

STAND. COM. REP. NO. 1126

Honolulu, Hawaii

APR 0 1 2013

RE: S.R. No. 123

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.R. No. 123 entitled:

"SENATE RESOLUTION REQUESTING THE CONVENING OF A TASK FORCE
TO STUDY THE SOCIAL, ECONOMIC, AND RELIGIOUS IMPACTS OF
ENACTING MARRIAGE EQUALITY IN HAWAII,"

begs leave to report as follows:

The purpose and intent of this measure is to request the Dean
of the William S. Richardson School of Law at the University of
Hawaii at Manoa to convene a task force to study the social,
economic, and religious impacts of enacting marriage equality in
Hawaii.

Your Committee received testimony in support of this measure
from the American Civil Liberties Union of Hawaii, First Unitarian
Church of Honolulu, Equality Hawaii, Japanese American Citizens
League Honolulu Chapter, Young Democrats of Hawaii, IMUAlliance,
Citizens for Equal Rights, Honolulu Pride, and twenty-two
individuals. Testimony in opposition to this measure was
submitted by the Hawaii Catholic Conference, Hawaii Family Forum,
and nine individuals. The Hawaii Civil Rights Commission
submitted comments on this measure.

Your Committee finds that the Hawaii Supreme Court held under
Baehr v. Miike that the State's refusal to grant marriage licenses
to same-sex couples violated the Hawaii State Constitution's
prohibition against sex discrimination. Subsequently, in 1998,
Hawaii voters ratified a constitutional amendment to add article
I, section 23, to the Hawaii State Constitution to grant to the

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Legislature the power to reserve marriage to opposite-sex couples. As a result, section 572-1, Hawaii Revised Statutes, specifies that a valid marriage contract is only between a man and a woman. In 2011, the Legislature passed Act 1, Session Laws of Hawaii 2011, which established civil unions in Hawaii but made clear that it was not the Legislature's intent to revise the definition of or eligibility requirements of marriage under chapter 572, Hawaii Revised Statutes.

Your Committee recognizes that the debate regarding same-sex marriage continues as more states are enacting laws allowing for same-sex marriages or civil unions. The American Civil Liberties Union testified that there are approximately one hundred twenty thousand married same-sex couples in the United States with nine states and the District of Columbia allowing same-sex marriage. Recently, Colorado became the ninth state to allow civil unions.

Moreover, the U.S. Supreme Court has recently heard opening arguments for *United States v. Windsor* and *Hollingsworth v. Perry*. The *Windsor* case challenges the constitutionality of the federal Defense of Marriage Act, commonly known and referred to as DOMA. DOMA restricts federal marriage benefits and requires inter-state marriage recognition to only opposite-sex marriages in the United States. As a result, same-sex couples, including same-sex couples in a civil union, are excluded from approximately one thousand one hundred federal rights and benefits, including insurance benefits for government employees, Social Security survivors' benefits, immigration, and the filing of joint tax returns that are available under law to opposite-sex married couples. The *Perry* case is currently being heard by the U.S. Supreme Court on appeal from the U.S. Court of Appeals for the Ninth Circuit, which held that California's Proposition 8, a 2008 ballot initiative that amended the state constitution to allow only opposite-sex couples to marry, was unconstitutional. The U.S. Supreme Court is anticipated to make a decision on these two landmark cases by the end of June.

Your Committee also notes the concerns raised in written testimony opposing this measure. The Hawaii Catholic Conference testified that the Catholic Church teaches that marriage between one man and one woman is a sacrament and that there is no compelling state interest in granting marriage equality to same-sex relationships. Furthermore, the Hawaii Catholic Conference and an individual testified that the task force proposed by this measure does not consist of equal representation of both sides of

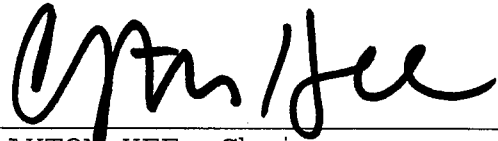


the same-sex marriage issue. Furthermore, the same individual testified that this measure does not specifically direct the task force to seek public input and community engagement and recommended delaying the convening of a task force until the U.S. Supreme Court renders decisions for and fully reports *United States v. Windsor* and *Hollingsworth v. Perry*, these cases are analyzed in depth, and there has been sufficient opportunity to discuss the impact these two cases may have on the pending *Jackson v. Abercrombie* case.

Your Committee recognizes that there are rapid changes in the legal and social landscape across the country regarding marriage equality and that this measure will provide the Legislature an opportunity to study the issue in depth and carefully consider any potential ramifications of any changes to Hawaii law. Your Committee believes that the task force will represent a diverse group of interests and legal scholars and enable the Legislature to be prepared to address the legal realities for same-sex couples, especially after the U.S. Supreme Court issues its rulings in *Windsor* and *Perry*.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee concurs with the intent and purpose of S.R. No. 123 and recommends that it be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



