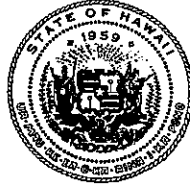


NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

# LATE TESTIMONY

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## House Committee on Judiciary

### H.B. 127, H.D. 1, Relating to Healthcare

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health

January, 24, 2012

1 **Department's Position:** The Department of Health (DOH) supports the intent of H.B. 127, H.D. 1 to  
2 ensure that sexual assault victims are provided medically accurate information and access to Emergency  
3 Contraception (EC) when receiving emergency medical care at Hawaii's hospitals but must oppose the  
4 measure because there are no available resources to establish and maintain a statewide EC delivery  
5 system.

6 **Fiscal Implications:** There is a need to determine the estimated amount of funds necessary to carry out  
7 the requirements of the bill. Fiscal impact is unknown at present.

8 **Purpose and Justification:** H.B. 127, H.D. 1 ensures that sexual assault victims are provided medically  
9 accurate information and access to EC when receiving emergency medical care at Hawaii's hospitals.

10 The measure states that "the cost of any EC dispensed shall be paid by the Department using  
11 monies from the Domestic Violence Sexual Assault (DVSA) Special Fund under Section 321-1.3." This  
12 requires the establishment and maintenance of a statewide EC delivery system. The cost of  
13 implementing such a system is unknown. Currently, the DVSA Special Fund is dependent upon funds  
14 from tax refund designations and birth and death certificates and may not have consistent funding to  
15 support the ongoing expenses necessary to implement and maintain a statewide EC delivery system.

1 The Department does not have a mechanism for procurement to fund and distribute EC to individual  
2 hospitals.

3 The Department currently monitors hospitals for licensing purposes and setting up a separate  
4 system for EC may incur additional costs to the Department.

5 Thank you for the opportunity to testify.



**LATE TESTIMONY**

Tuesday, January 24, 2012, 2:00 PM  
State Capitol, Conference Room 325

House Committee on Judiciary  
Representative Gil Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

**Testimony in Strong Support of HB 127, HD1 Relating to Healthcare**

Chair Keith-Agaran, Vice Chair Rhoads and Members of the House Committee on Judiciary

Thank you for this opportunity to testify before your committee. The Democratic Party of Hawai'i stands in strong support of HB 127, HD1, which would require hospitals to provide survivors of sexual assaults with factually accurate and unbiased information on emergency contraception, as well as access to said contraception.

At the 2010 Convention of the Democratic Party of Hawai'i, the convention body approved Environment and Health Resolution 2010-11: Requiring All Emergency Rooms to Offer Emergency Contraception. HB 127, HD1 is consistent with the language of this resolution.

The Legislation Committee of the Democratic Party of Hawai'i has subsequently elevated this issue to its Top Legislative Priorities for this Session.

The Democratic Party believes that when a victim of violent crime that results in physical injury seeks medical attention, the health care system should do everything possible to respond and administer medically necessary care.

Sexual assault, or rape, is a crime that is violent, traumatic, and the ultimate, intimate violation of a person's body.

According to the American College of Obstetricians and Gynecologists, the American Medical Association, and the American College of Emergency Physicians, the accepted standard of care for victims of sexual assault includes the provision of emergency contraception.

The Democratic Party of Hawai'i supports legislation requiring all hospital emergency rooms in the State to adhere to the accepted standard of care for victims of rape and sexual assault. This means providing accurate information regarding emergency contraception, as well as access to emergency contraception, without delay and without requiring patients to be transferred to another institution for that purpose.

Thank you again for this opportunity to testify in strong support of HB 127, HD1

Respectfully Submitted,

Doug Pyle and Joy Kobashigawa Lewis  
Co-Chairs  
Legislation Committee of the Democratic Party of Hawai'i

**Testimony for HB127 on 1/24/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, January 24, 2012 11:28 AM

**To:** JUDtestimony

**Cc:** skafjacquelyn@yahoo.com

**LATE TESTIMONY**

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Testimony for JUD 1/24/2012 2:00:00 PM HB127

Conference room: 325  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Jacquelyn Skaf  
Organization: Individual  
E-mail: skafjacquelyn@yahoo.com  
Submitted on: 1/24/2012

**Comments:**

Distinguished Representatives,

I urge you to vote NO on HB127 HD1.

If this bill is passed, it will trample the conscience rights of individual healthcare providers, including doctors, nurses, and pharmacists. It will also give the imprimatur of governmental authority to those who do not consider EC to be an abortifacient to recommend it to patients, rather than simply offering it as one of multiple options. (We've heard from several women who were told they "had" to take EC by nurses or others in the emergency room, with no effort to explain the pros and cons in a rational way.)

Those who refuse face penalties by state government and could risk discipline from their own employers and would be subject to fines of \$1,000 for each separate instance. This sets a dangerous precedent by allowing the government to mandate what healthcare providers must do, violating individuals' constitutional rights and in effect practicing medicine (see related video). Without a "right of conscience" exception HB 127 is a clear violation of several federal laws including the 2005 Weldon Amendment and 42 USC § 238nwhich reads:

The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that- (1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions

Violation of these laws may place tens of millions of dollars of federal health funding at risk-exacerbating Hawaii's budget problems. Moreover, patients will ultimately suffer as healthcare providers set aside their own best judgment and follow governmental requirements or leave the practice of medicine rather than violate their own consciences.

Thank you for your time and consideration.

Aloha,  
Jacquelyn Skaf

**TO: Chair Gil Keith Agaran and Members  
House Judiciary Committee**

# LATE TESTIMONY

**FR: Leslie Wilkins, Chair  
Hawaii State Commission on the Status of Women**

**RE: HB 127 RELATING TO EMERGENCY COTRACEPTIVES FOR SEXUAL  
ASSAULT SURVIVORS**

**Date: January 24, 2012**

**Position: Strong Support**

Dear Chair Keith Agaran and Members of the Judiciary Committee,

Thank you for the opportunity to testify on behalf of HB 127 and express my strong support for its passage. I commend you for your leadership in hearing this important piece of legislation so early in the legislative calendar. Women and girls of our state deserve such priority discussion of this critical health measure that has been languishing for so many years. I am here representing the official positions of the Hawaii State Commission of the Status of Women, Planned Parenthood of Hawaii, and Business and Professional Women/Hawaii, all of which I am honored to serve as a board member. I am also here today as the mother of a teenage daughter who believes this bill is critical to assure the standard of care that must be offered in our emergency medical facilities.

Sexual assault is an unthinkable and horrific crime, which renders the victim both physically and emotionally injured. When the victim is attended by EMT responders, she does not have decision-making in where she is taken for emergency room care. She most likely does not know there are disparate options among the various emergency room treatment protocols. Transport and stabilization are the immediate goals. When she is admitted to the emergency room where she has been transported, she should not be denied the standard of care and medically approved treatment protocols available, due to someone else's religious beliefs. She must not be denied her own choice to access all medically approved services that are aligned with her own beliefs. If she is denied full care, she is potentially re-victimized by the very entity that is charged with her care.

I urge your passage of HB 127 without weakening amendments. It is a bill whose time has more than come. Thank you for this opportunity to provide testimony. If you should have any further questions, please do not hesitate to call me at 808-280-0376 or email: [lesliewilkins1@gmail.com](mailto:lesliewilkins1@gmail.com)

Sincerely,

Leslie Wilkins

**ROBERT K. MATSUMOTO**  
Attorney at Law  
345 Queen St., Suite 701  
Honolulu, HI 96813  
Telephone: (808) 585-7244  
Facsimile: (808) 585-7284  
Email: [rkmbengoshi@hawaii.rr.com](mailto:rkmbengoshi@hawaii.rr.com)

## LATE TESTIMONY

No. of pages including this page: 3

DATE: January 23, 2012

TO: Representative Gilbert S.C. Keith-Agaran  
Chair, Senate Judiciary Committee

FACSIMILE NO. (808) 586-6211

RE: H.B. No. 127 H.D. 1  
Date & Time of Hearing: January 24, 2012 @ 2:00 p.m.  
House Conference Room 325

Dear Representative Agaran:

I urge you and your committee members to vote NO, or in the alternative to defer H.B. No. 127, H.D. 1 in committee for compelling reasons, i.e., the bill as presently drafted is unconstitutional because there is no exemption for those who have religious or conscientious objections to the dispensing of the "morning-after pill." With no such exemption, the First Amendment free speech and/or free exercise of religion rights will be transgressed.

**ENACTMENT OF SB 218, IN ITS PRESENT FORM WOULD BE A CLEAR VIOLATION OF CONSTITUTIONAL RELIGIOUS, CIVIL, AND/OR CONSCIENTIOUS OBJECTORS' RIGHTS.**

The American Center for Law and Justice, a national non-profit organization, with whom I have worked in the past, has instituted lawsuits in various

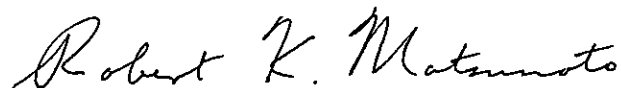
parts of the country to protect the civil rights of employees not to force them to dispense the so called "morning after" pill or to make referrals to those who do. The gravamen of these lawsuits is that such compulsion violates the First Amendment rights of such employees.

Therefore, any current employee of a pharmacy or of a hospital, who for religious or conscientious reasons chooses to bring a lawsuit against the State of Hawaii and prevails were SB 218 enacted in its present form, would be awarded in all probability all of his/her lost just compensation and/or attorney's fees because such a resident would have his/her civil rights abridged.

I transmit herewith a copy of a news bulletin from the ACLJ announcing its victorious representation of 2 pharmacists in Illinois whose religious beliefs under the Free Exercise Clause of the U.S Constitution were found to be abridged.

For the foregoing reasons, I urge you to vote NO, or in the alternative to defer HB 127 HD 1 in committee.

Very truly yours,

A handwritten signature in black ink that reads "Robert K. Matsumoto". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Robert K. Matsumoto



*This is the latest installment in a year-end series looking back at a few of the hundreds of victories by the ACLJ in 2011.*

Luke VanderBleek and Glenn Kosirog, two pro-life pharmacy owners in Illinois, were faced with a choice: violate their religious beliefs by dispensing abortion related drugs or face sanctions under a state rule. Governor Blagojevich stated that this rule's purpose was "to stop religion from 'stand[ing] in the way' of dispensing drugs, and force pharmacies to 'fill prescriptions without making moral judgments.'"

The ACLJ defended these pro-life pharmacists from being forced to violate their conscience and dispense abortion drugs in court and won. After six years of litigation, an Illinois state court found that the rule not only violated Illinois state law but that it also violated the Free Exercise Clause of the U.S. Constitution. This is not only a victory for these two pharmacists but for the freedom of conscience of pro-life members of the medical profession across America.

To help the ACLJ continue to have the resources we need to make these victories possible and continue these fights, **please consider making a donation to the ACLJ (<http://aclj.org/donate>)** through our year-end Matching Challenge. Your gift will be matched dollar-for-dollar through the end of the year.

You can read more in the ACLJ's 2011 Victories series **here (<http://aclj.org/Tags/2011%20Victories>)**.



# LATE TESTIMONY

**TO:** Chair Gil Keith Agaran and Members  
House Judiciary Committee

**FR:** Leslie Wilkins, Chair  
Hawaii State Commission on the Status of Women

**RE:** HB 127 RELATING TO EMERGENCY COTRACEPTIVES FOR SEXUAL  
ASSAULT SURVIVORS

**Date:** January 24, 2012

**Position:** Strong Support

Dear Chair Keith Agaran and Members of the Judiciary Committee,

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Sexual assault is an unthinkable and horrific crime, which renders the victim both physically and emotionally injured. When the victim is attended by EMT responders, she does not have decision-making in where she is taken for emergency room care. She most likely does not know there are disparate options among the various emergency room treatment protocols. Transport and stabilization are the immediate goals. When she is admitted to the emergency room where she has been transported, she should not be denied the standard of care and medically approved treatment protocols available, due to someone else's religious beliefs. She must not be denied her own choice to access all medically approved services that are aligned with her own beliefs. If she is denied full care, she is potentially re-victimized by the very entity that is charged with her care.

I urge your passage of HB 127 without weakening amendments. It is a bill whose time has more than come. Thank you for this opportunity to provide testimony. If you should have any further questions, please do not hesitate to call me at 808-280-0376 or email: [lesliewilkins1@gmail.com](mailto:lesliewilkins1@gmail.com)

Sincerely,

Leslie Wilkins

STATE CONSTITUTION

THE CONSTITUTION OF THE STATE OF HAWAII

ARTICLE I

BILL OF RIGHTS

# LATE TESTIMONY

POLITICAL POWER

**Section 1.** All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority. [Am Const Con 1978 and election Nov 7, 1978]

RIGHTS OF INDIVIDUALS

**Section 2.** All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities. [Am Const Con 1978 and election Nov 7, 1978]

EQUALITY OF RIGHTS

**Section 3.** Equality of rights under the law shall not be denied or abridged by the State on account of sex. The legislature shall have the power to enforce, by appropriate legislation, the provisions of this section. [L 1972, SB No 1408-72 and election Nov 7, 1972; ren Const Con 1978 and election Nov 7, 1978]

FREEDOM OF RELIGION, SPEECH, PRESS, ASSEMBLY AND PETITION

**Section 4.** ~~No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances.~~ [Ren and am Const Con 1978 and election Nov 7, 1978]

DUE PROCESS AND EQUAL PROTECTION

**Section 5.** No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry. [Ren and am Const Con 1978 and election Nov 7, 1978]

RIGHT TO PRIVACY

**Section 6.** The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right. [Add Const Con 1978 and election Nov 7, 1978]

SEARCHES, SEIZURES AND INVASION OF PRIVACY

**Section 7.** The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no

warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted. [Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978]

#### RIGHTS OF CITIZENS

**Section 8.** No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land. [Ren Const Con 1978 and election Nov 7, 1978]

#### ENLISTMENT; SEGREGATION

**Section 9.** No citizen shall be denied enlistment in any military organization of this State nor be segregated therein because of race, religious principles or ancestry. [Ren and am Const Con 1978 and election Nov 7, 1978]

#### INDICTMENT; PRELIMINARY HEARING; INFORMATION; DOUBLE JEOPARDY; SELF-INCRIMINATION

**Section 10.** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury or upon a finding of probable cause after a preliminary hearing held as provided by law or upon information in writing signed by a legal prosecuting officer under conditions and in accordance with procedures that the legislature may provide, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against oneself. [Ren and am Const Con 1978 and election Nov 7, 1978; am HB 150 (1981) and election Nov 2, 1982; am SB 2851 (2004) and election Nov 2, 2004]

#### GRAND JURY COUNSEL

**Section 11.** Whenever a grand jury is impaneled, there shall be an independent counsel appointed as provided by law to advise the members of the grand jury regarding matters brought before it. Independent counsel shall be selected from among those persons licensed to practice law by the supreme court of the State and shall not be a public employee. The term and compensation for independent counsel shall be as provided by law. [Add Const Con 1978 and election Nov 7, 1978]

#### BAIL; EXCESSIVE PUNISHMENT

**Section 12.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. The court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment. [Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978]

#### TRIAL BY JURY, CIVIL CASES

**Section 13.** In suits at common law where the value in controversy shall exceed five thousand dollars, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury. [Ren and am Const Con 1978 and election Nov 7, 1978; am SB 107 (1987) and election Nov 8, 1988]

#### RIGHTS OF ACCUSED

**Section 14.** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against the accused, provided that the legislature may provide by law for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor or licensed mental health professional; to have compulsory process for obtaining witnesses in the accused's favor; and to have the assistance of counsel for the accused's defense. Juries, where the crime charged is serious, shall consist of twelve persons. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment. [Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978; am SB 2846 (2004) and election Nov 2, 2004]

#### HABEAS CORPUS AND SUSPENSION OF LAWS

**Section 15.** The privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it.

The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe. [Ren and am Const Con 1978 and election Nov 7, 1978]

#### SUPREMACY OF CIVIL POWER

**Section 16.** The military shall be held in strict subordination to the civil power. [Ren Const Con 1978 and election Nov 7, 1978]

#### RIGHT TO BEAR ARMS

**Section 17.** A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. [Ren Const Con 1978 and election Nov 7, 1978]

#### QUARTERING OF SOLDIERS

**Section 18.** No soldier or member of the militia shall, in time of peace, be quartered in any house, without the consent of the owner or occupant, nor in time of war, except in a manner provided by law. [Ren and am Const Con 1978 and election Nov 7, 1978]

#### IMPRISONMENT FOR DEBT

**Section 19.** There shall be no imprisonment for debt. [Ren Const Con 1978 and election Nov 7, 1978]

#### EMINENT DOMAIN

**Section 20.** Private property shall not be taken or damaged for public use without just compensation. [Am Const Con 1968 and election Nov 5, 1968; ren Const Con 1978 and election Nov 7, 1978]

## LIMITATIONS OF SPECIAL PRIVILEGES

**Section 21.** The power of the State to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities. [Ren and am Const Con 1978 and election Nov 7, 1978]

## CONSTRUCTION

**Section 22.** The enumeration of rights and privileges shall not be construed to impair or deny others retained by the people. [Ren Const Con 1978 and election Nov 7, 1978]

## MARRIAGE

**Section 23.** The legislature shall have the power to reserve marriage to opposite-sex couples. [Add HB 117 (1997) and election Nov 3, 1998]

## PUBLIC ACCESS TO INFORMATION CONCERNING PERSONS CONVICTED OF CERTAIN OFFENSES AGAINST CHILDREN AND CERTAIN SEXUAL OFFENSES

**Section [24].** The public has a right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses. The legislature shall determine which offenses are subject to this provision, what information constitutes registration information to which the public has a right of access, the manner of public access to the registration information and a period of time after which and conditions pursuant to which a convicted person may petition for termination of public access. [Add SB 2843 (2004) and election Nov 2, 2004]

## SEXUAL ASSAULT CRIMES AGAINST MINORS

**Section [25].** In continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

1. What behavior constitutes a continuing course of conduct; and
2. What constitutes the jury unanimity that is required for a conviction. [Add SB2246 (2006) and election Nov 7, 2006]

# The United States Constitution

The following are the Amendments to the Constitution. The first ten Amendments collectively are commonly known as the Bill of Rights. *History*

---

## **Amendment 1 - Freedom of Religion, Press, Expression. Ratified 12/15/1791. *Note***

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## **Amendment 14 - Citizenship Rights. Ratified 7/9/1868. *Note History***

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.