

JAN 21 2010

SENATE CONCURRENT RESOLUTION

URGING THE GOVERNOR TO USE AND CONSIDER GENDER EQUALITY WHEN
APPOINTING JUDGES AND JUSTICES TO HAWAII COURTS.

1 WHEREAS, as of June 2009, in the Hawaii State Bar
2 Association, the pool from which judicial nominees are selected,
3 female attorneys who are active members make up 40.6 per cent of
4 membership; and

5
6 WHEREAS, as of June 2009, the percentage of female judges
7 in the Judiciary was thirty-five per cent, or twenty-eight
8 judges and justices at all levels of the court system; and

9
10 WHEREAS, by comparison, nationwide, the percentage of
11 female judges (30 per cent) is roughly proportional to the
12 percentage of women lawyers (31.6 per cent); and

13
14 WHEREAS, in 2009, seven female judges announced their early
15 retirement from the Judiciary, which constitutes twenty-five per
16 cent of Hawaii's female judges, and Governor Lingle is in the
17 position to appoint replacements for these female judges prior
18 to the end of her term of office; and

19
20 WHEREAS, of the nineteen judicial appointments made by
21 Governor Lingle, only five have been women; and

22
23 WHEREAS, the Legislature finds that the appointment of
24 women judges is important, because of the benefit of their life
25 experiences. Judges, and especially appellate judges, often
26 have discretion in deciding cases. How this discretion is
27 exercised is often a product of the judges' life experiences and
28 values; this is undeniably so for many decisions, and especially
29 at the appellate level; and

30
31 WHEREAS, the Legislature finds that the appointment of
32 women to the bench reduces bias, and the appearance of bias, in
33 the judicial system. Studies of federal and state courts have



1 shown bias in a broad range of substantive areas, such as family
2 law, domestic violence, and criminal law, not only in outcome,
3 but particularly in how cases are treated in court; and
4

5 WHEREAS, bias, or even the appearance of bias, against
6 women undermines the integrity of the judicial system. As
7 stated by Justice Sandra Day O'Connor: "When people perceive
8 bias in a legal system whether they suffer from it or not, they
9 lose respect for that system, as well as for the law." By
10 appointing women to the bench, the potential for gender bias is
11 reduced and the ultimate objective of equal justice under the
12 law is better served; and
13

14 WHEREAS, with more women as judges, the public at large
15 would see the justice system as more representative of diversity
16 and, presumably, more fair; and
17

18 WHEREAS, the Legislature additionally finds that it is
19 important for the Judiciary, as a decision-making body, to be
20 representative of those for whom decisions are made. It is not
21 enough to say male judges can adequately represent women in this
22 decision-making capacity; and
23

24 WHEREAS, for example, a balanced and representative jury is
25 fundamental to our judicial system. More cases are decided by
26 judges than by juries, however. How then can we reconcile our
27 acceptance of the importance of a representative jury and not
28 accept the equally critical need for a representative
29 judiciary?; and
30

31 WHEREAS, our democratic system of government mandates that
32 adult citizens from all walks of life should have equal access
33 to participation in decision-making and leadership. It is
34 untenable that any specific interest group, say a particular
35 ethnic or religious group, could be systematically excluded from
36 direct participation in decision-making on the grounds that
37 others can "speak" for them. Since women and men play different
38 roles in society and therefore have different needs, interests,
39 and priorities, it follows that women also cannot be adequately
40 represented in decision-making by men; and
41

42 WHEREAS, the Legislature further finds that appointing
43 women to the bench serves to provide male judges and attorneys
44 with a different perspective, in the course of collegial



1 discourse within community and bar interactions. A different
2 perspective may allow male judges and attorneys to become aware
3 of the ways in which their assumptions, attitudes, and behavior
4 are gendered to reflect their own situation, exclude a woman's
5 perspective, and thus obstruct women's equal participation; and
6

7 WHEREAS, the Legislature additionally finds that, because a
8 judgeship is often seen as the pinnacle of a legal career,
9 appointing female judges provides young female attorneys with
10 role models and reassurance that they can get past the glass
11 ceiling. Recent studies tend to indicate there is an
12 undercurrent of gender bias in the legal profession. For
13 example, findings of the survey conducted by The Women in Law
14 Committee of the State Bar of California in cooperation with The
15 Employment Law Center, Legal Aid Society of San Francisco
16 indicated that eighty-five per cent of the women lawyers
17 surveyed perceive a subtle but pervasive gender bias within the
18 legal profession. Almost two-thirds agree that women lawyers
19 are not accepted as equals by their male peers. Sixty-two per
20 cent of the female respondents believe that they do not have as
21 much opportunity for advancement as male lawyers; and
22

23 WHEREAS, the circuit court judges of today are the
24 intermediate court of appeals judges and supreme court justices
25 of tomorrow, it is important that the State promote women into
26 the Judiciary at the "entry" levels, or women will be entirely
27 absent from this "class" of judges in the future; and
28

29 WHEREAS, the Legislature finds that appointing women to the
30 Judiciary is crucial for the reasons stated herein; now,
31 therefore,
32

33 BE IT RESOLVED by the Senate of the Twenty-fifth
34 Legislature of the State of Hawaii, Regular Session of 2010, the
35 House of Representatives concurring, that Governor Lingle is
36 strongly urged to use and consider gender equality when
37 appointing judges and justices in the future; and
38
39



S.C.R. NO. 37

1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Governor and the
3 Chief Justice of the Hawaii Supreme Court.
4
5
6

OFFERED BY:

Michelle A. Adoni

~~_____~~

~~_____~~
Irene Inoué Ki

Franzanne Chun Oalland

Rachel de Baker

Gay L. Hama

~~_____~~

~~_____~~
Norman Sakamoto

