

Honolulu, Hawaii
FEB 29, 2024

RE: H.B. No. 2802
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committee on Judiciary & Hawaiian Affairs, to which was referred H.B. No. 2802 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 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 the Member of the United States House of Representatives representing Hawaii Congressional District 2; Office of the Governor; Hawai'i Civil Rights Commission; Office of the Mayor of the City and County of Honolulu; two members of the Honolulu City Council; one member of the Honolulu Liquor Commission; Scarlet Honolulu; American Civil Liberties Union of Hawai'i; Change 23 Coalition; Hawai'i Health & Harm Reduction Center; Rainbow Family 808; Democratic Party of Hawai'i; Stonewall Caucus of the Democratic Party of Hawai'i; Hawai'i Friends of Civil Rights; North Hawaii Community Action Network; Chamber of Sustainable Commerce; Indivisible Hawai'i; Pride at Work - Hawai'i; Drug Policy Forum of Hawai'i; Hawaii State AFL-CIO; Papa Ola Lokahi; O & A Consulting LLC; Techmana LLC; We Are One, Inc.; Hawaiian Ethos; Hawaii Rainbow Chamber of Commerce; Hawai'i Nurses' Association - OPEIU

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Local 50; Hawaii Ports Maritime Council; Japanese American Citizens League, Honolulu Chapter; and numerous individuals. Your Committee received testimony in opposition to this measure from numerous individuals.

Your Committee finds that the path to recognizing marriages between persons of the same sex in the State has been arduous. In 1991, three same-sex couples sued the State, complaining that the State's refusal to issue marriage licenses to same-sex couples violated the Hawaii State Constitution. A plurality of the Hawaii Supreme Court held that restricting marriages to opposite-sex couples discriminated on the basis of sex: "on its face and as applied, HRS § 572-1 denies same-sex couples access to the marital status and its concomitant rights and benefits, thus implicating the equal protection clause of article I, section 5 [of the Hawaii Constitution]." The Hawaii Supreme Court remanded the case to the trial court for review based on a standard of strict scrutiny.

Your Committee further finds that as the case was proceeding through the judicial process on remand, the Legislature passed various legislation to solidify the position of marriage as a union between persons of the opposite sex. The first was Act 217, Session Laws of Hawaii 1994 (Act 217), which "reiterate[d] the original intent of the [L]egislature in enacting section 572-1, [HRS], that that section, and all of Hawaii's marriage licensing statutes, both originally and presently are intended to apply only to male-female, not same-sex couples."

In 1997, the Legislature proposed an amendment to the Hawaii State Constitution (the marriage amendment) that provided the following: "The legislature shall have the power to reserve marriage to opposite-sex couples." The purpose of the marriage amendment was to reserve "the question of whether or not the State should issue marriage licenses to couples of the same sex" to the Legislature. The marriage amendment was approved by the electorate on November 3, 1998, and codified at section 23 of article I of the Hawaii State Constitution.

Your Committee also finds that the Legislature reversed the stance it held in Act 217 by passing the Hawaii Marriage Equality Act of 2013 - Act 1, Special Session Laws of Hawaii 2013 - to recognize marriages between individuals of the same sex in the State. With the passage of the Hawaii Marriage Equality Act of



2013, the State joined fourteen other states at the time that extended full marriage rights to same-sex couples.

Your Committee finds that, on June 26, 2015, the Supreme Court of the United States, in Obergefell v. Hodges, 576 U.S. 644 (2015), held that "the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry."

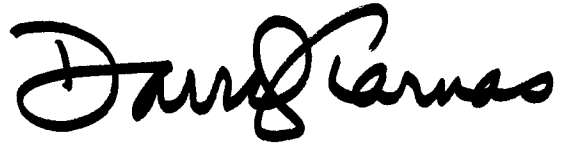
However, your Committee further finds that despite the judicial pronouncement in Obergefell holding persons of the same sex may exercise the fundamental right to marry, the Supreme Court of the United States has recently taken the unprecedented step to eliminate rights the Court has previously recognized. On June 24, 2022, the Supreme Court of the United States, in Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022), eliminated the right to abortion under the United States Constitution. There is now concern that the Court will revisit its holding in Obergefell. If the Supreme Court of the United States holds that the United States Constitution does not confer a right to marry for same-sex couples, then under the marriage amendment of the Hawaii State Constitution, the authority to limit marriage in the State of Hawaii is vested in the Legislature. This measure repeals the Legislature's authority to limit marriage.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary & Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2802, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2802, H.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary &
Hawaiian Affairs,



DAVID A. TARNAS, Chair



