



HAWAI‘I CIVIL RIGHTS COMMISSION

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April 3, 2019
Rm. 325, 2:00 P.m.

To: Hon. Chris Lee, Chair
Members of the House Committee on Judiciary

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

Re: S.C.R. No. 12

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.

This concurrent resolution, if enacted, requests 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. S.C.R. No. 12 urges 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.

LATE

SCR-12

Submitted on: 4/12/2019 1:30:55 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Khara Jabola-Carolus	Hawai'i State Commission on the Status of Women	Support	No

Comments:

SCR-12

Submitted on: 4/10/2019 4:12:26 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

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: 4/11/2019 1:40:51 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	aaup of hawaii	Support	No

Comments:

LATE

SCR-12

Submitted on: 4/12/2019 9:26:00 AM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:

SCR-12

Submitted on: 4/10/2019 2:23:53 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

I support this bill as many times, when one employer gets away with it, the stigma still stands for the employee, and will follow them - comments of dressed to sexy (doesn't matter if it's like any other employee) to not pretty enough (even some, I'm prettier than her who may have found the party attractive and wished for advances has even occurred) The employee then becomes a victim of others who may try to mimic, replicate, or create their own variation - some discreetly, other's not so much...With the majority of the time, the take it or leave it, is usually the leave it variety. Many who have undergone the problems, have the 'just suck it up' mentality of how life isn't fair, which should never be the case. Other's may leave it due to financial difficulty - courts and legal representation is very costly, and going up against a large corporation or someone with deep pockets can exhaust a person's bank account quickly and lawyers may not want to take the case unless fully compensated or the conflict issue; with legal aid, EEOC, and HCRC being able to pick the cases they are willing to take, and do not cover all instances, regardless of proof. (mostly claims of the number of man hours needed, mixed with other legal issues not covered, etc. the most common I've heard, with they're volunteers so aren't compensated) While I'm sure there are a number of 'reasons' available, most harassment/sexual harassment claims go unrecorded for years, as they're bound to adhere to a contract or just how the system works. This would be a step in breaking down those restrictions.

SCR-12

Submitted on: 4/10/2019 3:48:32 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments:

I strongly support SCR12. Anyone who has been a victim of sexual harassment or sexual assault should have access to the courts. Too many times, arbitration and silence for these types of offenses allows additional sexual harassment or assault by the perpetrator.

Please pass SCR12. Thank you.

Mike Golojuch, Sr.,

SCR-12

Submitted on: 4/10/2019 4:32:14 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on Judiciary

Alyssa Barbosa-Grogan

Wednesday, April 10, 2019

Support for SCR 12 (SSCR 1827)

My name is Alyssa Barbosa-Grogan, a Myron B. Thompson School of Social Work Graduate Student. I am a social worker that has worked with youth, adults, and other individuals who are sexual assault survivors. I am support SCR 12 (SSCR 1827) it is my duty to advocate for others, to empower others to ensure others are able to speak out on their trauma. In the U.S., one in three women and one in six men experienced some form of contact sexual violence in their lifetime, eight percent of rapes occur while the victim is at work, in eight out of ten cases of rape, the victim knew the perpetrator.

We have heard and seen the traumatization as well as know the strength that survivors need when coming forward to share their stories. Survivors need access to the courts, to stand in front of a judge and share their stories. Survivors should not be forced into arbitration or silenced due to the power that comes with money. Survivors need to know that they matter, their stories matter, that what happened should not have happened and that no amount of money can keep them silenced and without a voice. I strongly support SCR 12 (SSCR 1827) and the survivors who want to share their trauma to the public and in front of the courts.

Thank you,

Alyssa Barbosa-Grogan

Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Committee on Judiciary

Chelsie Alkire
Student at University of Hawai`i at Manoa

Thursday, April 11, 2019

Support for SCR No. 12

Aloha Rep. Chris Lee, Rep. Joy A. San Buenaventura, and other committee members,

My name is Chelsie, and I am currently a graduate student at the University of Hawai`i at Manoa (UHM). I am writing you today in support for SCR No. 12, which requests members of the United States Congress to amend federal law to ensure access to the courts for victims of sexual harassment and sexual assault. Many are forced into arbitration and silenced under current law. I believe that victims of sexual assault and sexual harassment should have a right to a safe place to testify and ensure that their perpetrators are brought to justice. I do not think it is fair that current law often pressures said victims into keeping quiet, and I think it's frankly repulsive that in our current society many victims keep quiet due to fear of retaliation. This may encourage repeat offenders to continue to engage in harassment and assault on the logic that nothing will happen anyway. I am in strong support of this resolution which aims to eliminate these issues.

Thank you so much for all the hard work you guys are doing daily for all us constituents! Thank you for this opportunity to testify in support of SCR No. 12.

Mahalo,
Chelsie

SCR-12

Submitted on: 4/11/2019 10:46:40 AM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Comments:

LATE

SCR-12

Submitted on: 4/11/2019 8:16:50 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Individual	Support	No

Comments:

SCR-12

Submitted on: 4/12/2019 1:41:21 PM

Testimony for JUD on 4/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Tada	Individual	Support	Yes

Comments:

As a victim of sex assault myself, I strongly support this bill.. There is such a stigma surrounding victims of sexual assault, especially around male victims, who are/feel like they cannot talk about our abuse that we male victims very often are told to just 'get over it. There are so many services for female victims, but so very few options for male victims. I'm sure there are many male victims who would really benefit from not feeling forced into silence. I strongly but humbly ask that you pass this bill, adding that it states that this is for both male and female victims. I am not meaning to, nor am I trying to take anything away from female victims, I just want male victims like myself to feel more free to discuss our very real and painful trauma.

Mahalo for your time.