

Honolulu, Hawaii

**November 6**, 2013

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

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Seventh State Legislature  
Second Special Session of 2013  
State of Hawaii

Sir:

Your Committees on Judiciary and Finance, to which was referred S.B. No. 1 entitled:

"A BILL FOR AN ACT RELATING TO EQUAL RIGHTS,"

beg leave to report as follows:

The purpose of this measure is to recognize marriages between individuals of the same sex, thus ensuring that same-sex married couples receive the same rights, benefits, protections, and responsibilities under state and federal law as opposite-sex married couples, while protecting religious freedom.

Specifically, this measure, in the form in which it was received by your Committees:

- (1) Ensures the continuity of rights, benefits, protections and responsibilities of couples in a civil union or reciprocal beneficiary relationship who seek to marry each other by clarifying procedures for the succession of such legal relationships and the accrual and succession of the consequent rights, benefits, protections, and responsibilities;
- (2) Specifies that all language related to the rights, benefits, protections, and responsibilities of marriage and married persons under the law be construed in a gender-neutral manner in order to apply to all legal



marriages regardless of the gender of the married persons;

- (3) Specifies that all rights, benefits, protections, and responsibilities of parentage derived from a marriage relationship under state law shall apply equally to all married persons regardless of gender;
- (4) Specifies that in the context of the interaction between state and federal law, all state laws shall be construed as if the federal law recognizes all marriages in the same manner as state law does;
- (5) Specifies that clergy and religious officers shall not be required to and shall not be subject to liability for failure or refusal to solemnize any marriage;
- (6) Specifies that religious organizations that do not make the organization's facilities or grounds available to the general public for solemnization of any marriage celebration for a profit shall not be subject to civil or administrative liability for refusing to make their facilities or grounds available for any marriage;
- (7) Permits a married couple to submit documentation to the Department of Health of the solemnization of their marriage in the event that the person who solemnized their marriage fails to submit the required documentation to the Department;
- (8) Makes conforming amendments to existing reciprocal beneficiary and civil union laws to reflect relevant amendments to the marriage law;
- (9) Extends jurisdiction to the courts of this State for actions for divorce, annulment, or other dissolution of a marriage entered into in this State, regardless of the personal domicile or physical presence in this State of the parties to the marriage, if neither party is domiciled in a jurisdiction that recognizes the marriage; and
- (10) Authorizes the Department of Health to take any internal administrative or ministerial action necessary to implement the provisions of this measure.



### Public Hearing and Testimony

Official public notice of your Committees' public hearing on this measure was posted on October 28, 2013, in accordance with the requirements of Rule 11.5 of the Rules of the House of Representatives (2013-2014). The text of the Governor's original proposed legislation was first released to the public by the Governor on August 22, 2013.

In anticipation of the receipt of an extraordinary amount of testimony, the House of Representatives encouraged citizen participation in the hearing process by accepting written testimony by personal delivery, U.S. Postal Service, and the Legislature's website. Additionally, individuals with an interest in submitting oral, in-person testimony were able to do so and reserve in advance a place in the speaking order. Individual testifiers were presented more than once with the opportunity to present oral testimony and members of your Committees took advantage of the opportunity to ask follow-up questions of many testifiers, including private citizens as well as state officials, community leaders, and professional experts.

Your Committees received more than 23,000 pieces of written testimony on this issue. Further, over 5,000 individuals registered to testify orally. Committed to hearing each of those voices, your Committees began hearing testimony on Thursday, October 31, 2013, and with the exception of Sunday, continued through Tuesday, November 5, 2013. Your Committees' unprecedented hearing process lasted more than 55 hours, during which more than 1,000 persons testified orally before your Committees.

The Governor; Department of the Attorney General; Department of Taxation; Department of Human Resources Development; Hawaii Civil Rights Commission; Hawaii State Commission on the Status of Women; IMUAlliance; United Steelworkers Union Local 12-591; League of Women Voters; American Civil Liberties Union of Hawaii; Pacific Alliance to Stop Slavery; Planned Parenthood of Hawaii; Honpa Hongwanji Mission of Hawaii; Japanese American Citizens League Honolulu Chapter; Gay, Lesbian, Bisexual, Transgender Caucus of the Democratic Party of Hawaii; First Unitarian Church of Honolulu; National Association of Social Workers, Hawaii Chapter; The Interfaith Alliance Hawaii; Democratic Party of Hawaii; Honolulu Pride; Hawaii United for Marriage; Musicians' Association of Hawaii, Local 677; Student Network for Action and Progress;



O'ahu County Democrats of the Democratic Party of Hawai'i; Equality Hawaii; Hawai'i State Democratic Women's Caucus; Progressive Democrats of Hawaii; Wahine Builders, General Contractors 21991; Labor Caucus of the Democratic Party of Hawaii; UNITE HERE Local 5; University of Hawaii Professional Assembly; Kokua Council; Hawaii State Teachers Association; YWCA Hawaii Island; YWCA Kauai; YWCA Oahu; OutServe-SLDN Hawaii; Gay, Lesbian & Straight Education Network Hawaii Chapter; Hawaii Advocates for Consumer Rights; Hawai'i Peace & Justice; Parents, Families, and Friends of Lesbians, Gays, Bisexuals, Transgendered, Intersex and Questioning Oahu; The American Congress of Obstetricians and Gynecologists, Hawaii Section; Design Response; Screen Actors Guild- American Federation of Television and Radio Artists Hawaii Local; International Sisterhood of Witches and Amalgamated Magicks, Local 665; United Public Workers, AFSCME, Local 646, AFL-CIO; ILWU Local 142; Pride At Work; World Class Productions; U.S. Representative Colleen Hanabusa; U.S. Senator Brian Schatz; Vice-chair of the City Council of the City and County of Honolulu; Hawaii County Commissioner of the Hawaii State Commission on the Status of Women; and more than 9,000 concerned individuals submitted testimony in support of the measure.

The Hawaii Family Forum, Hawaii Family Advocates, New Hope Leeward, Hawaii Catholic Conference, Parishioners of Our Lady of Sorrows Church, Wednesday Night Witness, Cedar Assembly of God, Asia Church Korea, Light of Promise Ministries, Transformation Hawaii, Hawaii Christian Coalition, The American Political Party, Legalshield, The Christian Counseling and Research Centers of America, and more than 14,000 concerned individuals submitted testimony in opposition to the measure.

The Department of Health and more than 200 concerned individuals provided comments on the measure.

Your Committees find that the over twenty-year history of Hawaii's consideration of this issue is particularly relevant in light of the concerns expressed by some testifiers that the condensed time frame of a special session is inadequate to address such an important issue. Your Committees further find that the Legislature has devoted more thorough and prolonged consideration to the issue of marriage equality than to any other matter in recent history through the public hearing process as well as during the preparatory and research period preceding public hearing.





### History of Marriage Equality in Hawaii

The issue of same-sex marriage was first litigated in Hawaii in 1991. Three same-sex couples sued the State of Hawaii, through its Director of Health, claiming that the Department of Health's denial of their respective applications for marriage licenses on the grounds that they were of the same sex violated their rights to privacy and equal protection under the Hawaii State Constitution. The Hawaii Supreme Court held in its resulting decision that the State's marriage statute was discriminatory on its face.

The equal protection clauses of the United States and Hawaii Constitutions are not mirror images of one another. The fourteenth amendment to the United States Constitution somewhat concisely provides, in relevant part, that a state may not deny to any person within its jurisdiction the equal protection of the laws. Hawaii's counterpart is more elaborate. Article I, section 5 of the Hawaii Constitution provides in relevant part that [n]o person shall ... 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. Thus, by its plain language, the Hawaii Constitution prohibits state-sanctioned discrimination against any person in the exercise of his or her civil rights on the basis of sex.

Baehr v. Lewin, 74 Haw. 530, 562, 852 P.2d 44, 59-60 (1993) (Emphasis in the original; internal quotations and parentheticals deleted.)

After the Hawaii Supreme Court's decision in Baehr, the Legislature amended state marriage statutes to limit marriage to male-female couples only. Act 217, Session Laws of Hawaii 1994. At that time, the Legislature found that "expanding the definitions of 'sex' in Article I, section 5, of the Hawaii Constitution and 'marriage' in chapter 572, Hawaii Revised Statutes, is a policy question within the exclusive purview of legislative bodies, to wit, the legislature or the constitutional convention . . ." Id. at Section 1.

In 1996, a Hawaii trial court found that the Legislature's action in Act 217 of limiting marriage to male-female couples



violated the State Constitution's equal protection clause, Article 1, section 5, Hawaii State Constitution, because the State failed to show a rational basis for excluding same-sex couples from legal marriage. Baehr v. Miike, Civ. No. 91-1394, 65 USLW 2399 (Hawaii Cir. Ct. Dec. 3, 1996) aff'd, 87 Haw. 34, 950 P.3d 1234 (1997). However, the court delayed implementation of its decision pending legislative action.

Following the court's decision, the Legislature proposed an amendment to Hawaii's Constitution to clarify legislative authority to define marriage by passing H.B. No. 117, Regular Session 1997. Section 1 of the bill expressly states:

The legislature further finds that the question of whether or not the State should issue marriage licenses to couples of the same sex is a fundamental policy issue to be decided by the elected representatives of the people. This constitutional measure is thus designed to confirm that the legislature has the power to reserve marriage to opposite-sex couples and to ensure that the legislature will remain open to the petitions of those who seek a change in the marriage laws, and that such petitioners can be considered on an equal basis with those who oppose a change in our current marriage statutes. (emphasis added)

Also in 1997, the Legislature passed Act 383, Session Laws of Hawaii 1997, the reciprocal beneficiaries law, codified as chapter 572C, Hawaii Revised Statutes. Chapter 572C extends a limited version of the rights, benefits, protections, and responsibilities associated with marriage to individuals who stand in meaningful relationships with each other but are not eligible for marriage under the law.

In 1998, after ratification by Hawaii's electorate, H.B. No. 117 was codified as Article I, section 23 of the Hawaii State Constitution, which states: "The legislature shall have the power to reserve marriage to opposite-sex couples." In 1999, the Hawaii Supreme Court ruled that, following the ratification of H.B. 117, the exclusion of same-sex couples from marriage no longer violated the Hawaii State Constitution's equal protection clause. Baehr v. Miike, No. 20371, 92 Haw. 634, 944P.2d 566 (1999).

As stated by retired Hawaii Supreme Court Justice Steven H. Levinson in testimony before your Committees on S.B. No. 1,



Article I, section 23 "grants the Legislature a monopoly" on the right to define eligibility for marriage. Further, the clear language of Article I, section 23 itself as well as the inclusion of an unambiguous policy statement leaves no undecided questions of determination of intent or interpretation for the courts. The Hawaii Attorney General states an assenting position on Article I, section 23. "By its plain language, this provision does not require that marriages be limited to opposite-sex couples. Instead, the section provides that the Legislature possesses the authority to limit marriages to opposite-sex couples by statute, should it choose to do so." Haw. Op. Atty. Gen. No. 13-1 (October 14, 2013). (emphasis added)

In 2011, Hawaii joined the small group of states that permit civil unions or domestic partnerships as an alternative means of providing equivalent rights, benefits, protections and responsibilities of marriage to same-sex couples with the enactment of Act 1, Session Laws of Hawaii 2011, codified as chapter 572B, Hawaii Revised Statutes. According to the language of Act 1, passage of the civil unions law did not represent "the legislature's intent to revise the definition or eligibility requirements of marriage under chapter 572, Hawaii Revised Statutes." Act 1, Session Laws of Hawaii 2011, section 1. However, the law also specified that, "[a] party to a civil union shall be included in any definition or use of the terms 'spouse', 'family', 'immediate family', 'dependent', 'next of kin', and other terms that denote the spousal relationship, as those terms are used throughout the laws of the State." Id. at section 1, codified as section 572B-11, Hawaii Revised Statutes.

#### Current Legislative and Judicial Context

The United States Supreme Court's recent decision in United States v. Windsor, 133 S. Ct. 2675 (2013) held the federal Defense of Marriage Act (DOMA), Public Law 104-199, unconstitutional on the grounds that it "violates basic due process and equal protection principles applicable to the Federal Government" under the Fifth Amendment to the United States Constitution. Windsor, 133 S. Ct. at 2693. The effect of Windsor is to make certain federal benefits available to same-sex couples who are married under state law, but not to those in other non-marriage relationships such as civil unions.

Hawaii's Attorney General clarified the effects of the Supreme Court's Windsor decision in a letter to our colleagues in



the Senate Committee on Judiciary and Labor. "[A] significant number of federal benefits" are unavailable to civil union partners post Windsor. The Attorney General identified employment benefits under the Federal Family Medical Leave Act, veterans' benefits, intellectual property protections under federal copyright law, public safety officers' death benefits, federal civilian and military thrift savings plans, and railroad employees' retirement benefits as unavailable to parties to a civil union. Letter of Attorney General David M. Louie to The Honorable Clayton Hee, Chair of Senate Committee on Judiciary and Labor, dated October 28, 2013, at pages 2-3.

The Attorney General also identified "several very significant federal programs" for which availability to civil union partners is unclear: Medicare, social security, the federal bankruptcy code, and Medicaid. Id. at pages 3-5. "This uncertainty is substantial because same-sex couples are unable to truly rely on these programs as opposite-sex couples do, if access to such benefits is open to question based on whether their state of residence recognizes their marriage." Id. at page 3.

Finally, the Attorney General identified certain intangible concerns related to the unavailability of marriage to same-sex couples including "substantial uncertainty with respect to estate planning, tax planning, wealth transfer, succession planning, and inheritance planning" as well as the substantial burden, applicable only to same-sex couples, of traveling out of state to enter into a federally recognized marriage and the State of Hawaii's inability to recognize a same-sex marriage validly entered in another jurisdiction. Id. at pages 5-6.

In light of the United States Supreme Court's decision in Windsor as well as a pending Hawaii lawsuit, Jackson v. Abercrombie, 884 F. Supp.2d 1065 (2012), challenging Hawaii's marriage laws and constitutional amendment on the grounds of due process and equal protection that now sits before the Ninth Circuit Court of Appeals, your Committees find it is timely for the Legislature to again take up this issue. Your Committees find that given this body's extensive experience with same-sex marriage over the last twenty-two years, this issue has received adequate debate to address this issue in a special session.





### Findings and Intent

Your Committees find that fourteen states in the United States plus the District of Columbia have already extended full marriage rights to same-sex couples. Additionally, sixteen other countries, including several that have significant and deeply-rooted religious cultural backgrounds such as Argentina, Brazil, Portugal, South Africa, and Spain, have enacted similar laws.

Your Committees find that many religious organizations and their members testified that they were satisfied with the religious exemption contained in this measure as it was received by your Committees. However, your Committees also find that the deeply-held concerns of some members of the religious community also merit consideration. Therefore, your Committees have included language in this measure that expands the exemptions for clergy and religious officers from the State's generally-applicable nondiscrimination laws to also include religious organizations, including nonprofit organizations operated, supervised, or controlled by a religious organization and to apply to the provision of goods and services as well as access to grounds and facilities. It is your Committees' intent that the religious exemptions contained in this measure shall not alter Hawaii's long-standing prohibition against discrimination by places of public accommodation except to the limited extent specified in this measure and in the limited context of solemnization or celebration of a marriage or civil union.

### Amendments

Your Committees have carefully weighed the information presented and the arguments made from a variety of perspectives on this controversial issue both over the last twenty-two years and during this special legislative session. Your Committees have undertaken to strike a careful balance and produce a measure that ensures equal protections and responsibilities for Hawaii's same-sex couples under state and federal law, while protecting religious freedoms and liberty.



Accordingly, your Committees have amended this measure by:

- (1) Deleting language relating to the gender-neutral application of marriage-derived parentage rights, benefits, protections, and responsibilities because it is superfluous;
- (2) Amending the religious exemption to more closely model similar provisions in effect in the state of Connecticut by making it clear that a clergy member, minister, priest, rabbi, religious officer, or religious society that provides solemnizations shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for declining to perform any marriage or civil union specifically because performing the marriage or civil union is in violation of their religious beliefs or faith;
- (3) Expanding the religious organization and facilities exemption to:
  - (a) Apply to religious organizations and to nonprofit organizations operated, supervised, or controlled by a religious organization;
  - (b) Establish that none of these entities shall be required to provide goods or services or their facilities or grounds for the solemnization or celebration of a marriage if the solemnization or celebration is in violation of their religious beliefs or faith; and
  - (c) Expressly provide that these entities shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal to provide goods, services, grounds, or facilities pursuant to this measure;
- (4) Applying the foregoing exemption and immunity from liability provisions to civil unions, including by amending the language of the existing solemnizer's

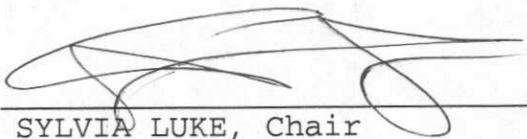
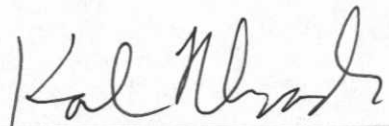


exemption for civil unions to be consistent with the language applicable to marriage;

- (5) Changing the effective date to December 2, 2013; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Judiciary and Finance that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committees on Judiciary and  
Finance,

  
\_\_\_\_\_  
SYLVIA LUKE, Chair  
\_\_\_\_\_  
KARL RHOADS, Chair

HSCR 4

<b>Bill/Resolution No.:</b>	<b>Committee Referral:</b>	<b>Date:</b>		
SB 1	JUD/FIN	11 / 5 / 13		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. RHOADS, Karl (C)	X			
2. HAR, Sharon E. (VC)			X	
3. BELATTI, Della Au	X			
4. BROWER, Tom	X			
5. CARROLL, Mele			X	
6. COFFMAN, Denny	X			
7. ITO, Ken			X	
8. KAWAKAMI, Derek S.K.	X			
9. LEE, Chris	X			
10. TSUJI, Clift			X	
11. WOOLEY, Jessica	X			
12. MCDERMOTT, Bob			X	
13. THIELEN, Cynthia	X			
TOTAL (13)	8	0	5	0
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
<b>Vice Chair's or designee's signature:</b> _____ 				
<b>Distribution:</b> Original (White) – Committee     Duplicate (Yellow) – Chief Clerk's Office     Duplicate (Pink) – HMSO				



State of Hawaii  
House of Representatives  
The Twenty-seventh Legislature

HSCR 4

**Record of Votes of the Committee on Finance**

<b>Bill/Resolution No.:</b> SB 1	<b>Committee Referral:</b> JUD/FIN	<b>Date:</b> 11/05/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. LUKE, Sylvia (C)	/			
2. NISHIMOTO, Scott Y. (VC)	/			
3. JOHANSON, Aaron Ling (VC)			/	
4. CULLEN, Ty J.K.	/		/	
5. HASHEM, Mark J.	/			
6. ING, Kaniela	/		/	
7. JORDAN, Jo			/	
8. KOBAYASHI, Bertrand	/			
9. LOWEN, Nicole E.	/			
10. MORIKAWA, Dee	/			
11. ONISHI, Richard H.K.	/			
12. TAKAYAMA, Gregg	/			
13. TOKIOKA, James Kunane	/		/	
14. WOODSON, Justin H.			/	
15. YAMASHITA, Kyle T.	/			
16. FUKUMOTO, Beth			/	
17. WARD, Gene			/	
<b>TOTAL (17)</b>	10		7	
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 0.8em;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b>				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office      Duplicate (Pink) – HMSO				