

STAND. COM. REP. NO.

3284

Honolulu, Hawaii

MAR 22 2024

RE: H.B. No. 2802

H.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-Second State Legislature  
Regular Session of 2024  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2802, H.D. 1, entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE 1, SECTION 23, OF THE HAWAII CONSTITUTION RELATING TO MARRIAGE,"

begs leave to report as follows:

The purpose and intent of this measure is to propose a constitutional amendment to repeal the Legislature's authority to limit marriage to opposite-sex couples.

Your Committee received testimony in support of this measure from one member of Hawai'i's congressional delegation; one member of California's congressional delegation; Office of the Governor; Hawai'i Civil Rights Commission; Office of the Mayor of the City and County of Honolulu; one member of the Honolulu City Council; Hawai'i Health and Harm Reduction Center; Stonewall Caucus of the Democratic Party of Hawai'i; Hawaii State Teachers Association; Democratic Party of Hawai'i; ACLU of Hawai'i; Papa Ola Lokahi; Change 23 Coalition; Hawai'i State Commission on Fatherhood; American Association of University Women of Hawaii; Hawaii State AFL-CIO; Chamber of Sustainable Commerce; Indivisible Hawaii; Rainbow Family 808; Episcopal Diocese of Hawai'i; Scarlet Honolulu; Spill the Tea Cafe; Hawaiian Ethos; IATSE Local 655; Kumukahi Health + Wellness; Japanese American Citizens League; Hawaii Ports Maritime Council; Aloha Green Apothecary; Interfaith Alliance



Hawai'i; Love Sandwich, LLC; Qwaves; Planned Parenthood Alliance Advocates; and one hundred sixty-six individuals.

Your Committee received testimony in opposition to this measure from one individual.

Your Committee finds that in 1993, the Hawaii Supreme Court ruled it was sex discrimination under the Hawaii State Constitution's bill of rights to deny same-sex couples marriage licenses unless the State could demonstrate a compelling state interest to justify its discrimination against the couples. Following a two week trial under Judge Kevin Chang with testimony from national and local experts in psychiatry, psychology, sociology, and pediatrics, the State failed to prove a compelling state interest to justify the discrimination in denying marriage licenses to same-sex couples. However, severe public backlash to the ruling led to article 1, section 23, of the Hawaii State Constitution being proposed by the Legislature in 1997, despite comprehensive findings and the overwhelming evidence at trial demonstrating that marriage would benefit the families of same-sex couples and have no adverse impact on the families of opposite-sex couples. The proposed constitutional amendment appeared on the ballot in 1998 as Constitutional Amendment 2 and was approved by the State's voters by a vote of 69.2 percent to 28.6 percent.

Since then, public opinion has changed from opposition to support of same-sex marriage, with same-sex marriage currently existing in all fifty states and over thirty countries. In 2013, the Legislature enacted a law allowing same-sex couples to marry in the State, with Hawai'i being the fifteenth state at the time to do so. At the federal level, the United States Supreme Court recognized same-sex couples' right to marry in *Obergefell v. Hodges*, 576 U.S. 644 (2015), and most recently Congress enacted the Respect for Marriage Act in 2022, requiring federal, state, and local governments to recognize and respect same-sex marriage.

Your Committee further finds that article 1, section 23, of the Hawaii State Constitution is the only provision in the Hawaii State Constitution's bill of rights designed and adopted to target and discriminate against a minority of the State's population, in this case members of the LGBTQ community. Additionally, it is directly contrary to the ruling of the United States Supreme Court in *Obergefell*. Your Committee believes that it is imperative to



remove a discriminatory provision from the State's bill of rights. This measure will allow the people of Hawai'i to undo a wrong done nearly thirty years ago and ensure that marriage equality is protected in the State.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2802, H.D. 1, and recommends that it pass Second Reading and be referred to your Committee on Ways and Means.

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



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KARL RHOADS, Chair



The Senate  
 Thirty-Second Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary**  
**JDC**

|                         |                     |          |
|-------------------------|---------------------|----------|
| Bill / Resolution No.:* | Committee Referral: | Date:    |
| HB 2802 HD1             | JDC, WAM            | 03/19/24 |

The Committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312     
  Pass, with amendments 2311     
  Hold 2310     
  Recommit 2313

| Members                  | Aye | Aye (WR) | Nay | Excused |
|--------------------------|-----|----------|-----|---------|
| RHOADS, Karl (C)         | ✓   |          |     |         |
| GABBARD, Mike (VC)       |     | ✓        |     |         |
| ELEFANTE, Brandon J.C.   | ✓   |          |     |         |
| SAN BUENAVENTURA, Joy A. | ✓   |          |     |         |
| AWA, Brenton             |     |          |     | ✓       |
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| <b>TOTAL</b>             | 3   | 1        | —   | 1       |

Recommendation:  Adopted       Not Adopted

Chair's or Designee's Signature:  


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\*Only one measure per Record of Votes