senator Sam Slom. He is not known to me, or anyone I know in the civil rights community, to have a "demonstrated commitment to civil rights", which is required by the statute. My concern is that Mr. Lavoie may be dedicated to protecting business interests rather than civil rights.

The final nominee, Lester Ueoka, is a respected and a compassionate man, but he makes his living representing the interest of a big business, Hawaiian Telcom. It will be difficult for Mr. Ueoka to be taking pro-employee positions as a Civil Rights Commissioner, when as an assistant general counsel at Hawaiian Telcom, he is required by the ethics of his profession to advocate for his employer's position zealously.

The other two members of the Civil Rights Commission are already employer advocates. Cora Wong Pietsch represents the Army in labor and employment issues. Mark Valencia is in private practice and defends employers in employee civil rights cases. He is representing an employer currently opposing my female client in a sex harassment case. He also represented an employer in another whistleblower case where I represented the Plaintiff. That case was resolved in January of this year. He is paid to advocate for employer positions.

If the three current nominees are approved, Hawaii will have five Commissioners who represent employer interests. This is completely contrary to the statute, which requires Commissioners to have a demonstrated commitment to civil rights. This could have a devastating effect on civil rights. The primary threat posed to employee civil rights by a Civil Rights Commissioner slanted toward guarding the economic interests of employers rather than the civil rights of employees, is that Civil Rights Commission regulations could, and probably would, be changed to protect employers not employees. Last year the Hawaii Employers Council ("HEC") petitioned to change those regulations to make it more difficult for women to bring successful sexual harassment complaints. The Commission although it modified HEC's request slightly, is moving forward to change that rule. There was one commissioner who opposed making the change, Sara Banks. Ms. Banks, who does have a background of demonstrated commitment to Civil Rights, was not reappointed to the Commission by the Governor. The HEC petition for the rule change will now sail through the Commission, if these nominations are approved. I have been informed by an employee of HEC that this petition to change sexual harassment rules was just the start of the pro-employer changes in the regulation. They also plan to petition to limit the rights of handicapped workers. These regulatory changes are critical. They are given deference by the Courts, and they are not subject to legislative review. The result of approval of these nominations could be a wholesale rewriting of civil rights laws to favor employers without any input from the Legislature.

These nominations have totally disregarded the wording of the statute. The statute states:

The members appointed to the Commission shall be selected on the basis of their knowledge and expertise in civil rights matters and on the basis of a demonstrated commitment to the preservation of civil rights of all individuals.

The commissioner who met the statute requirement, Sara Banks, was not reappointed by Governor Lingle. Ms. Banks did have a demonstrated commitment to the preservation of civil rights. Commissioner Banks was the only commissioner who voted against the changes sought in the rules by the HEC to weaken protection for women who are sexually harassed in the workplace by their supervisors. Commissioner Banks was admired at the Commission for her hard work. I have been told that all of the other commissioners wanted her to be and expected her to be reappointed. The Governor sent a significant message by not reappointing the one Commissioner who stood up to business interests, and then instead appointing people to the Commission with no civil rights background, and who appear to have a pro-business agenda. It is very important that these nominations not be consented to by the Senate.