

JAN 21 2010

SENATE 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

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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

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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

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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

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

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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

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



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

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11 WHEREAS, with more women as judges, the public at large
12 would see the justice system as more representative of diversity
13 and, presumably, more fair; and

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

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

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

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39 WHEREAS, the Legislature further finds that appointing
40 women to the bench serves to provide male judges and attorneys
41 with a different perspective, in the course of collegial
42 discourse within community and bar interactions. A different
43 perspective may allow male judges and attorneys to become aware
44 of the ways in which their assumptions, attitudes, and behavior



1 are gendered to reflect their own situation, exclude a woman's
2 perspective, and thus obstruct women's equal participation; and
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4 WHEREAS, the Legislature additionally finds that, because a
5 judgeship is often seen as the pinnacle of a legal career,
6 appointing female judges provides young female attorneys with
7 role models and reassurance that they can get past the glass
8 ceiling. Recent studies tend to indicate there is an
9 undercurrent of gender bias in the legal profession. For
10 example, findings of the survey conducted by The Women in Law
11 Committee of the State Bar of California in cooperation with The
12 Employment Law Center, Legal Aid Society of San Francisco
13 indicated that eighty-five per cent of the women lawyers
14 surveyed perceive a subtle but pervasive gender bias within the
15 legal profession. Almost two-thirds agree that women lawyers
16 are not accepted as equals by their male peers. Sixty-two per
17 cent of the female respondents believe that they do not have as
18 much opportunity for advancement as male lawyers; and
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20 WHEREAS, the circuit court judges of today are the
21 intermediate court of appeals judges and supreme court justices
22 of tomorrow, it is important that the State promote women into
23 the Judiciary at the "entry" levels, or women will be entirely
24 absent from this "class" of judges in the future; and
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26 WHEREAS, the Legislature finds that appointing women to the
27 Judiciary is crucial for the reasons stated herein; now,
28 therefore,
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30 BE IT RESOLVED by the Senate of the Twenty-fifth
31 Legislature of the State of Hawaii, Regular Session of 2010,
32 that Governor Lingle is strongly urged to use and consider
33 gender equality when appointing judges and justices in the
34 future; and
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36 BE IT FURTHER RESOLVED that certified copies of this
37 Resolution be transmitted to the Governor and the Chief Justice
38 of the Hawaii Supreme Court.
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