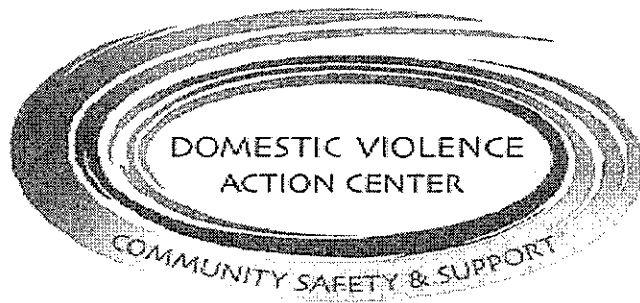


SCR37



To: Senator Brian Taniguchi, Chair
Senator Dwight Takamine, Vice Chair and
Members of the Committee on Judiciary and Government Operations

From: Nanci Kreidman, M.A.
Chief Executive Officer

RE: SCR 37 and SR 26 Urging the Governor to use and consider gender equity when appointing judges and justices to Hawai'i courts (Hearing: Monday, March 26, 2010, 9:35 a.m., Room 016)

Please accept this testimony in support of SCR 37 and SR 26. It is unfortunate that such a resolution is needed, as it is our hope that women and men are considered with equal enthusiasm and seriousness when a vacancy occurs in one of Hawaii's courts.

The representation of women on the bench continues, however, to lag behind men. There also continues to be gender bias in the courtroom and it is our impression that one way to offset such gender bias is to have a greater representation of females serving as judges.

The research that has been done about gender bias was conducted in other parts of the country, thus suggesting this phenomenon is not unique to Hawaii. The challenge exists here as well and deserves attention by our elected leaders.

This year only 5 of 19 appointments by the Governor were women, despite the fact that seven women retired this past year. We are concerned that only 34-40% of sitting judges are women, and every time a woman judge leaves and is not replaced by a woman, the percentage drops.

We urge the committee to pass these measures on behalf of the women and girls of Hawai'i. Thank you for this opportunity to provide testimony.

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Testimony of Hawaii Women Lawyers
Relating to:

**SENATE RESOLUTION NO. 26 and
SENATE CONCURRENT RESOLUTION NO. 37
Urging the Governor to Use and Consider Gender Equality when Appointing
Judges and Justices to Hawaii Courts**

To: **Senate Committee on Judiciary and Government Operations**
Honorable Brian T. Taniguchi, Chair
Honorable Dwight Y. Takamine, Vice Chair

Hearing: Monday March 29, 2010, 9:35 a.m.
Conference Room No. 016, State Capitol, 415 South Beretania St.

Hawaii Women Lawyers ("HWL") respectfully submits this testimony in support of the above resolutions.

HWL was founded in 1976 as an organization of attorneys dedicated to advancing the professional and community goals of women attorneys in Hawai'i. Specifically, HWL was formed to improve the status of women in the legal profession, to increase the number of women in positions of authority and responsibility, and to promote the advancement of all women. Today, HWL continues in its dedication to improve the lives and careers of women in all aspects of the legal profession and to enhance the status of women and promote equal opportunities for all people.

With particular regard to judicial appointments, HWL endorses qualified women candidates as part of its efforts to support gender equality on the bench in Hawai'i.

In our recent newsletter (a copy of which is enclosed for your information), the HWL President's Column described how, through a series of events, the gender gap in the Hawai'i State Judiciary has been increasing. The gap is most evident in the First Circuit, primarily due to the recent retirements by female Circuit Court Judges Blondin, Wong, Marks, Hifo, Hirai and Radius, not to mention the retirement of Intermediate Court of Appeals Judge Watanabe. Combined with judicial appointments and retentions of fewer women than men, the gender gap is much more pronounced today.

This cannot be a result of an absence of qualified women applicants. The "short list" of candidates provided by the Judicial Selection Commission ("JSC") typically includes women candidates, all of whom are presumed to be qualified to serve on the bench. HWL has encouraged the JSC to increase the number of women on the "short list" and has encouraged the appointment and confirmation of qualified women candidates.

It is crucial that our courts are representative of the Hawai`i community they serve. Indeed, a judiciary in which men and women are equally and adequately represented will insure public confidence in the legitimacy and impartiality of the justice system.¹

In a world where one of the primary functions of the judiciary is to promote equality and fairness, it would be anomalous if the very institution charged with that goal should itself exclude [or limit] women from its ranks. Symbolically, having women on the bench signals to other women and to groups that have been historically marginalized and confined, that they too can excel, and upon excelling, will be recognized and rewarded for their accomplishments.²

We are at a crucial juncture. The current vacancies provide an appropriate opportunity to address the disparity in our state courts and appoint qualified women judges so that the judiciary will appropriately and adequately reflect women in the Hawai`i community and in the Hawai`i bar.

Accordingly, HWL respectfully supports the above resolutions urging the Governor to consider gender equity when making appointments to the Hawai`i State Judiciary.

Sincerely,

LANE HORNFECK
Chair of Judicial Equity Committee
and Former President
HAWAII WOMEN LAWYERS

¹ The Right Honorable Beverley McLachlin, P.C. Chief Justice of Canada, *Why We Need Women Judges*, at 1, *speech given at the International Association of Women Judges 8th Biennial Conference, May 3-7, 2006.*

² *Id.* at 3 (brackets added).

President's Column

THE GENDER GAP IN THE STATE'S JUDICIARY

Over the last few months, I've received many emails expressing deep concerns about the growing gender gap at the state judiciary. The concerns are a result of a mix of events: significantly fewer women than men have been nominated to fill judicial vacancies, women judges up for retention appear to have faced more challenges than men, particularly on issues of temperament, fewer women than men have applied to fill vacancies, and far fewer men than women have retired from the bench. The consequences of the growing gender gap created by these events are not always obvious.

I refrain from addressing the value of a female perspective on the bench, noting the oft-quoted observation of Mary Jeanne Coyne, Associate Justice of the Minnesota Supreme Court, that "A wise old man and a wise old woman often reach the same conclusion". No need to belabor this statement and its variation that accompanied U.S. Supreme Court Justice Sonia Sotomayor's recent nomination and confirmation. The gender gap simply means that there are far fewer wise women than there are wise men on the bench as a whole.

Hawaii Women Lawyers was formed in 1976 to improve the status of women in the legal profession; to increase the number of women attorneys in positions of authority and responsibility; and to promote the advancement of all women. Throughout the 1980's and 1990's, the HWL Board took action to encourage women applicants and assist them with their applications and conduct mock interviews. Credit should be given to those early efforts by former HWL members Lorraine Akiba, Trudy Burns Stone, Rai Saint Chu and Corianne Lau, among many others. Some of the recently retiring women judges were appointed during those years.

HWL has continued to encourage women applicants and assist with applications, recommendations, comments and interviews. Because of recent events, the effort has been stepped up. Hurdles include potential applicants who remove themselves from the process or believe that the process would be futile. California Women Lawyers received an award from the National Conference of Women's Bar Associations for its program "So, You Want To Be A Judge?" program; we hope to institute something similar.

Why is closing the gender gap so important? The administration of justice is served by a more balanced bench that achieves not just diversity, but it ensures representation of the populations served by the judiciary. For litigants and all who appear in court – their confidence in the system, and their impression of legitimacy and impartiality, will be enhanced by a judiciary in which men and women are fairly represented. This does not mean that the judiciary must mirror society – but women are half of the population and so many issues before the courts – divorce, spousal support, child custody and support, domestic violence and crimes, discrimination in housing and employment -- involve women who need to know that when they go before the courts, not all of the decision-makers will be men. This is not to say that male judges cannot be impartial, of course they can be, but the credibility of the judiciary is not helped when almost every case on almost every docket is presided over by a man.

Of course there shouldn't be a quota on appointments, but at minimum, the process needs to be examined to eliminate inadvertent structural bias. Why are fewer women applying for judgeships? Does the application form discourage otherwise qualified women applicants because it is perceived to imply minimum qualifications (such as lead trial experience) for the job? Are the right qualifications being sought? Are there systemic causes (in private practice and government) preventing women from meeting those qualifications? Does the public nature of the process inhibit otherwise qualified women applicants from looking for "another job"? What causes potential applicants to believe the process may be futile? Why are fewer women than men remaining on the bench, seeking retention, and being retained? Is temperament evaluated differently for men and women judges?

The Judicial Selection Commission generally has provided a somewhat gender-balanced list of nominees to the Governor; the Governor's track record of appointments has been not so balanced – of the 22 candidates nominated by Governor Lingle, only 5 have been women. That the men may have been qualified is not the only issue -- the list will always include qualified men whose experience, temperament, and background make them suitable for appointment. To the extent that the selection of judges impacts the credibility and legitimacy of the entire judiciary, and not just the individual applicant, action is needed to narrow the gender gap in the State Judiciary.

With so many important economic and social issues today, narrowing the gender gap in the judiciary won't just happen without our membership making it an issue for the Judicial Selection Commission, the Governor, and Senators, present and future. It will take all of us, working together, to make a positive difference. But for now, I expect to receive more emails and calls asking Hawaii Women Lawyers to take the lead. If not us, who will?

HAWAII WOMEN LAWYERS SUPPORTS THE APPOINTMENT
OF QUALIFIED WOMEN APPLICANTS TO THE BENCH.