

February 24, 2012

LATE

Testimony in Support of HB 2569 Relating Civil Unions Conditioned Upon Various Amendments to Section 1 Dealing with HRS Section 572B-B to Ensure Protection of First Amendment Rights of Religious Organizations

State O Hawaii

House of Representatives

Committee on Finance

HEARING DATE: February 23, 2012; 6:00 p.m. Conference room 308

TO: Committee on Finance

Representative Marcus Oshiro, Chair

Representative Marilyn Lee, Vice Chair

Committee Members

My name is Jonathan Durrett, a practicing Hawaii attorney since 1982 concentrating in the area of Tax-Exempt Organizations, many of which are faith-based organizations. I am testifying to laud the drafters of HB2569 H.D.1 who have attempted to ensure protections of the First Amendment rights of churches and faith-based organizations fulfilling vital charitable roles within our Island community.

Unfortunately, the bill is deficient in a couple of material respects.

1. The bill does not define "religious organizations." As an attorney for several faith-based schools and social service agencies, I believe the intent of the bill is to ensure constitutional protections to these organizations. An educational institution like Chaminade University or BYU-Hawaii should be accorded presumptive protections to be able to decline use of their on campus facilities for solemnization ceremonies or post-solemnization celebrations by same gender couples as the activities violate fundamental tenets of these organizations' religious beliefs. This basic proposition is not clear from the language in HD1. The language must be augmented to ensure that "religious organization" specifically includes schools, hospitals and other agencies and organizations operated by faith-based organizations. Similarly, "solemnization" must be broadened to include "celebrations" as well.

2. The bill leaves ambiguous whether facilities of religious organizations might be deemed "public accommodations" under federal civil rights laws. Allowing potential claimants to argue that a religious organization's facilities can be considered public facilities would work a pernicious infringement of the religious organizations constitutional freedom of religious association. Perhaps an accompanying

amendment to HRS 489-2 defining "public accommodations" should be passed in conjunction with the present proposed bill. HRS 489-2 should contain an explicit statement to the effect "that any facilities or structures of churches or religious organizations in which members of the general public are not normally excluded shall not be considered "public accommodations" simply by virtue of the fact that members of the general public are not excluded."

Thank you for your wisdom in applying this First Amendment safeguard to the nascent civil union legislation which is certain to require tweaks before it can be fully implemented.

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February 23, 2012

Dear Legislators;

Religious freedom is at the core of our country's founding spirit. In order to preserve and protect that religious freedom I am in support of HB2569 HD1 but recommend that it be further amended to say...No religious organization that denies use of its religious facility for the solemnization or celebration of a civil union shall be subject to any fine or penalty or other civil action.

Sincerely
Ernie Ho
Pastor
Unification Church

Lee M. Yarbrough

Attorney At Law & Certified Public Accountant

LEE M. YARBROUGH

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Thursday, February 23, 2012 Time: 6:00 p.m.

House Finance Committee
House Conference Room 308
415 South Beretania Street
Honolulu, HI 96813

RE: House Bill 2569 HD 1 - Relating to Civil Unions – Support

To: Representative Marcus B. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Members of the Committee

My name is Lee M. Yarbrough. I am an attorney and CPA practicing in the areas of Estate Planning and Taxes. I have been an active participant in the process of passing Act 1 Relating to Civil Unions over the past few years and have offered frequent testimony on bills affecting Reciprocal Beneficiaries and Civil Unions.

I favor the clarification of some aspects of the implementation of Act 1, as proposed by HB2569 and HB2569 HD1, a bill which had a significant amount of input from the Civil Unions Task Force -- made up of staff members from the Attorney General's office, personnel from the Department of Health, and members of the legislature, the Hawaii Tourism Authority and LGBT organizations.

Along with the implementation process, the task force was also able to discuss areas within Act 1 that could be made clearer, consistent and more appropriate. It is my understanding that a sub-committee was also established to look into various Statutes that relate to Act 1 and to propose clarifying legislation, which is being presented here in HB 2569 HD1.

I support the passage of HB2569 HD1, but I would like to suggest that perhaps that 6 month period of time allowed in Section 1 of HB2569 HD1 (regarding HRS Section 572B-A on page 1), for continuation of equivalent rights and benefits when the same two people transition from a Reciprocal Beneficiary (RB) relationship to a Civil Union, is too long and should be shortened somewhat. Even allowing just a one (1) month period, would allow a reasonable time frame for past and present RB participants to formally terminate their RB when required to do so (previously and up to the date of enactment of this bill), upon receipt of their Certificate of Termination of RB immediately to apply for a Civil Union license, and then have their Civil Union solemnized during the one month validity period of the Civil Union license.

Once the requirement for terminating a RB (for obtaining a Civil Union license is removed in Section 2 of the bill (regarding HRS Section 572-1 (1) on page 2), and the provisions of Section 9 are in force (regarding the HRS Section 572-7 provisions for automatic termination upon solemnization are effective), there should be no gap period for people having their RB automatically terminated by

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entering into a CU in Hawaii or entering into a substantially equivalent union out of state (which is then recognized as a CU in Hawaii). Future RB terminations ought to be able substantially concurrent, but a 1 month maximum time frame should permit timely and reasonable transitions from one status to another in order to receive continuous equivalent benefits under the law.

Please consider reducing the 6 month time frame to a 1 month period, which would still ensure that the gap period of benefits and protections which a couple would experience upon termination of the RB relationship would be bridged. It would also make sure that the transition period allowed is reasonable enough to allow for a termination of the RB, while still requiring a timely transition to a CU (through solemnization) in order to continue those previous benefits uninterrupted.

HB 2569 HD1 has done a good job in addressing concerns of the CUTF members and other related State Departmental concerns. I write in support of HB 2569 HD1 and ask that you consider my comments regarding reducing the length of time for bridging the gap period for benefits when transitioning from a Reciprocal Beneficiary Relationship to a Civil Union ,when passing this bill.

Thank you for this opportunity to testify in support of HB 2569 HD1.


Lee M. Yarbrough
Attorney at Law/CPA