



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 9, 2024

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY

Senate Bill 3351 – Proposing an Amendment to Article I, Section 5 of the Hawaii Constitution
Relating to Due Process and Equal Protection

The Disability and Communication Access Board (DCAB) supports Senate Bill 3551 – Proposing an Amendment to Article I, Section 5 of the Hawaii Constitution Relating to Due Process and Equal Protection.

This bill would propose an amendment to the State Constitution to expand the existing list of groups that are protected from discrimination to include persons with disabilities, among others. While State statutes already prohibit such discrimination, enshrining it into the State Constitution would be a powerful symbol of Hawaii's commitment to equality.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director



Committee: Judiciary
Hearing Date/Time: Friday, February 9, 2024 at 9:30 a.m.
Place: Conference Room 016 & via Videoconference
Position: Testimony of the ACLU of Hawai'i in **SUPPORT of S.B. 3351**
Proposing an Amendment to Article I, section 5 of the Hawai'i
Constitution Relating to Due Process and Equal Protection

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

The American Civil Liberties Union of Hawai'i **SUPPORTS S.B. 3351** which proposes a constitutional amendment to prohibit discrimination against a person because of ethnicity, national origin, age, disability, or sex, including sexual orientation, gender identity, gender expression, pregnancy, and pregnancy outcomes.

Our Hawai'i State Constitution is modeled after the U. S. Constitution, yet also includes more expansive provisions. For example, the Hawai'i Constitution lists key individual rights of citizens, prohibits sex-based discrimination, guarantees an explicit right to privacy and safeguards collective bargaining. In addition, the Hawai'i Constitution reflects the unique history and cultural heritage of Hawai'i, establishing protections for Native Hawaiians, the environment and natural resources, and public wellness.

Nonetheless, our Hawai'i Constitution could be strengthened by adding an Equal Rights Amendment that would prohibit discrimination by the government based on a person's **ethnicity, national origin, age, disability, or sex — including their sexual orientation, gender identity, gender expression, pregnancy and pregnancy outcomes**. It would also protect against any government actions that would curtail a person's reproductive autonomy or their access to reproductive health care.

Even before the Supreme Court struck down *Roe*, access to abortion and other reproductive care was already nonexistent in many parts of the country. Even in Hawai'i, some people living in rural areas and the neighbor islands still struggle to get the care they need.

The proposed ERA would, for the first time, explicitly include language to clarify that discrimination based on a person's pregnancy or pregnancy outcome is sex discrimination – this is crucial given the national trend of criminalizing people for various pregnancy outcomes, as well as the Supreme Court's overturning of *Roe v. Wade*.

In closing, we respectfully request your support of S.B. 3351, to reaffirm our commitment to equality for everyone and to advance equality for all.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota

Policy Director

ACLU of Hawai'i

cshiota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

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SB-3351

Submitted on: 2/3/2024 2:55:55 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	Written Testimony Only

Comments:

Rainbow Family 808 strongly supports SB3351. As the Aloha State, this amendment to the State Constitution needs to be made. Please pass this bill.

Mike Golojuch, Sr., Secretary/Board Member

SB-3351

Submitted on: 2/2/2024 8:28:56 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawai'i	Support	Written Testimony Only

Comments:

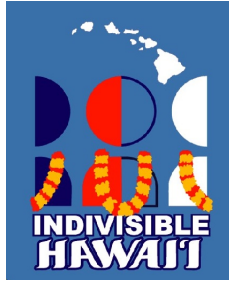
Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai'i; Hawai'i's oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 3351.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr. (he/him)
Chair and SCC Representative
Stonewall Caucus for the DPH



INDIVISIBLE HAWAII

February 8, 2024

Dear Senators Rhoads, Gabbard, Elefante, San Buenaventura, and Awa,

I write on behalf of Indivisible Hawaii in strong support of SB3351. Hawaii's constitution already prohibits discrimination on the basis of race, religion, sex or ancestry. This bill would allow Hawaii's citizens to vote on adding prohibitions of discrimination on the basis of ethnicity, national origin, age, disability, sexual orientation, gender identity, gender expression, pregnancy and pregnancy outcomes. There is already a patchwork of state and federal provisions which address some of these protections. But that patchwork is not without loopholes.

Hawaii's constitution has always prohibited discrimination on the basis of sex. Yet our state constitution was amended in 1998 to prevent same sex marriage. That action was clearly discrimination based on homosexuality. As Justice Gorsuch said in *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731 (2020), ". . . discrimination based on homosexuality . . . necessarily entails discrimination based on sex; the first cannot happen without the other." The individual rights we have long held under our state and federal constitutions and have long taken for granted are not set in stone. We have only to look at the U.S. Supreme Court's abortion decision, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), to recognize this.

Hawaii has always been in the forefront of protecting individual rights. It was the first state to ratify the Equal Rights Amendment and Hawaii's own state constitution contains a broader protection of individual rights than the U.S. Constitution. SB3351 will help guarantee these rights for our citizens, now and in the future. There is never justification for discrimination.

Sincerely, Lisa Gibson
Group Leader
Indivisible Hawaii

Indivisible is a national grassroots movement formed in December 2016 to defeat the Trump agenda of racism, misogyny and authoritarianism. There are now thousands of local Indivisible groups across the county representing over a million people. In Hawai'i, we have seven chapters across four islands representing over a thousand pro-democracy citizens.



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

SENATE COMMITTEE ON JUDICIARY

FEBRUARY 9, 2024

SB3351 – Proposes a constitutional amendment to prohibit discrimination against a person because of ethnicity, national origin, age, disability, or sex, including sexual orientation, gender identity, gender expression, pregnancy, and pregnancy outcomes.

POSITION: STRONG SUPPORT

The Democratic Party of Hawai'i **strongly supports** SB3351, which updates the State constitution to be amended to **add protections against discrimination** for people based on:

- Ethnicity
- National Origin
- Age
- Disability
- Sex including sexual orientation
- Gender identity
- Gender expression
- Pregnancy
- Pregnancy outcomes

Given the current national political climate, with the rise of hate speech, the extension of these protections are deeply needed. Additionally, this bill reflects the Democratic Party of Hawai'i values, as stated in the most recent Party platform, under the guiding principle of "HUMAN AND CIVIL RIGHTS". Please support this bill.

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee
(808) 679-7454
kriscoffield@gmail.com

Abby Simmons

Co-Chair, Legislative Committee
(808) 352-6818
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Senate Committee on the Judiciary
Hearing Date/Time: February 9, 2024/9:30AM
Place: Hawaii State Capitol, Room 016
Re: Testimony in **STRONG SUPPORT** of S.B. No.3351

Dear Chair Karl Rhoads, Vice-Chair Mike Gabbard and Members of the Health and Homeless Committee:

Members of AAUW of Hawaii thank you for this opportunity to testify in **strong support** of S.B. No. 3351 to propose amending Article 1, Section 5 of the Constitution of the State of Hawai'i to also prohibit discrimination against a person because of ethnicity, national origin, age, disability or sex including sexual orientation, gender identity, gender expression, pregnancy and pregnancy.

Section 5. DUE PROCESS AND EQUAL PROTECTION now reads:

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

It is important to add ethnicity, national origin, age, disability or sex including sexual orientation, gender identity, gender expression, pregnancy and pregnancy outcomes to the due process and equal protection section of the Constitution of the State of Hawai'i for several reasons:

1. **Protection of Civil Rights:** Explicitly including these categories in the state constitution ensures that individuals belonging to these groups are afforded equal protection under the law. This protection is crucial for upholding civil rights and preventing discrimination based on immutable characteristics.
2. **Promotion of Equality:** By recognizing these characteristics within the constitutional framework, Hawai'i sends a strong message about its commitment to equality and inclusion. It establishes a legal foundation for promoting diversity and fostering a society where all individuals are treated with dignity and respect.
3. **Addressing Historical Injustices:** Historically, certain groups, such as people who are pregnant, ethnic minorities, LGBTQ+ individuals, people with disabilities, and Kupunas have faced systemic discrimination and marginalization. Incorporating

these categories into the constitution acknowledges past injustices and signals a commitment to rectifying them through legal protection and equal treatment.

4. **Legal Clarity and Consistency:** Explicitly listing these categories in the constitution provides clarity and consistency in legal interpretation and application. It establishes a clear standard for evaluating laws and policies to ensure they do not discriminate against individuals based on these protected characteristics.
5. **Preventing Discriminatory Legislation:** Incorporating these categories into the constitution serves as a safeguard against the enactment of discriminatory legislation that targets or disproportionately affects individuals based on their ethnicity, national origin, age, disability, sex, sexual orientation, gender identity, gender expression, pregnancy, or pregnancy outcomes.
6. **Reflecting Evolving Societal Values:** Including these categories in the constitution reflects evolving societal values and norms regarding equality, diversity, and inclusion. It demonstrates a commitment to adapting legal frameworks to align with changing perspectives and addressing emerging issues related to discrimination and equality.
7. **Legal Remedies and Recourse:** Constitutional protection ensures that individuals who experience discrimination based on these characteristics have legal remedies and recourse available to them. It strengthens their ability to challenge discriminatory practices and seek justice through legal avenues.

Overall, adding these categories to the due process and equal protection section of the State Constitution of Hawai'i is a significant step toward fostering a more inclusive and equitable society, where all individuals are treated fairly and have equal opportunities regardless of their immutable characteristics.

Sincerely,
Elizabeth Jubin Fujiwara, Esq.
Public Policy Committee, AAUW of Hawaii
publicpolicy-hi@aauw.net

The American Association of University Women (AAUW) of Hawaii is an all-volunteer, statewide chapter of a national organization and is made up of six branches: Hilo, Honolulu, Kaua'i, Kona, Maui, and Windward Oahu. UH Hilo, UH Manoa, UH Maui College, and Windward Community College are also AAUW partners. AAUW's mission is to advance gender equity for equal opportunities in education, at workplace and for economic security, and in leadership.

SB-3351

Submitted on: 2/2/2024 4:38:04 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Younghee Overly	Individual	Support	Written Testimony Only

Comments:

Mahalo for hearing SB3351 which would put "the protection of LGBTQIA people and reproductive freedom as an amendment to Hawaii constitution" on the November 2024 ballot. Hawaii has been a leader with civil rights and SB3351 simply makes sense, especially now.

SB-3351

Submitted on: 2/3/2024 11:25:06 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill and what it stands for!

SB-3351

Submitted on: 2/3/2024 2:25:52 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Godbey Carson	Individual	Support	Written Testimony Only

Comments:

I support sending to public ballot a constitutional amendment to expand our equal protection protections, especially in regard to sexual orientation, gender identity, and pregnancy.

We have as a nation a tragic history of persecution of persons who are LGBTQ, who deserve the same protections and rights under the law as other vulnerable classes currently protected by our equal protection clause. Given what is occurring in other states, it is also prudent to include pregnancy within the protected scope of rights.

We have sadly learned in recent years that failure to expressly protect certain rights as constitutional rights can result in courts suddenly destroying rights we thought were fundamental and protected. Adding these protected classes to our constitution can prevent loss of rights should the political makeup of our courts change.

Thank you for consideration of my testimony.

Ellen Carson, Honolulu, HI

SB-3351

Submitted on: 2/4/2024 1:07:13 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Fenton K lee	Individual	Oppose	Written Testimony Only

Comments:

Subject:Reject SB No. 3551 Due to Constitutional Concerns

Dear [COMMITTEE ON JUDICIARY](#),

I am writing to strongly urge the rejection of SB No. 3551. Despite its intentions towards equality and non-discrimination, the bill poses serious risks to First Amendment freedoms and introduces legal ambiguities that could have far-reaching consequences. Its broad language threatens to infringe upon free speech rights, creating a chilling effect on expression. To protect our constitutional rights and ensure that legislation does not inadvertently harm the principles it seeks to uphold, I advocate for the discontinuation of this bill. A more nuanced approach is necessary to balance equality with the fundamental rights enshrined in our Constitution.

Sincerely,

Fenton Kaulana Lee

SB-3351

Submitted on: 2/7/2024 11:45:03 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lois Langham	Individual	Support	Written Testimony Only

Comments:

I am in full support of this bill. For equality and freedom for all in the Aloha state, I support this bill.

SB-3351

Submitted on: 2/7/2024 12:26:19 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Martha Nakajima	Individual	Support	Written Testimony Only

Comments:

I support this bill.

SB-3351

Submitted on: 2/7/2024 4:30:46 PM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Betsy Scolnik	Individual	Support	Written Testimony Only

Comments:

in support

SB-3351

Submitted on: 2/8/2024 8:07:33 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Diana Van De Car	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill. I am grateful for the Legislature taking this up. Mahalo!

SB-3351

Submitted on: 2/8/2024 9:06:24 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Patti Cook	Individual	Support	Written Testimony Only

Comments:

Hawai'i has for many years prohibited discrimination in our State Constitution to guarantee all residents equity and fairness. It's who we are and a reflection of our history and the way we embrace and welcome diversity. SB3351 would initiate an amendment of the State Constitution to strengthen the prohibition of discrimination...prevent and address loopholes that are not pono.

Please approve this bill and keep it moving forward for passage to initiate a Constitutional Amendment.

Mahalo for your consideration.

Patricia (Patti) Cook

Kamuela, HI 96743

SB-3351

Submitted on: 2/9/2024 5:25:40 AM

Testimony for JDC on 2/9/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Individual	Support	Written Testimony Only

Comments:

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

Hawaii Health & Harm Reduction Center strongly supports this measure to strengthen our state constitution's equal rights provision.

We also support the elimination of Article I, Section 23, which authorizes the Legislature to limit marriage to opposite-sex couples.

Mahalo for the opportunity to provide testimony.