



# HAWAI‘I CIVIL RIGHTS COMMISSION

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March 20, 2019  
Rm. 325, 2:15 p.m.

To: The Honorable 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: H.C.R. No. 5/ H.C. No. 6

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 H.C.R. No. 5 and H.C. No. 6.**

These resolutions, if enacted, request 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. H.C.R. No. 5 and H.R. No. 6 urge 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 H.C.R. No. 5 and H.C. No. 6.



‘O kēia ‘ōlelo hō’ike no ke  
**Komikina Kūlana Olakino o Nā Wāhine**

Testimony on behalf of the  
**Hawai‘i State Commission on the Status of Women**

Prepared for the House Committee on Judiciary

In Support of HCR5 and HR6  
Wednesday, March 20, 2019, at 2:15 p.m. in Room 325

Dear Chair, Vice Chair, and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports HCR5 and HR6, which requests U.S. Congress to amend federal law to ensure victims of sexual harassment and sexual assault who might otherwise be forced into arbitration and silence instead have access to the courts.

The Commission has long advocated against mandatory arbitration agreements in the workplace. Arbitration allows employers to hide sex and gender-based misconduct which would otherwise be made public in court. While women who have signed arbitration agreements and who are later victimized by sex discrimination may file a complaint with the EEOC, they will not be able to sue in court. Further, the chances of prevailing in arbitration are much slimmer than in the court system. Accordingly, the Commission asks the Committee to pass HCR 5 and HR6.

Mahalo,

Khara Jabola-Carolus  
Executive Director

**HCR-5**

Submitted on: 3/18/2019 2:13:08 PM

Testimony for JUD on 3/20/2019 2:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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 HCR 5.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

**HCR-5**

Submitted on: 3/18/2019 7:18:08 PM

Testimony for JUD on 3/20/2019 2:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Rainbow Family 808	Support	No

Comments:

I strongly support HCR5 and HC6. We need the federal government to ensure all victims who have suffered sexual abuse or harrassment have their day in court . Please pass HCR5 and HC6.

Mike Golojuch, Sr., Board Member, Rainbow Family 808



March 18, 2019

Representative Chris Lee, Chair  
House Committee on Judiciary

**Re: HCR 5 / HR 6, REQUESTING MEMBERS OF THE UNITED STATES CONGRESS TO AMEND FEDERAL LAW TO ENSURE THAT VICTIMS OF SEXUAL HARASSMENT AND SEXUAL ASSAULT WHO MIGHT OTHERWISE BE FORCED INTO ARBITRATION AND SILENCE INSTEAD HAVE ACCESS TO THE COURTS.**

**Hearing: Wednesday, March 20, 2019, 2:15 p.m., Room 325**

Dear Chair Lee and Members of the Committee on Judiciary:

Hawaii Women Lawyers (“HWL”) **supports HCR 5 / HC 6**, which requests that members of the United States Congress requested to amend federal law to ensure that victims of sexual harassment and sexual assault have access to the court and are not forced in to arbitration through mandatory arbitration clauses.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

Last year, HWL conducted a survey of its members as to the incidences and experiences of sexual harassment in the legal community.<sup>1</sup> 76 attorneys responded to the survey. Nearly 60% (42 attorneys) reported being sexually harassed at some time during their legal career, with approximately 13% (10 attorneys) reporting having been sexually harassed in the workplace within the last two years.

It is common for victims of sexual assault and harassment not to report abuse for fear of retaliation. Mandatory arbitration clauses that apply to sexual harassment claims have the

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<sup>1</sup> HWL has 357 active members, who are all members of the Hawaii State Bar Association. The survey was conducted between January 12, 2018 and February 4, 2018. The survey was done on a strictly voluntary and anonymous basis, and with the understanding that any stories provided by survey respondents may be shared publicly to raise awareness of the occurrence of sexual harassment in the legal community. The survey was conducted for informational purposes only, and HWL has not conducted an independent investigation as to and cannot guaranty the accuracy of the results of the survey or the specific instances of harassment shared by survey respondents. HWL recognizes that terminology may carry different connotations for different parties and did not define “sexual harassment” in the survey. HWL also recognizes that men are victims of sexual harassment as well as women, but as the mission of HWL is to improve the lives and careers of women in all aspects of the legal profession, the main focus of the article is on the experiences of female victims.

impact and effect of further silencing victims. They can also allow repeat offenders to continue to engage in serial harassment. HWL supports this resolution, which would encourage members of the United States Congress to advance legislation to address this issue.

Thank you for the opportunity to submit testimony on this measure.

**HCR-5**

Submitted on: 3/19/2019 3:52:18 PM

Testimony for JUD on 3/20/2019 2:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Monk	Individual	Support	No

Comments:



**LATE**

**HCR-5**

Submitted on: 3/19/2019 10:06:51 PM  
Testimony for JUD on 3/20/2019 2:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Individual	Support	No

Comments:

**LATE**

**HCR-5**

Submitted on: 3/20/2019 12:24:19 AM  
Testimony for JUD on 3/20/2019 2:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments: