



# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

April 3, 2019  
Rm. 211, 10:00 a.m.

To: Hon. Karl Rhoads, Chair  
Members of the Senate Committee on Judiciary

Hon. Donovan M. Dela Cruz, Chair  
Members of the Senate Committee on Ways and Means

From: Linda Hamilton Krieger, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.C.R. No. 12/ S.R. No. 11

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC supports S.C.R. No. 12 and S.R. No. 11.**

These resolutions, if enacted, request members of the United States Congress to amend federal law to ensure access to the courts for victims of sexual harassment and sexual assault who are forced into arbitration and silenced under current law.

As a result of the Harvey Weinstein accusers coming forward and the rise of the #MeToo movement, there is growing outcry and condemnation of the use of confidentiality agreements and private dispute resolution to keep sexual harassment complaints secret and off the record, allowing serial harassers to escape scrutiny and enabling them to continue to harass others.

Many employers now impose pre-dispute mandatory arbitration agreements as a condition of employment, covering all employment claims and eliminating access to the courts for public adjudication and relief in cases of sexual harassment and sexual assault. H.C.R. No. 5

and H.R. No. 6 urge Congress to address the issue of forced arbitration and secrecy by amending federal law to ensure access to the courts for victims of sexual harassment and sexual assault.

State law prohibitions against pre-dispute mandatory arbitration agreement requiring arbitration of employment claims have been held to be preempted by the Federal Arbitration Act (FAA). (See *Brown v. KFC National Management Co.*, 82 Hawai'i 226 (1996)). The most direct way to effectively address the issue and avoid preemption is federal legislation amending the FAA to prohibit pre-dispute arbitration agreements that require arbitration of sex discrimination claims.

The HCRC supports S.C.R. No. 12 and S.R. No. 11.

**SCR-12**

Submitted on: 3/29/2019 6:04:27 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of SCR 12.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

**SCR-12**

Submitted on: 3/29/2019 7:42:00 PM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pride Work HI	Testifying for Pride at Work Hawaii	Support	Yes

Comments:

Aloha Senators,

The Pride at Work Hawaii, an affiliate of Hawaii State AFL-CIO, supports the passage of SCR 12.

Mahalo for your consideration and for the opportunity to testify in STRONG support of SCR 12.

Mahalo,

Pride at Work - Hawaii

**SCR-12**

Submitted on: 4/2/2019 10:21:18 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:



April 2, 2019

Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

Senator Donovan M. Dela Cruz, Chair  
Senate Committee on Ways and Means

**Re: SCR 12 / SR 11, REQUESTING MEMBERS OF THE UNITED STATES CONGRESS TO AMEND FEDERAL LAW TO ENSURE THAT VICTIMS OF SEXUAL HARASSMENT AND SEXUAL ASSAULT WHO MIGHT OTHERWISE BE FORCED INTO ARBITRATION AND SILENCE INSTEAD HAVE ACCESS TO THE COURTS.**

**Hearing: Wednesday, April 3, 2019, 10:00 a.m., Room 211**

Dear Chair Rhoads and Members of the Committee on Judiciary and Chair Dela Cruz and Members of the Committee on Ways and Means:

Hawaii Women Lawyers (“HWL”) **supports SCR 12 / SR 11**, which requests that members of the United States Congress requested to amend federal law to ensure that victims of sexual harassment and sexual assault have access to the court and are not forced in to arbitration through mandatory arbitration clauses.

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.

Last year, HWL conducted a survey of its members as to the incidences and experiences of sexual harassment in the legal community.<sup>1</sup> 76 attorneys responded to the survey. Nearly 60% (42 attorneys) reported being sexually harassed at some time during their legal career,

---

<sup>1</sup> HWL has 357 active members, who are all members of the Hawaii State Bar Association. The survey was conducted between January 12, 2018 and February 4, 2018. The survey was done on a strictly voluntary and anonymous basis, and with the understanding that any stories provided by survey respondents may be shared publicly to raise awareness of the occurrence of sexual harassment in the legal community. The survey was conducted for informational purposes only, and HWL has not conducted an independent investigation as to and cannot guaranty the accuracy of the results of the survey or the specific instances of harassment shared by survey respondents. HWL recognizes that terminology may carry different connotations for different parties and did not define “sexual harassment” in the survey. HWL also recognizes that men are victims of sexual harassment as well as women, but as the mission of HWL is to improve the lives and careers of women in all aspects of the legal profession, the main focus of the article is on the experiences of female victims.

with approximately 13% (10 attorneys) reporting having been sexually harassed in the workplace within the last two years.

It is common for victims of sexual assault and harassment not to report abuse for fear of retaliation. Mandatory arbitration clauses that apply to sexual harassment claims have the impact and effect of further silencing victims. They can also allow repeat offenders to continue to engage in serial harassment. HWL supports this resolution, which would encourage members of the United States Congress to advance legislation to address this issue.

Thank you for the opportunity to submit testimony on this measure.