

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Health & Human Services

From: Cheryl Kakazu Park, Director

Date: March 22, 2018, 9:00 a.m.  
State Capitol, Conference Room 329

Re: Testimony on H.C.R. No. 73 / H.R. No. 88  
Requesting the Department of the Attorney General to Convene a  
Two-Year Working Group to Determine the Best Way to Protect  
the Rights of Surrogates, Gestational Carriers, Intended Parents,  
and Children

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Thank you for the opportunity to submit testimony on this resolution, which would request the Attorney General to convene a surrogacy working group. The Office of Information Practices (OIP) takes no position on the proposed working group, but **is recommending deletion of an exemption to chapter 92, HRS, part I of which is the Sunshine Law, that the resolution seeks to create.**

OIP has previously held that a group created by resolution is generally not a “board” subject to the Sunshine Law. To be a “board,” a group must be “created by constitution, statute, rule, or executive order,” and creation by nonbinding resolution does not satisfy that requirement as it is not equivalent to creation by statute. OIP Op. Ltr. No. 08-02 at 3-7. Thus, it is unlikely that the group called for by this resolution would be subject to the Sunshine Law in the first place.

Even for a “board” subject to the Sunshine Law, a resolution that the board was exempt from the Sunshine Law would be legally ineffective because a

resolution, which is not legally binding, would not override statutory requirements such as those set out in the Sunshine Law.

**Thus, the proposed Sunshine Law exemption is likely unnecessary, and would be ineffective. OIP recommends that to avoid confusion, this Committee should amend the resolution by deleting the proposed exemption (at page 3, lines 16-17).**

Thank you for the opportunity to testify.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.C.R. NO. 73, and H.R. 88, REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONVENE A TWO-YEAR WORKING GROUP TO DETERMINE THE BEST WAY TO PROTECT THE RIGHTS OF SURROGATES, GESTATIONAL CARRIERS, INTENDED PARENTS, AND CHILDREN.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

**DATE:** Thursday, March 22, 2018                      **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Jill T. Nagamine, Deputy Attorney General

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Chair Mizuno and Members of the Committee:

The Department of the Attorney General ("Department") supports this resolution.

This resolution is based on the recommendations of the Department in its Report on Surrogacy and Gestational Carrier Agreements as required by House Concurrent Resolution Number 56, Senate Draft 1 (2017), transmitted to the Legislature on December 28, 2017. It would request the Department to convene and lead a working group for the purposes of considering whether the State should regulate surrogacy. It would request the Department to seek input for the working group from community partners, including some State agencies, surrogates, gestational carriers, intended parents, and children.

The working group would be tasked with considering the legal aspects of surrogacy, including whether surrogacy should be allowed and regulated, whether there should be limitations upon the types of surrogacy available, what parentage presumptions ought to apply, if any, and whether laws need to be enacted or amended to protect the rights of all parties involved in surrogacy arrangements.

In light of evidence that surrogacy arrangements are already occurring in Hawaii but there is no uniform way to handle them, it is timely to determine the answers to the questions raised in this resolution.



March 21, 2018

Representative John Mizuno, Chair  
House Committee on Health and Human Services

**Re: H.C.R 73 / H.R. 88: Requesting the Department of the Attorney General to convene a two-year working group to determine the best way to protect the rights of surrogates, gestational carriers, intended parents, and children.**

**Hearing: Thursday, March 22, 2018, 9:00 am, Room 329**

Dear Chair Mizuno and Members of the Committee on Health and Human Services:

Hawaii Women Lawyers (“HWL”) submits testimony in **strong support** of H.C.R 73/ H.R. 88, which requests the Department of the Attorney General to convene a two-year working group to determine the best way to protect the rights of surrogates, gestational carriers, intended parents, and children.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

This resolution is a first step in the process of recognizing and regulating gestational surrogacy, which has become more common for same sex couples, or opposite sex, partnered or single families using in vitro fertilization. The resolution aims to have a working group address and protect the rights of both intended parents and gestational surrogates, and recognizes the unique nature of gestational surrogacy arrangements, where a woman agrees to become pregnant, carry and give birth to another child for intended parents.

For families (whether same or opposite sex, partnered or single) who get to the point of considering surrogacy, many have already experienced and exhausted fertility treatments and/or other options to grow their families.

Hawaii Women Lawyers would like to see Hawaii ultimately follow the lead of other states like California, where the process for a pre-birth order is able to be obtained via a court procedure. This process would provide the most certainty for intended parents and gestational carriers, since the names of the intended parents would go on the birth certificate.

For the above reasons, we support H.C.R 73/ H.R. 88 and respectfully request that the Committee pass these resolutions.



To: Hawaii State House of Representatives Committee on Health and Human Services  
Hearing Date/Time: Thursday, Mar. 22, 2018, 9:00 a.m.  
Place: Hawaii State Capitol, Rm. 329  
Re: Testimony of Planned Parenthood Votes Northwest and Hawaii in support of  
H.C.R. 73/ H.R. 88, with an amendment

Dear Chair Mizuno and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in support of H.C.R. 73/ H.R. 88, and **respectfully requests an amendment to include representation from a community group that seeks to protect and promote the rights of LGBTI families.**

H.C.R. 73 and H.R. 88 promote reproductive justice in that they seek to address legal issues in Hawaii law that limits people’s ability to determine when and how they will have children as well as their ability to raise their children in a safe and supportive environment.

Thank you for this opportunity to testify in support of H.C.R. 73/ H.R. 88, with an amendment.

Sincerely,

Laurie Field  
Hawaii Legislative Director and Public Affairs Manager

**HCR-73**

Submitted on: 3/21/2018 1:21:48 PM

Testimony for HHS on 3/22/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marci Lopes	Individual	Support	No

Comments:



## Hawai'i LGBT Legal Association

**LATE**

March 22, 2018

TO: House Committee on Health & Human Services

FROM: Hawai'i LGBT Legal Association

RE: **Support for HCR 73/ HR 88**

Chair Mizuno, Vice-Chair Kobayashi, and committee members:

The Hawai'i LGBT Legal Association ("HLLA") is a voluntary professional organization of Hawai'i lawyers, legal workers and law students dedicated to the fair and just treatment of the LGBT community. **HLLA supports HCR 73/HR 88.**

LGBT couples routinely have children using assisted reproductive technology, including in vitro fertilization and surrogacy. The process for same-sex male couples necessarily involves surrogates and surrogacy agreements.

As noted in the Attorney General's Report on Surrogacy and Gestational Carrier Agreements, Hawaii's parentage statute is old and outdated and doesn't address surrogacy. The Hawaii Family Court has a process for confirming intended parents under gestational surrogacy agreements as legal parents. But it is lengthy and costly, involving post-birth paternity and stepparent adoption proceedings, which were not designed for surrogacy situations.

HLLA agrees with the Attorney General's assessment that it would be beneficial to update Hawaii's parentage law to address surrogacy and ensure that it applies equally to children born to same-sex couples. We support this resolution because it appears to be a step in that direction.

We also appreciate that the resolution proposes to seek input from community partners, including advocates and representatives of intended parents and surrogates. We believe this is vitally important.

Thank you for the opportunity to testify.

Sean Taylor  
Board Member  
Hawaii LGBT Legal Association