



**Testimony to the Senate Committee on Judiciary and Labor**

The Honorable Brian T. Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair  
Thursday, February 28, 2008, 2:00 p.m.  
State Capitol, Conference Room 016

by

Judge Frances Q.F. Wong  
Deputy Chief Judge / Senior Judge  
Family Court, First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 2054, Relating to Family Court

**Purpose:** Includes criteria to define "best interests of the child" regarding custody and visitation determinations.

**Judiciary's Position:**

The Judiciary took no position on the original draft of this bill and continue to take no position on this bill. The Judiciary supports the Legislature's recognition of the impact domestic violence has on the application of the proposed factors.

We respectfully suggest that the amendment provided in subsection (b)(5) on page 7 also be applied, to subsection (b)(11) as follows:

- (11) Each parent's willingness to allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;

This amendment is necessary because domestic violence may affect the non-perpetrator parent's "willingness" to maintain "family" connections. First, such forced contact can be used as a tool for continuing control and terrorization by the perpetrator. Second, extended families are sometimes intentionally or unwittingly, exerting control dynamics over the non-perpetrator parent.

Thank you for the opportunity to provide testimony on this measure.



TO: Committee on Judiciary and Labor, Chair Taniguchi and Vice Chair Hee

FR: Ana Maring, Hawaii State Coalition Against Domestic Violence [amaring@hscadv.org](mailto:amaring@hscadv.org)

RE: Relating to Family Court SB2054 SD1 – February 28, 2008, 2:00pm Room 016

Aloha, my name is Ana Maring and I represent the Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

Healthy and safe families have been the primary goal of the Battered Women's Movement. Frequently there is an assumption that the violence will end once the victim of abuse separates from the batterer. Multiple studies have shown this is the most dangerous time for women and their children. 75% of women who are murdered by a partner or former partner have recently separated or told their partner they are planning to leave. According to media accounts Janel Tupola had separated from her batterer prior to her death and co-workers of Jenny Hartsock say she was in the process of leaving her batterer. Perpetrators of family violence often use visitation and custody as an opportunity to be violent or manipulate the victim.

Battered women frequently believe the court system will support them in their quest for safety but that is often not the case. "Compared to non-battering fathers, batterers are more likely to seek custody of their children, and they may misuse the legal system as a symbolic battleground for continuing abuse through harassing and retaliatory litigation." (Kendall Segel-Evans, *Wife Abuse and Child Custody and Visitation by the Abuser* 1989). Additionally, there tends to be a presumption that courts will not give custody to batterers but according to a Massachusetts survey (Jay Silverman, Harvard) conducted as recently as 2004, 54% of custody cases involving documented spousal abuse were decided in favor of the alleged batterers. Joint and shared/joint custody may be an appropriate parenting situation in non-violent families. When domestic violence has been present in the relationship, shared/joint custody and visitation can be dangerous for the victim and the children. Several studies suggest that up to half of spouse abusers are also violent with their children.

The Coalition supports this bill's intent to have the courts and its associated personnel appropriately evaluate safety for children when addressing custody. Best interest of the child standards must only be applied when appropriate. It is extremely important for Family Court to consider domestic violence cases separately for those of non-violent families.

Thank you for the opportunity to comment.

**testimony**

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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Wednesday, February 27, 2008 9:20 PM  
**To:** testimony  
**Subject:** SB2054 SD1 to be heard on 02/28/08 @ 2:00pm by the Committee on the Judiciary & Labor, Room 016  
**Importance:** High

TO: Senator Brian Taniguchi, Chair  
Senator Clayton Hee, Vice-Chair  
Judiciary & Labor Committee Members

FROM: Dara Carlin, M.A.  
Oahu VOICES Representative  
716 Umi Street, Suite 210  
Honolulu, HI 96819

DATE: February 28, 2008

RE: Support for SB2054 SD1

Dear Chair, Vice-Chair and Judiciary & Labor Committee Members,

I have been authorized to speak to this measure on behalf of **Statewide VOICES**, The Formerly Battered Womens Caucus. It is the consensus of the caucus to stand in support of SB2054 SD1 which seeks to define the best interests of a child.

I was an active, participating member of the SR10 Task Force's Best Interests Of A Child working group that provided the standards proposed in this bill. Our statewide caucus had time to review each standard and found that all the standards, with the exception of #5, did not and would not pose an ongoing threat of harm to victims of domestic violence and their children. Standard #5, that addresses cooperation between each parent, posed an ongoing threat of danger for domestic violence (DV) victims and their children who escaped the marriage/relationship and family home because of domestic violence since "cooperation" post-separation for DV victims would only serve as continued access to the victim by the abuser. To paraphrase a Maui VOICES member: "There was never any cooperation during the marriage; what makes them think that he's suddenly going to cooperate after the marriage?"

If we want to prevent further murders like the last one we had (Janel Tupuola of Kailua in January) then we need to do all we can to keep the victims and survivors of DV safe from their abusers post-separation, because asking or requiring them to "cooperate" with their abusers could be a potential death sentence. Thankfully, the SD1 version of SB2054 adds that "this factor (cooperation) shall not be considered in a case where the court has determined that family violence has been committed by a parent". With this safety measure in place, Statewide VOICES can now stand in full support of this proposal without reservations.

Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.  
Oahu VOICES  
The Formerly Battered Womens Caucus

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2/27/2008

**Testimony in strong Support of SB 2054 SD 1 best interests  
of the child factors**

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TO: Senator Taniguchi, Chair  
Senator Hee, Vice Chair  
Committee on Judiciary and Labor

Hearing: Thursday, February 28, 2008; 2:00 p.m.; Room 016, State Capitol

From: LAURETTE DEMANDEL-SCHALLER, MFT, Ph.D., C.E., G.A.L., SAP  
**Ethics Chair Hawaii Assoc. of Marriage Family Therapists;  
Clinical Member American Assoc. for Marriage and Family  
Therapy; Custody Evaluator; Guardian Ad Litem;  
Mediator; Member of the Assoc. of Family and Conciliation  
Courts,  
And The SR10 Taskforce**

Subj: Testimony in strong Support of SB 2054 SD1

My name is Dr. Laurette Schaller, I have lived on the Island of Kauai for over 20 years, and have been a licensed Psychotherapist for 24 years, in California and Hawaii, providing treatment and forensic services to children and families.

The passage of SB 2054 SD1 will make the BEST INTEREST OF THE CHILD the cornerstone of judicial consideration when determining the award of custody to divorcing or never married parents. This is consistent with the mission of the Court to carry out its strategic plan to develop, support, and advocate for maximum parental involvement in the lives of their children. With the passage of SB2054 SD1 there will be a legal standard that is consistent with policy developed in other states across our nation, and also one which will be appealable in the appellate courts. The passing of this Bill means progress for the people in the State of Hawaii and the preservation of our children for generations to come. I work with the members of the groups listed, we strongly believe that SB 2054 SD1 should be supported. Thank you for the opportunity to testify.

## testimony

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**From:** tharris@hawaii.rr.com  
**Sent:** Thursday, February 28, 2008 8:33 AM  
**To:** testimony  
**Subject:** Testimony for Support of SB2054 SD1

February 27, 2008

**To:** Senator Taniguchi, Chair  
Senator Hee, Vice Chair  
Committee on Judiciary and Labor

**From:** Greg Farstrup

**Subj:** Testimony IN STRONG SUPPORT of SB2054 SD1 re factors the courts shall consider in determining the best interests of the child

**Hearing:** Thursday, February 28, 2008; 2:00 p.m.; Room 016, State Capitol

I strongly endorse SB2054 SD1. This bill creates guidelines which will help children and families as custody decisions are being made by the courts. As a participant in the process, which included various groups and interests, I can say that there was broad consensus for the best interests criteria in the current bill. From domestic violence groups to family law lawyers, people came together to support this bill because a standard is required for custody determinations. Many other states have specific criteria, in statute, and this bill is necessary for the best interests of children. This bill also supports SB2055 SD1 which establishes a framework for child custody evaluator standards and policies. This bill will alleviate the capricious and arbitrary manner in which these decisions are currently made.

Ted Harris

**testimony**

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**From:** Chris [crslethem@everdial.net]  
**Sent:** Thursday, February 28, 2008 9:05 AM  
**To:** testimony  
**Cc:** crslethem@gmail.com  
**Subject:** Testimony IN STRONG SUPPORT of SB2054 SD1 re factors the courts

Hearing: Thursday, February 28, 2008; 2:00 p.m.; Room 016, State Capitol

I strongly support **SB2054 SD1**. This bill creates consistent standards and criteria used by judges and custody evaluators which will help children and families. This bill will also work to create higher standards of excellence and greater care as custody decisions that are being made by the courts. As someone who was involved in the process, along with other stakeholders, I can say that there was extensive consensus and extreme diligence in developing the language for the "the best interests criteria" in the current bill. >From mothers, fathers, family therapists and even domestic violence advocate groups to family law attorneys, we came together to draft the language and support this bill because standards will minimize adversarial litigation and provide more consistent and fair decision making. More and more states are adding specific criteria, in statute, and this bill is necessary for the best interests of children. This bill also supports SB2055 SD1 which establishes a framework for child custody evaluator standards and policies.

**Thank you**  
**Chris Lethem**

February 26, 2008

To: Senator Taniguchi, Chair  
Senator Hee, Vice Chair  
Committee on Judiciary and Labor

From: Tom Marzec

**Subj:** Testimony **IN STRONG SUPPORT** of **SB2054 SD1** re factors the courts shall consider in determining the best interests of the child

Hearing: Thursday, February 28, 2008; 2:00 p.m.; Room 016, State Capitol

First, I am extremely grateful and relieved that this bill, critical to improving family court custody decisions, is being given a hearing. Mahalo Senator Taniguchi and Senator Hee!

I strongly support **SB2054 SD1**. The current lack of standards in determining what is in the best interests of the child is not effective for making custody determinations and is harmful to children and families. Creating these best interests of the child standards, with this bill, gives guidance to parents, the courts, custody evaluators, guardians, and others -- while also providing discretion based on the facts and circumstances of each individual case.

2008 is the third legislative session where bills have been introduced defining criteria for the courts to use in "best interests" determinations. In 2006, best interests criteria (directly from an in-depth research study and model<sup>1</sup>) were incorporated into a bill. Subsequent years resulted in additional information, education, refinements and consensus regarding these criteria. This 3 year process has brought varied groups and interests together, in large part due to Senator Chun Oakland's leadership, and formed broad consensus for the criteria in the current bill. For example, SB2054 SD1 even had the criteria additionally reviewed and recommended by an attorney for the national parent organization of the Hawaii State Coalition Against Domestic Violence. Also, family law practitioners related that such best interests criteria would be helpful for themselves, their clients and the courts because a standard will raise the effectiveness of child custody processes.

Judge Wong, in June 2007, issued a Custody Evaluation Standards and Procedures memo. On page 15 under XIV Guiding Principles, the memo states that "The child's best interest standard is paramount..."; yet, unfortunately offers no further definition or criteria regarding how this standard is to be determined or applied. Likewise, the appellate courts have declined to define the "best interests" standard. That is why many other states have specific criteria, in statute, and this bill is necessary for the best interests of children. This bill also supports SB2055 SD1 which establishes a framework for child custody evaluator standards and policies.

Your consideration of, and support for this bill, is very appreciated!

Sincerely,

Thomas A. Marzec

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<sup>1</sup> Jameson, B. J., Ehrenberg, M. F. & Hunter, M. A. (1997). Psychologists' ratings of the Best-Interests-of-the-Child Custody and Access Criterion: A family systems assessment model. Professional Psychology: Research and Practice, 28(3), 253-262.

**From:** Celia Suarez, Marriage and Family Therapist

**Subj:** Testimony IN STRONG SUPPORT OF SB 2054, factors the courts shall consider in determining the best interest of the child

Hearing: Thursday, February 28, 2008, 2:00pm. Conference Room 016, State Capitol

I strongly support HB2042. The current lack of standards in determining what is in the best interests of the child is affecting custody evaluators and the courts for making custody determinations. This hurts parents and children. Creating the best interests of the child standards in this bill gives guidance to parents, the courts, custody evaluators, guardians, and mental health providers while also providing discretion based on the facts and circumstances of each individual case.

Thank you for giving me the opportunity to support this bill.



**Ann S. Yabusaki, Ph.D.**  
*California Psychologist PSY14443*  
*California Marriage and Family Counselor MFC 2255H*  
*Hawaii Marriage and Family Therapist MFT-87*

The Honorable Senators Brian T. Taniguchi, Chair  
and Clayton Hee, Vice Chair  
Committee on Judiciary and Labor  
Hawaii State Senate  
Hawaii State Capitol, Room 226  
415 South Beretania Street  
Honolulu, Hawaii 96813

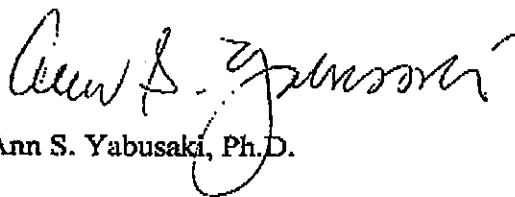
RE: S.B. 2054 S.D.1 RELATING TO FAMILY COURT  
Senate Committee on Judiciary and Labor  
Hearing Scheduled: February 28, 2008, 2:00 pm

Dear Senators Taniguchi and Hee:

I am writing in full support of S.B. 2054, a bill specifying factors the courts shall consider for awarding custody and visitation in the Best Interest of the Child. As a psychologist and marriage and family therapist, I have treated many high-conflict couples and families. I have observed and participated in custody proceedings that create, in my opinion, unnecessary trauma and harm to families and their communities.

I am particularly grateful that this bill addresses the best interest of children because children are the victims of high-conflict families. I am grateful that it addresses family violence, alcohol and substance abuse, family dynamics in which parents use children for personal gain, and other harmful situations in which children are placed. By addressing areas to consider in the best interest of the child, my hope is that we will more fully address the larger contexts in which our children and families live.

Mahalo nui loa,



Ann S. Yabusaki, Ph.D.

**LATE**

# State Commission on Fatherhood

c/o Hawai'i Dept. of Human Services; 1390 Miller Street, Room 209; Honolulu, HI 96813

February 28, 2008

**TO:** Senator Taniguchi, Chair; Senator Hee, Vice Chair  
Committee on Judiciary and Labor (c/o fax 586-6659)

**FROM:** Greg Farstrup, Chair, State Commission on Fatherhood

**SUBJECT:** Testimony IN STRONG SUPPORT of SB2054 SD1 amending the  
Factors the courts shall consider in determining the best interests of the child

**HEARING:** Thursday, February 28, 2008; 2:00 p.m.  
Room 016, State Capitol

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**I strongly support the passage of SB2054 SD1.**

Mahalo Senator Taniguchi, Senator Hee, and Committee Members for hearing this bill. It will be a significant step for improving family court custody decisions in combination with *SB2055 SD1*, which establishes a framework for child custody evaluator training and certification.

As a participant in the SR10 Task Force that developed this bill, I was impressed that there is broad consensus for the best interests of the child criteria in the current bill. People from concerned families, family service and mediation agencies, domestic violence groups, professional organizations, family law attorneys, Hawai'i Coalition for Dads, and others came together to support this bill because improved standards are needed to improve child custody determinations.

Family law practitioners have said that such best interests criteria would be helpful for them, their clients, and the courts because a standard will improve the effectiveness of the custody process.

Creating these best interest of the child standards, with this bill, gives better guidance to parents, the courts, custody evaluators, guardians, and others—while also providing discretion based on the facts and circumstances of each individual case.

Mahalo for considering this important legislation.

**I urge the Committee on Judiciary and Labor to support the passage of SB2054 SD1.**

State Commission on Fatherhood: Greg Farstrup, Chair (*Hawai'i Coalition for Dads*); Marika Ripke, Secretary/ Treasurer (*Hawai'i Kids Count, UH Manoa*); Barrett Awai (*Kawaiiah'o Church*); Bernard Carvalho (*Office of Community Assistance, Kaua'i County*); Merton Chinen (*Office of Youth Services*); Mike Dias (*Alu Like-Hilo*); Dennis Kajikawa (*Dept. of Education*); Loretta Fuddy (*Dept. of Health*); Myrna Murdoch (*Children's Rights Council of Hawai'i*); Henry Oliva (*Dept. of Human Services*); Tom Read (*Dept. of Public Safety*); Russell Suzuki (*Dept. of Attorney General*); and Sylvia Yuen (*Center on the Family, UH Manoa*).

**LATE**

To: Senator Taniguchi, Chair  
Senator Hee, Vice Chair  
Committee on Judiciary and Labor

From: Kathryn JB Gorak

Subj: Testimony **IN STRONG SUPPORT** of **SB2054 SD1** best interests of the child criteria

Hearing: Thursday, February 28, 2008; 2:00 p.m.; Room 016, State Capitol

I strongly support SB2054 SD1. Having suffered through 20 plus Family Court custody hearings, (13 heard Motions and Orders), I wish the criteria used for the best interests of the child determinations was already defined. This excellent bill is long overdue.

"Best interests" means different things to different people, and this wide range of interpretations hurt my daughter, as Helena was unfairly evaluated. Judges and custody evaluators have to follow a consistent, defined standard. Without such a standard, it is too easy to abuse the custody evaluation process.

I feel that if this best interests bill was already in place, our child would have had an improved co-parenting relationship with both parents, operating from a common ground and goals. Instead, without best interests defined there was extensive litigation, abusive financial power, and a win-loss scenario instead of parallel parenting which caused fear and resentment.

Please contact me for additional feedback at 429-5888.  
Please support this bill and help families get fair custody evaluations and court decisions.

Kathy Gorak, mother of a 12-year old daughter.

February 28, 2008

To: Senator Taniguchi, Chair  
Senator Hee, Vice Chair  
Committee on Judiciary and Labor

From: Melinda Chee, MS, MA, ACNP-BC, RN-BC, CCM,  
Member Hawaii Children's Rights Council

Subj: Testimony IN STRONG SUPPORT of of SB2054 SD1 re factors the courts shall consider in determining the best interests of the child

Hearing: Thursday, February 28, 2008; 2:00 p.m.; Room 016, State Capitol

Of priority, I am profoundly appreciative that this bill, critical to improving family court custody decisions, is being given a hearing. Mahalo nui loa to Senator Taniguchi and Senator Hee!

I strongly support SB2054 SD1. The current lack of standards in determining what is in the best interests of the child is not effective for making custody determinations and is harmful to children and families. Creating these best interests of the child standards, with this bill, gives guidance to parents, the courts, custody evaluators, guardians, and others -- while also providing discretion based on the facts and circumstances of each individual case.

In my own case, Custody decisions were based upon fabricated evidence, submitted under penalty of Perjury, by Custody Guardian ad litem, Kimberly Towler, Esq., child psychologist Sue Lehrke, PhD and Hawaii First District Family Court employee Barbra Shintani, an Unlicensed Social Worker. In my case, custody was changed without a hearing, which is an unconstitutional violation of Fourteenth Amendment due process rights. Family Court decisions were based upon the fabricated evidence submitted by the above named individuals. Former Judge, Allene Suemori was removed from the bench because of her unconstitutional rulings on this case. When I filed a Motion for removal of Guardian ad Litem Kimberly Towler; protesting her fees which were massively over the fee cap established by Hawaii Court Rules, it spawned vengeance litigation, with processes and outcomes largely controlled by Towler.

It is critical that the Hawaii Legislature improve Family Court Custody decision-making. The Family Court is so resistant to enhancements they retaliate against those who would dare to offer sincere recommendations for continuous improvements. In my own case, at a trial regarding custody on July 10, 2007, 50% of the Trial time was devoted to my previous Legislative Testimony.[Hawaii Senate SCR52 Task Force Family Court Sunshine and Accountability Committee Public Meeting on November 9, 2006]. Defendant Kevin Chee, a Honolulu attorney, urged the Family Court to penalize me for my Testimony. He testified, under cross-examination during the July 10, 2007 trial, that GAL Kimberly Towler has slept with Defendant's Law office female secretary, Cyd Ignacio. This creates a

profound appearance of impropriety!! How can a guardian ad litem appear unbiased when that “custody evaluator” is having a domestic partnership relationship with one of the parties’ office staff? Yet, Judge Radius lauded the performance (s) of GAL Towler!

At the conclusion of the Trial, Judge Radius first reminded that only Written Court Orders are effective. Then she specified only she could write the court orders related to the Trial. Family Court Rules establish Court Orders are to be issued within 90 days of a hearing/trial. In my case this did not happen. On October 12, 2007, more that 90 days later, Judge Radius provided for visitation during a previous time period. Consider this: In October, she allowed for visitation in September, a time period which had already passed. To my knowledge, time tunnels happen only in Hollywood movies. How, in October, could I visit with my daughter in September? You see, if one testifies in favor of Family Court enhancements, one will face severe vengeance retaliation from the Hawaii Family Court.

It is time to restore democratic checks and balances through Legislative actions. The Hawaii Family Court conducts a “*Jurist of the Year*” popularity contest. Family Court customers are specifically forbidden from voting. On the other hand, Family court employees and Family court attorneys are allowed to vote. In my case, this means GAL Kimberly Towler, Family Court UNLICENSED social worker Shintani and custody evaluator, Sue Lehrke, as well as Defendant Kevin Chee, a Honolulu attorney representing himself were all allowed to vote. The *Jurist of the Year* popularity contest poses a conflict of interest for judges. In my case, it is obvious the judges pandered to the preferences of the Defendant, GAL and custody evaluators because they were eligible voters in the contest. You are probably aware of an Article in the Hawaii Bar Journal, February, 2004 titled “*Divorce Law in Hawaii: An Update*”, by eminent Hawai’i Family Law attorney, William C. Darrah. He states: “The situation has become so bad that because of time constraints lawyers have been forced to resort to presentation devices which in fact violate the Hawaii Rules of Evidence” [See *Kie v McMahel*, 91 Haw. 438, 984 P. 2d 1264 (App 1999)].

A central theme of the Defendant is his efforts to seek retaliation and vengeance from the Family Court because Plaintiff Melinda Chee participated in Hawai’i Senate testimony regarding enhancements in Family Court processes and efficiencies. Plaintiff Melinda Chee offered sincere, balanced, video-taped testimony at a Hawai’i Senate hearing. The Hawai’i Legislature is exploring Family Court models shown in other states to be efficient and satisfactory to court members and customers alike. Participation in open democratic processes should not generate communist-like fear of reprisal. Continual democratic process enhancements are a good thing, not something to be retaliated against. Legal openness, fairness, sunshine and transparency foster justice.

*“Injustice anywhere is a threat to justice everywhere” Martin Luther King Jr.*

**LATE**

**testimony**

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**From:** Myrna [myrnam@hawaii.rr.com]  
**Sent:** Saturday, March 01, 2008 2:37 PM  
**To:** testimony  
**Cc:** myrnam@hawaii.rr.com  
**Subject:** Testimony SB 2054.doc

Testimony in **strong Support of SB 2054 SD1**

Hearing: Feb 28, 2008  
Time 2.30 p.m  
Room 016 State Capital

V

COMMITTEE  
COMMITTEE ON JUDICIARY AND LABOR  
Senator Brian T. Taniguchi, Chair  
Senator Clayton Hee, Vice Chair

**From: Myrna B. Murdoch**  
**Children's Rights Council and Commission on Fatherhood**  
**And SR10 Taskforce**

Subj: Testimony in **strong Support of SB 2054 SD1**

My name is Myrna B. Murdoch, Convener of the Best Interest of the Child working group of the SR10 taskforce, founder of the Children's Rights Council of Hawaii and a member of the Hawaii State Commission on Fatherhood.

The passage of SB 2054 will make the BEST INTEREST OF THE CHILD the cornerstone of

judicial consideration when determining the award of custody to divorcing or never married parents. This is consistent with the mission of the Court to carry out its strategic plan to develop, support, and advocate for maximum parental involvement in the lives of their children. With the passage of SB2054 there will be a legal standard that is consistent with policy developed in other states across our nation, and also one which will be appealable in the appellate courts both in Hawaii and in the 9<sup>th</sup> circuit.

Thank you for giving me an opportunity to testify.

Sincerely,

Myrna B. Murdoch