

THE
 TWENTY-SEVENTH LEGISLATURE
 STATE OF HAWAII
 SECOND SPECIAL SESSION OF 2013
 JOURNAL OF THE HOUSE

FIRST DAY

Monday, October 28, 2013

In accordance with the provisions of Section 10 of Article III of the Constitution of the State of Hawaii, and the Proclamation issued by Governor Neil Abercrombie on September 11, 2013, the House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii convened in Special Session on Monday, October 28, 2013.

The Honorable Joseph M. Souki, member of the Eighth District, having been elected Speaker of the House of Representatives on the Opening Day of the Twenty-Seventh Legislature and retaining that position under the provision of Rule 1.5 of the Rules of the House of Representatives, called the House to order at 10:06 o'clock a.m.

The Chair then called upon the Clerk who read the Governor's Proclamation as contained in Gov. Msg. No. 1.

GOVERNOR'S MESSAGES

Gov. Msg. No. 1, Second Special Session, transmitting a Proclamation convening the Twenty-Seventh Legislature of the State of Hawaii in a special session on Monday, October 28, 2013, at 10:00 a.m., as follows:

"September 11, 2013

The Honorable Donna Mercado Kim, President
 and Members of the Senate
 Twenty-Seventh State Legislature
 State Capitol, Room 409
 Honolulu, Hawaii 96813

The Honorable Joseph M. Souki, Speaker
 and Members of the House of Representatives
 Twenty-Seventh State Legislature
 State Capitol, Room 431
 Honolulu, Hawaii 96813

Dear President Mercado Kim, Speaker Souki, and Members of the Legislature:

Transmitted herewith is the proclamation convening the Twenty-Seventh Legislature of the State of Hawaii in special session on Monday, October 28, 2013, at 10:00 a.m.

Sincerely,
 /s/ Neil Abercrombie
 NEIL ABERCROMBIE
 Governor, State of Hawaii

Enclosure"

P R O C L A M A T I O N

WHEREAS, under Section 10 of Article III of the Constitution of the State of Hawaii, the Governor may convene both houses of the Legislature or the Senate alone in special session; and

WHEREAS, the Governor believes that, in keeping with the United States Supreme Court's recent decision in United States v. Windsor, 133 S.

Ct. 2675 (2013), the State of Hawaii should extend to same-sex couples the right to marry and receive all the same rights, benefits, protections, and responsibilities of marriage as opposite-sex couples receive under the laws of this State;

NOW, THEREFORE, I, NEIL ABERCROMBIE, Governor of the State of Hawaii, pursuant to the power vested in me by Section 10 of Article III of the Constitution of the State of Hawaii, do hereby convene both houses of the Twenty-seventh Legislature of the State of Hawaii in special session on the 28th day of October, 2013, at 10 o'clock a.m., primarily for the consideration of legislation to provide for marriage equality in the State of Hawaii.

DONE at the State Capitol, Honolulu, State of Hawaii,
 this 9th day of September, 2013.

/s/ Neil Abercrombie
 NEIL ABERCROMBIE
 Governor of Hawaii

APPROVED AS TO FORM:

/s/ David Louie
 David M. Louie
 Attorney General"

The invocation was then delivered by Reverend Blayne Higa of Pacific Buddhist Academy, after which the Roll was called showing all members present with the exception of Representatives Choy, Lowen, Nakashima and Yamane, who were excused.

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 38 through 40) were received and announced by the Clerk and were placed on file:

Gov. Msg. No. 38, Second Special Session, dated October 11, 2013, transmitting a proposed draft bill to fund the settlement of Collective Bargaining Unit 10.

Gov. Msg. No. 39, Second Special Session, dated October 22, 2013, transmitting a proposed draft of the marriage equity bill.

Gov. Msg. No. 40, Second Special Session, dated October 22, 2013, transmitting a letter asking the Legislature to consider several items in addition to legislation providing for marriage equity, and proposed drafts for the items:

- Funding for the Hawaii Health Systems Corporation Kauai regional health care system;
- Collective bargaining costs associated with Bargaining Unit 10; and
- Collective bargaining costs associated with Bargaining Unit 13.

At 10:15 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:16 o'clock a.m.

INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative Takai introduced guests from Fukushima Prefecture: Mr. Yuhei Sato, Governor of Fukushima Prefecture; Mr. Norio Hashimoto, Senior Director of the International Affairs Division; Mr. Daisuke Suzuki, Senior Staff, International Affairs Division; Mr. Shigeyuki Homma, Secretary to Governor Sato; Mr. Toyokazu Sugama and Mr. Toshikazu Shirasaka, press; Ms. Maya Perry, interpreter; and Mr. Toshihiko Takeda, travel agent. They were accompanied by Mr. Toyoei Shigeeda, Consul General of Japan in Honolulu.

Representative Ward introduced his intern, Ms. Nadiya Pashkova.

Representative Aquino introduced Pastor Joe Hunkin, Jr., and members of the Lighthouse Outreach Center in Waipahu.

Representative Oshiro introduced his sister and brother-in-law, Mrs. Susan and Mr. Eryle Okamura.

Representative Ing introduced his constituent and girlfriend, Ms. Sara Ohashi.

Representative Thielen introduced Chaplain John Heidel.

At 10:21 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:35 o'clock a.m.

ORDER OF THE DAY

INTRODUCTION OF BILLS

Representative Saiki moved that the following bills (H.B. Nos. 1 through 5) pass First Reading by title and be referred to Printing, seconded by Representative Johanson.

H. B. Nos.

- 1 "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS."

Introduced by: Representative Souki, by request.

- 2 "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS."

Introduced by: Representative Souki, by request.

- 3 "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION."

Introduced by: Representative Souki, by request.

- 4 "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS."

Introduced by: Representative McDermott.

- 5 "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO RESERVE MARRIAGE TO OPPOSITE-SEX COUPLES."

Introduced by: Representative McDermott.

Representative McDermott rose to speak in support of the motion, stating:

"Mr. Speaker, I stand in strong support. I have some brief comments. This is an extraordinary move, to speak on First Reading, but these are extraordinary times. I would just like to commend the Body and you, Mr. Speaker, for allowing our proposed constitutional amendment, House Bill 5, proposing an amendment that the Hawaii Constitution reserve marriage to opposite-sex couples, be referred to Judiciary and Finance.

"I know the Judiciary Chairman is a man of keen intellect and will give it all the deliberation that he thinks it deserves. I'd like to encourage the Body to hear this measure since we're already here and spending the taxpayers' money. Here's another opportunity for us to listen to our bosses. An opportunity to have them, since they're already coming down here, let's throw another bill on the agenda so they can hear it. I implore you, sir, please let the people's voices be heard. If it turns out there is no support for it, I can live with that. Thank you very much."

Representative Ward rose to speak in support of the motion, stating:

"Mr. Speaker, I rise in support. Mr. Speaker, I know it's very unusual on First Reading, having a speech. In fact, we of the minority were the unusual progenitors of speaking on Second Reading and it was unusual. But these are unusual times. We are in a special session, and this bill deserves special acknowledgement and results.

"I'm speaking to, the good gentleman from Ewa Beach just referred to the bill number, I believe it's 5. The constitutional amendment, letting the people decide.

"A couple of facts, Mr. Speaker. Number one, a very extensive, scientific, very costly survey was just done by the people of Hawaii through an organization that has local and national ties that said 70 percent of the people of Hawaii, Mr. Speaker, including your constituents and mine, and everybody else in this Chamber, said that this special session, that this issue, should be decided by the people. This bill, that the good gentleman from Ewa Beach said, is giving that opportunity. Mr. Speaker, if the Governor knew he had the votes, why would he not let the people decide? Why do we have to go into special session? You know that this House..."

The Chair addressed Representative Ward, stating:

"Representative Ward, there will be ample time later on to debate on the bill."

Representative Ward continued, stating:

"Thank you, Mr. Speaker, I appreciate that opportunity, but right now I have the Floor, may I finish? Mr. Speaker, I want to make two more points. Your point was to the Governor very clear, there are not enough people, two-thirds majority in this House, to have a special session. President Kim of the Senate said we do not have the need for a special session. Except for someone who went behind your back and told the Governor to have a special session, somebody in this Body, we would not be here, Mr. Speaker.

"So the point is, the numbers are there that the people should decide, the resolution and amendment is here that we should let the people decide. So I implore those powers that be, let the people decide. Get a hearing on the resolution, as the Representative from Ewa Beach said, if nobody shows up, if they don't want it, do it. There's simple evidence and empirical statistics that 70 percent of the people of Hawaii, and you can ask all of your constituents, they say let them decide on this issue.

"This is a turning point in the history of Hawaii. This is greater than the Hokulea, this is greater than the Great Mahele. This is something, Mr. Speaker, that all of us are going to be responsible for. If we don't include the people in the huddle, we're going to be regretful. The same way we passed PLDC and went back and changed it. The same way we did the quick job on the Super Ferry and it didn't work. Mr. Speaker, please be deliberative, please be the leader on this, and I thank you for the opportunity to, first time ever on this Floor, to speak on First Reading."

The Chair then stated:

"To the audience, I'm going to ask you not to react. We have a very serious bill that we're looking at, and I'll instruct the Sergeant-at-Arms to monitor this as we go along. So please don't react. Thank you very much."

Representative Fale rose, stating:

"Mr. Speaker, I rise with some comments. What a time to be a freshman in the State Legislature here in Hawaii, to be present for some of the greatest items that are going to affect generations now and generations into the future, Mr. Speaker. I'm not certain what the history of speaking on First Reading is or anything, Mr. Speaker, I am a freshman, but I am rising with these comments.

"I'm looking at the agenda here, and it's good to see that we have items addressing some of the needs of the working people of Hawaii. We have a bill that's going to address very important issues relating to an institution that is generations old here in the state. What I am concerned with is, I know that we do have, in the State of Hawaii, 80,000 children who are in poverty, Mr. Speaker. We're called in here in this special session, and I believe if there's anything more that is most sacred and most special to the people in the State of Hawaii, are our children. We have 80,000 of them who are struggling this day, Mr. Speaker, and I don't see a single measure here that directly addresses the issues relating to the 80,000 children who live in poverty today, Mr. Speaker.

"I'm just disappointed that our children would be pushed to the back of the line, and that 80,000 of them will be forgotten at this time, Mr. Speaker. I know that we do have a few more days to introduce some measures, Mr. Speaker, so I hope to have your support when I introduce a measure that would more adequately address the 80,000 children in poverty, Mr. Speaker, during this time. Thank you."

The motion was put to vote by the Chair and carried, and the noted bills passed First Reading by title and were referred to Printing. (Representatives Choy, Lowen, Nakashima and Ing were excused.)

At 10:43 o'clock a.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:44 o'clock a.m.

At 10:44 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:05 o'clock a.m.

At this time, the Chair stated:

"Members, please note that House Bill Numbers 1 through 5 have been referred to committee, as noted in the House Committee Referral Sheet No. 1."

COMMITTEE ASSIGNMENTS

The following measures were referred to committee by the Speaker:

<u>H.B. Nos.</u>	<u>Referred to:</u>
1	Jointly to the Committee on Labor & Public Employment and the Committee on Finance
2	Jointly to the Committee on Labor & Public Employment and the Committee on Finance
3	Jointly to the Committee on Health and the Committee on Finance
4	Jointly to the Committee on Labor & Public Employment and the Committee on Finance

5 Jointly to the Committee on Judiciary and the Committee on Finance

At this time, Representative Oshiro rose to appeal the ruling of the Chair, stating:

"Thank you, Mr. Speaker. I respectfully stand to appeal the ruling of the Chair on the aforementioned referral of the five House bills. In general, the argument that I would make for my referral request is that, the current referral of House Bill 1, House Bill 2, House Bill 3, House Bill 4, and House Bill 5, shows that it's a single joint referral, which means there will only be one public hearing of those respective committees. For the Bargaining Unit 10 cost item, House Bill 1, it will be a Labor 'slash' Finance. For the next one, Bargaining Unit 13, House Bill 2, Labor 'slash' Finance. The third one is House Bill 3 which is a Health 'slash' Finance referral. House Bill 4, collective bargaining cost items for Bargaining Unit 13, Labor 'slash' Finance. And last, House Bill 5, proposing a constitutional amendment, Judiciary 'slash' Finance.

"Mr. Speaker, the point of contention at this stage is that we seem to be in an extreme rush to get in and out of special session as soon as possible, but by doing so we might fail the opportunity or lose the opportunity to really gain some insight in the subject matter areas. For the first one with the Labor Committee, if it was a Labor 'comma' Finance, you would have the opportunity to have one hearing on one day and then maybe have another day for a separate hearing for the Finance Committee.

"The importance of that, Mr. Speaker, is that the members could understand and appreciate the intricacies of our Chapter 89 collective bargaining process, whereby the employer and employee, upon reaching an agreement and having ratified by the membership, then come to the Legislature in a proper manner and a proper timing for approval offered by this Body. I think that might be lost in the discussion. I hope that it is not. But having two days also allows the participation by the general community to understand the significance of these decisions that we will make.

"I must confess, Mr. Speaker, I do have a slight bias to making sure that we adopt and approve, in total, all of the bargaining unit cost items in Unit 10 and Unit 13 members in those three bills, House Bill 1, 2 and 4, so I need to disclose that. But again, the point I'm trying to make is that in order to allow greater public participation on this matter and greater participation by the committee membership, we should have two separate hearings on those labor bills. The same could be said to the Hawaii Health Systems Corporation bill that would provide an emergency appropriation to, I believe, one of the Kauai hospitals. I think that's important for us to know, especially the members of the Health Committee, why we are here for a special emergency appropriation when we just closed a session about three months ago.

"I think those are important questions to get an idea of what's really going on with the Health Systems Corporation that might require additional work during the interim until we go into our regular session in January. Also to understand the fiscal component of it. Again, it's more about public participation on these policy decisions.

"Again, last but not least, House Bill 5, proposing an amendment, this is part and parcel of the whole reason why we're in here in a special session convened, not by ourselves but really on compulsion by the Governor's proclamation of a special session.

"This extraordinary special session is only one of several over the last twenty years, the prior one was back in 2007 when we had to address a Hawaii Supreme Court ruling dealing with the Hawaii Super Ferry. And the one prior to that in 2001 was to address the economic fallout of the terrorist attacks, 9/11.

"So for these reasons, Mr. Speaker, I just ask that you reconsider these referrals, give the community more time to deliberate, to study, and to participate in the process. So my referral request would be, instead of Labor 'slash' Finance, Labor 'slash' Finance, Health 'slash' Finance, Labor 'slash' Finance, Judiciary 'slash' Finance, you would have a comma there,

Labor 'comma' Finance, Labor 'comma' Finance, Health 'comma' Finance, Labor 'comma' Finance, and Judiciary 'comma' Finance, and afford two whole days, or two separate days of public hearing on these important measures.

"Finally, Mr. Speaker, I thank you very much for this opportunity. Thank you."

Representative Jordan rose to speak in opposition to the Chair's ruling, stating:

"Thank you, Mr. Speaker. Yes, Mr. Speaker, I too am not here on my own recourse. We were asked to be here at the calling of our Governor. I too would like to hear more public participation. Now I've only been here, this is my third year, and I've always seen two hearings for such matters like these. I think we owe it to our community to allow them to attend one or two hearings of their choice. Currently, we are not allowing that for our community, especially our brothers and sisters from our HGEA bargaining units. They have waited a long time to settle that agreement, and they should have that opportunity at one or two of those hearings.

"I think it would be more beneficial for our members on those committees to hear these discussions. I too feel we should be showing as much consideration to our general public for their participation in these proceedings as much as we are going to be doing. So, Mr. Speaker, I please ask for your kindness and possibly re-referring these to single hearings. We are not going to be done by next week, we can be here for up to thirty days, and I don't feel the need or the rush to get these done by next week. I think we owe it to our constituents and should show them our good faith in public process and in the governmental process."

Representative McDermott rose to speak in opposition to the Chair's ruling, stating:

"Thank you, Mr. Speaker. As the author of House Bill 5, I have no objection to the delineated hearing process. In fact, I would like to echo the comments of the previous speakers. I think a more thoughtful, deliberative, transparent process would serve us all well with regard to that. In fact, it's my understanding that we're waiting on the Senate for them to take action, so Judiciary will have some time between now and then, and if they need help, my office stands ready to assist.

"With regard to HGEA Unit 13, I've introduced similar legislation, although it didn't get a referral, but it's almost a mirror image of this and I called for it last week. The data was so sketchy on it, we couldn't even get the figures until we had a copy from your bill. So there wasn't a lot of information out there on that measure, and certainly an issue as complex and financially impactful upon our state, we should have the opportunity to thoroughly and deliberatively discuss it and look at every detail. We're here, we might as well roll up our sleeves and get to work and really go to town and really peel back the layers of the onion on each of these measures. So I have no objections, in fact, I would support the request that was made. Thank you, sir."

Representative Saiki rose to speak in support of the Chair's ruling, stating:

"Mr. Speaker, I stand in favor of the Chair's ruling with some brief comments. First, I'd like to note that the referrals for these five measures were made with the concurrence of the subject matter chairs. No subject matter chairs were left out of the public hearing process. So both committees will have ample opportunity to vet these measures.

"Second, I'd like to note that with respect to the collective bargaining bills, and there are three collective bargaining bills that are on this referral sheet, that the law basically states that if we do not approve these agreements in this special session, then they will be deemed to be rejected. If these measures are rejected, then that means that the respective unions will have to go back to the bargaining table with the administration to come up with new proposals for next year. I'm not sure if we want to impede any of the agreements that have already been agreed to preliminarily by the unions and the administration.

"I'd also like to note that we have followed, in some respects, the custom and practice of prior special sessions where measures have been jointly referred to committees for public hearing purposes. This is no different, and in fact this referral is better because as I just noted, all of the appropriate subject matter chairs have been included in these referrals. So for these reasons, I support the Chair's ruling. Thank you."

Representative Fale rose, stating:

"Mr. Speaker, just a few comments. I just went online to try and find the measures that are being discussed today, and I wasn't able to find them online, which means that we have a serious issue with the public for the opportunity that they have to look at this. One of our great assistants from the IT department just showed me where you actually go to, to get it online. But for us here, the general public doesn't have somebody to ask, which corner do I need to look in for this measure. That just speaks to the public's opportunity to participate in this process.

"After discussion is done, and at the appropriate time, I'd like to ask for a roll call vote."

At this time, Representative Fale requested a roll call vote.

Representative Har rose to speak in opposition to the Chair's ruling, stating:

"Thank you Mr. Speaker, in support of the appeal of the Chair's ruling. Mr. Speaker, first of all, a brief rebuttal. The Majority Leader talked about rejection of these bills. That's not the issue here, the issue is about process. This is about the democratic process that we all swore to uphold. The fact of the matter is this, the Governor has called us back into a special session. We should give the public ample process that they are entitled to. That's all that we're talking about. Nobody is talking about rejecting or approving these bills, this is simply a matter of the process.

"When we talk about custom and practice, again, I think we can really clearly distinguish the situation in 2007 versus this situation. We are going to be dealing with the most contentious social issue of our time, and to include as much of the public is our duty. So we should, in fact, try to have as many hearings as possible, and not just try to rush out of special session because it's uncomfortable. Thank you, Mr. Speaker."

Representative Ing rose to speak in support of the Chair's ruling, stating:

"Mr. Speaker, I rise in favor of the Chair's ruling. Our Representative from Wahiawa mentioned the importance of public input and transparency. I completely agree, I think in any bill the utmost opportunity for public input is imperative, but especially for issues as divisive and important to the future of fairness and equality in Hawaii as is House Bill 5. So for that reason I really want to try to solicit as much public input as possible.

"I find it difficult, I'm a freshman and I don't really know the processes, as some of you might, as thoroughly, or the history of bills, but I do recognize that in my bills that I tried to get passed last session, and in most bills, people that don't usually give public testimony, these are the people we want to reach out to and make sure they have a voice. They have a hard time, as the Representative from Laie mentioned, knowing exactly where the committee hearings are and when to give testimony and how to submit them. So the more hearings that are necessary for a bill, the more chances the bill has to die, and second, the more opportunity is lost.

"It's very difficult to get someone to give testimony in two committees, or three committees, let alone one. I do recognize that when we had the PLDC hearings, there was a joint hearing and we had hundreds and hundreds of testifiers. People often speak on financial matters in a subject matter hearing, which is, I guess, not how the process is supposed to go. Again, I'm a freshman, I don't know the exact procedures. People speak of subject matter in finance hearings.

"In a joint committee, people in the public who aren't lobbyists can come in and speak on any matter of the bill, and it'll be relevant. For me, that's maximizing public input. We've seen it in PLDC. I think with a joint committee hearing, actually ironically we'll be seeing more public input.

That's a pattern I've picked up on so far and I think it'll probably hold for HB 5. Thank you."

Representative Ward rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, I rise in opposition to the Speaker's ruling. Mr. Speaker, earlier I had the opportunity to introduce a U.S. State Department diplomat from Ukraine, I think she's still here, Nadiya Pashkova. One of the comments she made when she first came here within the first week of her observation is the meeting she had with various lobbyists and people. She said, 'this thing is so open, there's such accessibility, there is so much open air democracy and transparency.' Basically we just had our door open and people would walk in and they would talk to me. In Ukraine you can't even get close to the Representatives.

"In this instance, Mr. Speaker, we're saying, don't get close, we want to lock you into two hearings, and I think for the sake of transparency and openness, let's let the people be heard. We have 45 days, contrary to what was earlier said, there's 45 days that we have to get in and get out of here according to our constitution. Mr. Speaker, there shouldn't be a rush, there should be a deliberative process. We should be able to stand and give the people an opportunity to weigh in on any and all these issues. So please, I would say, let the people decide, let the people be heard. Thank you."

Representative Belatti rose to speak in support of the Chair's ruling, stating:

"Thank you, Mr. Speaker. I'm standing in support of the Chair's ruling and the current referrals as they are presented on the committee referral sheet. Mr. Speaker, I just want to add my concurrence with the Majority Leader's comments that these referrals were made with the subject matter committee chairs. I would also like to note that as soon as the Governor's message was presented to us, and even before that, members of the Health Committee were engaged in discussions with HHSC to understand what the financial situation is, and that the Governor's message crystalized something that we have known has been a problem.

"So there has been ample time, I believe, for members of the Health Committee to take a look at what the request is from the Governor's office, and that the Governor's emergency appropriation request was posted the day that it was sent down to the House. So I think in that sense, there is and was enough time, and I have the confidence, the full faith and confidence in the committee members of both Health and Finance to be able to handle this matter expeditiously and with efficiency, and an eye towards preserving our public resources as we engage in this special session.

"On the larger matter of need for ample process with respect to House Bill 5 and the subject matter that we are taking up there, just generally throughout this special session. The Governor's call for special session came over a month ago. We have been debating the content of those bills. So I think that this is ample time, we have had ample time, and I'm looking forward to the rest of this special session. Thank you, Mr. Speaker."

Representative Tokioka rose, stating:

"Thank you, Mr. Speaker. I rise on a point of clarification. Mr. Speaker, I'd like to ask you as the Chair, if you would consider a friendly request, and that would be to the Representative from Wahiawa's motion to vote for the bills 1 through 5 separately."

The Chair then stated:

"Thank you very much, that's one way of having a discussion. The Chair has made his referral, so you shall vote on it or not."

Representative Tokioka: "So you would not entertain a motion to vote separately?"

Speaker Souki: "There is a motion to appeal presently."

Representative Tokioka: "I understand that."

Representative Evans rose to speak in support of the Chair's ruling, stating:

"Thank you, Mr. Speaker. I rise in opposition to the appeal, and in support of the current referrals which are joint hearings. Mr. Speaker, we're talking about process here, and I think this last session really showed all of us all these decisions on how we make referrals. The PLDC, Public Land Development Corporation, as the head of that joint hearing, it was very thoughtful. We talked with the other chairs, we talked about what would be best for the public, we talked about how we had to involve people from all of our neighbor islands, flying in, how very expensive it was. It's unfortunate, but we are an island state. It's extremely inconvenient for people to fly in, to drive in, to the State Capitol.

"We felt that having a joint hearing was very respectful to them so that each committee member, and I want to emphasize that, we hope every committee member will be at the hearing, and they collectively will hear from that individual how they feel strongly about the merits of the bill. One way or another, they can talk about the language. I think this gives them a great opportunity to express themselves.

"If you break this up into two hearings, you are actually, I think, causing some problems for a lot of people who cannot get to the State Capitol. The other thing about this session which is different from our last session is that we're getting publicity on just the bills. Fortunately there's just a few, so everybody, all the newspapers, everybody that hears the day, it will be covered in the newspaper. We do not get that kind of coverage on all those, what, 1,700 bills in the House, 1,400 bills in the Senate. We don't get that kind of coverage on bills. We are getting coverage on this bill.

"There will be plenty of time for people to see this discussion and to weigh in. I'm hoping that everybody writes emails and makes phone calls, and I'm hoping that the newspapers today make sure that the coverage is total. This is very special, this special session, and we should get coverage for this, and we should get public input. But I like the way we've done the referrals. I think the chairs have met with leadership, I think there's been a decision collectively that this is the right way to go. I support the current referral. Thank you."

Representative Oshiro rose to respond, stating:

"Mr. Speaker, second and last time. Mr. Speaker, thank you very much. Just a couple of things. I'm speaking in favor of the bills itself, I want to see the collective bargaining contracts ratified by this Body and approved and funded. Again, that's very important. I think it is fair and part of the process. Let's make sure that's clear on the record. Perhaps this might be the best time to make a request for a ruling on a possible conflict."

Representative Oshiro then declared a potential conflict of interest, stating:

"The question I have right now with the possibility of a conflict is that I'm a card-carrying member of AFSCME," and the Chair ruled, "no conflict."

Representative Oshiro continued, stating:

"Thank you. Finally, Mr. Speaker, I just want members to realize that this is all about the process of making sure the community has the right to participate in their democracy, and to participate meaningfully. You've pointed out several times in our discussion, we're not restricted to a five day session or a seven day session or a 10 day session, that we do in fact have up to 30 days or even 45 days, should there be a need to do it. So there is no rush to move these bills through as we seem to be doing. Thank you, Mr. Speaker."

Representative McDermott rose to respond, stating:

"Mr. Speaker, thank you. With regard to the referral process, I've heard many things said. If it's so wonderful then why isn't this the standard operating procedure moving forward through next session, number one. Number two, we're told that people had plenty of time to look at these, the committee chairs. Well as of this morning, until five minutes before

session, my bill, HB 5, didn't even have a referral. So now it does, so I'm hoping the committee chairs have had an opportunity to look at it.

"Second thing is, the HGEA cost contract, I support that, I called publicly for that to be passed last week. But the information on what the figures were, were still not available in detail from the Governor's office. It wasn't until this Wednesday that I actually got a copy of your bill from LRB that we could put in the appropriate numbers. So my bill's not on here, but nevertheless, it'll get done. So, there hasn't been enough thought, there hasn't been enough deliberative process, there hasn't been enough transparency. And because it's so compressed, let's not make a mistake. Thank you very much, Mr. Speaker."

At 11:29 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:31 o'clock a.m.

At this time, the Chair stated:

"There has been a call for roll call. So we are going to ask you to raise your hands. All those that are in favor of a roll call, please raise your hand."

The request for roll call was put to vote by the Chair and upon a show of hands, the request was granted.

The Chair then stated:

"Members, there has been an appeal of the ruling of the Chair. A vote in favor, 'aye' will be to support the current referral. A vote of 'no' will be against the current referral."

Roll call having been approved, the request to appeal the ruling of the Chair was put to vote by the Chair, and on the following show of ayes and noes, the ruling of the Chair was sustained:

Ayes, 34: Aquino, Belatti, Brower, Cabanilla, Cachola, Coffman, Cullen, Evans, Hanohano, Hashem, Ichiyama, Ing, Ito, Kawakami, Kobayashi, Lee, Luke, McKelvey, Mizuno, Morikawa, Nishimoto, Ohno, Onishi, Rhoads, Saiki, Say, Souki, Takai, Takayama, Takumi, Thielen, Woodson, Wooley and Yamashita.

Noes, 13: Awana, Carroll, Fale, Fukumoto, Har, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Tokioka, Tsuji and Ward.

Excused, 4: Choy, Lowen, Nakashima and Yamane.

Representative Ward rose, stating:

"Mr. Speaker, point of parliamentary inquiry. There's one resolution that's conspicuously absent. May I ask where is the resolution that the appointed due Representative from Waipahu as Floor Leader, who is now occupying that seat."

The Chair then stated:

"That resolution will be on the deck tomorrow morning."

Representative Ward: "Tomorrow morning. Thank you, Mr. Speaker."

ANNOUNCEMENTS

Representative Belatti: "Mr. Speaker, the House Committees on Health and Finance will be holding a public hearing on House Bill Number 3 today at 1:30 p.m. in Room 309 with decision-making to follow. Public notification in anticipation of this joint hearing was posted and distributed on Wednesday, October 23rd. In addition, the bill was made available for inspection and review on that same date. Thank you."

Representative Hashem: "Mr. Speaker, the House Committees on Labor and Public Employment and Finance will be holding a public hearing on House Bill Numbers 1 and 2 today at 1:00 p.m. in Room 309, decision-making to follow. Public notification in anticipation of this joint hearing was posted and distributed on Wednesday, October 23rd."

Representative Ward: "Mr. Speaker, earlier in a speech I referred to a survey done by Hawaii Family Advocates that indicated that 70 percent of the people wanted them, not us, to decide the issue. If you doubt any of the statistics or the relevance of that, I invite everybody to come at 4:00 to the rally to see if the people really want to decide. Thank you."

ADJOURNMENT

At 11:38 o'clock a.m., on motion by Representative Saiki, seconded by Representative Johanson and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Tuesday, October 29, 2013. (Representatives Choy, Lowen, Nakashima and Yamane were excused.)

OTHER COMMUNICATIONS

"MEMORANDUM

TO: Speaker Joseph M. Souki
FROM: Rep. Lauren Kealohilani Matsumoto
DATE: 08/09/2013
RE: Notification of Name Change

Aloha Speaker Souki,

This is to advise you that my legal name has changed from *Lauren Kealohilani Cheape* to *Lauren Kealohilani Matsumoto* because of my recent marriage. I will be using *Lauren Kealohilani Matsumoto* for Legislative purposes from this point forward.

Should you have questions, please contact me at your convenience. Thank you for your time.

Cc: Chief Clerk
House Sergeant At Arms"

SECOND DAY

Tuesday, October 29, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:10 o'clock a.m., with Speaker Souki presiding.

The invocation was delivered by Representative Justin H. Woodson, after which the Roll was called showing all Members present with the exception of Representatives Carroll, Choy, Kobayashi, Nakashima and Yamane, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the First Day was deferred.

INTRODUCTIONS

The following introduction was made to the Members of the House:

Representative Oshiro introduced his former teacher, Ms. Sally Waitt.

ORDER OF THE DAY

REPORTS OF STANDING COMMITTEES

Representatives Nakashima and Luke, for the Committee on Labor & Public Employment and the Committee on Finance, presented a report (Stand. Com. Rep. No. 1) recommending that H.B. No. 1 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Representative Saiki, seconded by Representative Mizuno and carried, the report of the Committees was adopted and H.B. No. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," passed Second Reading and was placed on the calendar for Third Reading, with Representatives Carroll, Choy, Kobayashi, Nakashima and Yamane being excused.

Representatives Nakashima and Luke, for the Committee on Labor & Public Employment and the Committee on Finance, presented a report (Stand. Com. Rep. No. 2) recommending that H.B. No. 2 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Representative Saiki, seconded by Representative Mizuno and carried, the report of the Committees was adopted and H.B. No. 2, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," passed Second Reading and was placed on the calendar for Third Reading, with Representatives Carroll, Choy, Kobayashi, Nakashima and Yamane being excused.

Representatives Belatti and Luke, for the Committee on Health and the Committee on Finance, presented a report (Stand. Com. Rep. No. 3) recommending that H.B. No. 3, as amended in HD 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Representative Saiki, seconded by Representative Mizuno and carried, the report of the Committees was adopted and H.B. No. 3, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION," passed Second Reading and was placed on the calendar for Third Reading, with Representatives Carroll, Choy, Kobayashi, Nakashima and Yamane being excused.

INTRODUCTION OF BILLS

On motion by Representative Saiki, seconded by Representative Johanson and carried, the following bills (H.B. Nos. 6 through 12) passed First Reading by title and were referred to Printing: (Representatives Carroll, Choy, Kobayashi, Nakashima and Yamane were excused.)

H. B. Nos.

6 "A BILL FOR AN ACT RELATING TO CIVIL LIBERTIES."

Introduced by: Representative Jordan.

7 "A BILL FOR AN ACT RELATING TO PERSONAL RELATIONSHIPS."

Introduced by: Representatives McKelvey, Carroll, Evans and Kawakami.

8 "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO DEFINE MARRIAGE AS THE LAWFUL UNION OF ONE MAN AND ONE WOMAN."

Introduced by: Representative Fale.

9 "A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF EDUCATION'S SCHOOL FOOD SERVICES PROGRAM."

Introduced by: Representative Fale.

10 "A BILL FOR AN ACT RELATING TO CAPITAL IMPROVEMENT PROJECTS FOR THE BENEFIT OF THE DEPARTMENT OF EDUCATION."

Introduced by: Representative Har.

11 "A BILL FOR AN ACT RELATING TO SEXUALITY HEALTH EDUCATION."

Introduced by: Representatives Ward, Fale, Fukumoto and McDermott.

12 "A BILL FOR AN ACT RELATING TO RELIGIOUS LIBERTY."

Introduced by: Representatives Ward, Fale, Fukumoto and McDermott.

INTRODUCTION OF RESOLUTIONS

The following resolution (H.R. No. 1) was announced by the Clerk and the following action taken:

H.R. No. 1, entitled: "HOUSE RESOLUTION RELATING TO THE CAUCUS LEADERS AND THE COMMITTEE ASSIGNMENTS OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was jointly offered by Representatives Souki and Saiki.

Representative Saiki moved that H.R. No. 1 be adopted, seconded by Representative Johanson.

At 10:18 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:58 o'clock a.m.

The motion was put to vote by the Chair and carried, and H.R. No. 1 was adopted, with Representatives Choy, Nakashima, Tokioka and Yamane being excused.

At 11:59 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:02 o'clock p.m.

At this time, the Chair stated:

"In respect to House Resolutions 2, 3 and 4, we are going to defer that for one day."

The following resolutions (H.R. Nos. 2 through 5) were announced by the Clerk and the following action taken:

H.R. No. 2, entitled: "HOUSE RESOLUTION RELATING TO THE COMMITTEE ASSIGNMENTS OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was offered by Representative McDermott.

By unanimous consent, action was deferred one legislative day.

H.R. No. 3, entitled: "HOUSE RESOLUTION RELATING TO THE COMMITTEE ASSIGNMENTS OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was offered by Representative McDermott.

By unanimous consent, action was deferred one legislative day.

H.R. No. 4, entitled: "HOUSE RESOLUTION RELATING TO THE BIPARTISAN COALITION OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was offered by Representative McDermott.

By unanimous consent, action was deferred one legislative day.

H.R. No. 5, entitled: "HOUSE RESOLUTION RELATING TO MINORITY LEADERSHIP AND COMMITTEE ASSIGNMENTS OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was offered by Representative McDermott.

Representative McDermott moved that H.R. No. 5 be adopted, seconded by Representative Fale.

Representative McDermott rose to speak in support of the measure, stating:

"Mr. Speaker, I stand in strong support of this resolution. It is a difficult thing for me to do. But the truth, Mr. Speaker, the truth, if we embrace the truth, we never can go wrong.

"I've got a lot of friends on the other side of the aisle, and they're friends with me, Mr. Speaker, as you are and the Speaker Emeritus, because we know where each other stands. I'm not slithering around in back rooms or trying to make deals. I'm bold and up front with you and not trying to play any games. Not Machiavellian strategy or any nonsense like that. What I tell my constituents is what I tell you down here. I'm their employee, I work for them.

"I believe this relationship before us has not been good for the majority, has not been good for the minority. The natural Yin and Yang, the pull, the tug of democracy that keeps both sides honest, has been missing this session.

"Mr. Speaker, I'd like you to tell me what the Minority Caucus stands for, because I don't know. It's very problematic, we're worried about the scraps that fall from the Majority Leader's table instead of our constituents and the public at large. That's not what I want to be a part of. I want no ownership of this special session.

"Mr. Speaker, I was sold to become a member of this coalition based on transparency, deliberative process, open government, the things that people were criticizing the fellow behind me for, for 13 years. Said, 'this is what we need, this is what we need.' Okay, okay, I'm in, I'm in. But hey, I don't want to see same-sex marriage. 'Well, I don't think it's going to come up, I don't think it's going to come up.' That's the best we can get, that's the best we can get.

"First paragraph of the resolution, 'Whereas, the leadership coalition between the Majority and Minority Caucuses of the House of Representatives has failed to operate with transparency.' Mr. Speaker, the majority has a policy role. The minority has a policy role. But when we organized, one-third of the votes that gave you the gavel, came from this side. So we're part of the governing coalition, not the policy coalition, but the governing coalition. Fair enough, fair enough.

"Majority had a policy discussion, 'not going to have a special session.' Then a senior member of the majority leadership went to the Governor and told him to call the special session, just call it, 'we've got the votes there.' Didn't come see me, didn't come see our caucus. And we're part of the governing coalition that gave you the gavel, that gave you the Speakership. We weren't even consulted. I find that offensive. The constituents find it offensive, the folks that were out here yesterday, the thousands of them, find it offensive. The thousands who couldn't testify on the Senate side find it offensive. Hasn't been good for you, hasn't been good for us.

"Now as we address an issue of major societal change that's going to affect everything from the fifth-grade health class on up, we're rushing it through."

The Chair addressed Representative McDermott, stating:

"Representative, will you please speak to the resolution."

Representative McDermott: "I am, Mr. Speaker, deliberative process. I'm giving an example where it's not deliberative process."

Speaker Souki: "I'm going to have to question you again, speak on the resolution."

Representative McDermott continued, stating:

"Institute a forthright, deliberative process. Institute a forthright deliberative process. Forthright deliberative process, that's what I was sold. That's not what I'm getting, that's not what the public is getting, and I want to wash my hands of it.

"This whole arrangement has destroyed the Minority Caucus. Of course, right now I'm the most hated man in there. Fine, I can live with that, it's happened before, some of my old colleagues remember me sitting out here by myself. That's okay, because if you follow the truth, the truth, Mr. Speaker. This hasn't been forthright, it hasn't been deliberative, it hasn't been transparent. All the behind-the-scenes slithering, I don't like it, I'm not part of it."

The Chair addressed Representative McDermott, stating:

"So what is the essence of the resolution, please?"

Representative McDermott continued, stating:

"The essence of the resolution is, I'd like the governing coalition to be dissolved. I want us to give back the vice chairmanships to the majority. You can have them, they've polluted us. They've clouded our vision on what it means to provide a good Yin and Yang, a tug and a pull in a democratic process.

"I'd ask all items in the resolution be approved. Your minority is divided right now, and that's the truth."

Representative Johanson rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I speak in opposition to House Resolution 5. Before I begin with my opposition, I want to state that I fundamentally am not coming from a place of anger, I'm not coming from a place of resentment, I'm coming from a place of just trying to do what I think is right. And I think that's what each of us feel called to do, which is why we're all led to this Body.

"With respect to HR 5, the good Representative from Ewa Beach and I both oppose same-sex marriage, but we disagree on the best tactic, the best tone, and the best methods to employ to oppose this issue. Removing the good Representative from Kailua from the Judiciary Committee is not the only way to kill the bill.

"Hawaii Republicans have long valued the freedom to disagree respectfully. That respect should be given to each and every member. I opposed the special session because I think it denies people who disagree on this issue the opportunity to fully participate in the democratic process. Similarly, I oppose removing the good Representative from Kailua from the House Judiciary Committee against her will, because it denies her a say on a committee that she has served on honorably for years, simply because she disagrees with me and other members of the Minority Caucus.

"I think that good people can, and often do, disagree, but that doesn't necessarily have to divide us. It often does, because that's what's easiest.

"I too oppose same-sex marriage, but respectfully and wholeheartedly disagree with some of the comments previously made by the previous speaker. I don't believe that just giving up any official role within the House of Representatives is the best way to further our policy goals. This counterproductive strategy sends the wrong and untrue message, that when Republicans don't get exactly what we want, we cannot work with people in good faith and in a constructive manner, to achieve our objectives.

"I think that is also what the people at large are crying for. I believe that while we may disagree on many issues, as Republicans and Democrats, as the majority and the minority, I do believe that in earnest, the majority has kept its commitments and it has operated with integrity, despite the fact that I disagree with many in the majority on this issue.

"But I do think that just because we disagree, does not mean that we should be divided. This resolution, I think some have felt may be personal for me. I certainly am mentioned in it, but I respect the right of people who disagree with me, to disagree with my leadership. But I think we must consider it, in all of its totality, and I think the public is asking for people who disagree to be able to work together, without impugning each other's motives, and without casting aspersions. I think that's all too often the problem in modern American politics. And I'm glad that as difficult as it is for the majority, and as difficult as it obviously is for the minority, that we are trying to work through that, for the people for Hawaii, and for better government. Thank you very much."

Representative Thielen rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I'm rising to speak against the measure. Thank you. Mr. Speaker, I joined the Republican Party in the 1950's, and you can remember back to that period of time, although some of our colleagues can't. That was after Teddy Roosevelt, Republican President Teddy Roosevelt, had established the National Park System. One of the best environmentalists in our country's history. Then we fast forward to the 1970's. Conservative Republican Senator Barry Goldwater, his statement in support of gays in the military, I don't care if they're straight, I just care if they can shoot straight. That's way before President Clinton did the much downplayed, Don't Ask, Don't Tell.

"Those were Republican heroes that I respect. My feeling as a Republican, I believe that the mainstream Republican voice should be heard. I support marriage equality. I may be the sole Republican in our Minority Caucus that does, but I can guarantee you, I'm not the sole Republican in our community that supports marriage equality.

"We need the diverse voice. It doesn't need to be muzzled, Mr. Speaker, by taking me off of the Judiciary Committee. I've been told, 'go join the Democrat Party.' And with all due respect, Mr. Speaker, I prefer to stay here and fight to bring us back to the mainstream where we truly can represent the public, and not just be a fringe element looked at as social conservatives before everything else. I believe that some of these social conservatives have done more damage to our party than the Democrats have tried to do.

"Mr. Speaker, I refuse to step down. This Body may vote me off of Judiciary, but I refuse to step down from that committee. It would have to be by the vote of the majority. And I would ask the majority, all of you, to have tolerance for a Republican, who is a mainstream Republican, and who believes in marriage equality for all. Thank you."

Representative Oshiro rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of this resolution. A couple of points I think need to be made. We're not talking about any particular bill or measure before us. I think members need to understand that we need to read the rules.

"But it's a proper motion, Mr. Speaker, as you all might realize. In rule 11.2, 'The composition of the standing committee shall be as follows: The membership of each standing committee, including the designation of the chair and vice-chair shall be provided for by resolution, provided, however, that the composition of the committee shall be on a proportional basis with the members of the majority party,' the Democrats in this case, 'designating the chair, vice-chair, and majority party members, and the members of the minority party designating the minority party members.'

"So my understanding of the current composition of Judiciary Committee is of 13 members, and there are two slots for the Republicans, pursuant to the proportionality rule that we have in place. One member is Representative Thielen, the other member is Representative Bob McDermott.

"It's certainly within their prerogative, Mr. Speaker, to choose and select who they wish to represent their caucus, their philosophy, their party affiliation upon that committee. That's their choice, and I'll honor that choice, Mr. Speaker.

"Furthermore, Mr. Speaker, regarding the leadership. I cite part one, organizing the House, Rule 1.6. 'The Majority Leader, the Majority Floor Leader, the Minority Leader, the Minority Floor Leader, Whips, and Assistant Leaders and Assistant Floor Leaders as the House members of the majority and minority parties may select shall hold office during the term for which they were elected to the House, unless sooner removed by their respective parties.'

"Again, we are simply deferring to the will of the respective parties in this case, respective caucuses in this case. This is a well-placed resolution for the Republican Caucus.

"But I'm awfully excited, Mr. Speaker, about some other terms in this Resolution Number 5. It's one that would give the Vice Chair of the Finance Committee, right now held by Aaron Ling Johanson, and the Vice Chair of Economic Development & Business Committee, and also the Vice Chair of the Energy & Environmental Protection Committee, these committee chairs, all vice chairs, according to this rule here will then resort again to the designation by the Majority Caucus, as provided for in the rules. I really think that's a great idea. Thank you, Mr. Speaker."

Representative Jordan rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I too am speaking in support of this resolution. Earlier this year in our session, 2013, I voted 'no' on HR 4. And that was the resolution that assigned all the leaders to chairmanships and vice chairmanships. So, Mr. Speaker, in keeping with my same consistency, I will be supporting this measure, as requested by our members over here. Thank you very much, Mr. Speaker."

Representative Ward rose, stating:

"Mr. Speaker, I rise with two comments. The first comment is, on lines 15 to 21, I had no knowledge my name was being put in as leadership, nor did I approve of that. But I will tell you, Mr. Speaker, I will tell this Body what I told my caucus. 'I will not Souki you, Aaron Johanson.' With all due respect, that's exactly what I said.

"Second comment, Mr. Speaker, is this. This resolution, this time in our history, this time on this Floor, is symptomatic if not prophetic of what

we're going to do to the State of Hawaii. Your caucus is divided, my caucus is divided, and the people are divided. They're going to look upon this and say, 'what are you guys doing, you guys can't make up your mind.' This is a very divisive issue which has hurt you, hurt us, and it's going to hurt the people of Hawaii.

"The faith community is divided between the gay community and the faith community. Those people who are teachers, who fear they're going to have to teach this stuff, are divided."

The Chair addressed Representative Ward, stating:

"Alright, please maintain and speak on the resolution."

Representative Ward continued, stating:

"My second point is divisiveness, Mr. Speaker. You've heard it, you've heard the vitriol, you've heard what a good Republican is, what a bad Republican is. I'm saying we're the people of Hawaii and our job is governance, to keep unity. Leadership is keeping unity as you keep your eye on the goal. Mr. Speaker, you know as some of the members from the majority said, that 'by rights, this resolution should decide who is the leadership. By rights, who's on the committee.' Let us not be deceitful. You have switched out Representative Cabanilla, who is a 'no' vote on same-sex marriage, with Denny Coffman, who is a 'yes' on same-sex marriage. Now who's being deceitful by switching Representatives?"

At this time, the Chair addressed Representative Ward, stating:

"Representative, I'm going to call you out of order. You're out of order, sit down please."

Representative Ward: "Thank you very much, you want me to walk off, you want the Sergeant-of-Arms to come and take me off? I want to say my piece. I want a reprieve, I want to finish my speech."

Speaker Souki: "Sergeant-at-Arms..."

At 12:21 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:23 o'clock p.m.

Representative Ward continued, stating:

"Mr. Speaker, thank you for your indulgence, your tolerance, and not calling me out on what my vote will be before I speak."

The Chair then stated:

"Yes, I should have. Please state your vote."

Representative Ward: "*Kanalua*."

Representative McDermott rose to respond, stating:

"Mr. Speaker, second time, I believe I have three minutes. Mr. Speaker, again I speak cloaked in the truth. Not sophisticated, not Machiavellian, just the truth. The dysfunction that is appearing before you today has boiled over onto the House Floor.

"You heard my Minority Leader speak. That's the most he's said all session, Mr. Speaker. The only time I think I've heard him speak. And it was to save his own hide. We've got a problem, Mr. Speaker."

Representative Evans rose to a point of order, stating:

"Mr. Speaker, point of order. Isn't it against the rules to imply what another Representative's intentions are? Thank you."

The Chair then stated:

"It certainly is. Please proceed."

Representative McDermott continued, stating:

"Mr. Speaker, we have a problem here. The problem is your Minority Caucus is divided, as the Representative from the 17th District said.

"Now there was some talk about mainstream Republicans and conservative radicals and all the rest. Mr. Speaker, I'm married to a Samoan, I've got eight kids, two pit bulls, and live in Old Ewa Beach. Now I don't know what that categorizes me as, but I'm here representing the people of my district the best way I can, with everything we have. This resolution before us will enable us to do that. Will give us direction and guidance, and provide the counterbalance, the didactic counterbalance that's required in a Majority – Minority Caucus relationship.

"We don't have that right now. We don't have that, Mr. Speaker. Nobody knows who's on what side, and everyone's scurrying in the shadows and begging for scraps from the Majority Leader's table, and I don't like that, Mr. Speaker. We've got a real problem, and it's boiled over onto the Floor.

"Mr. Speaker, titles don't make a leader. Leaders aren't, there are few born, but it's a skill, it's a craft, it's learned over time. And when a leader's lost the confidence of his troops, he should know that and should step aside and say, 'Okay, someone else take over. Whatever the problem is, I'm not the guy. I'm not the fix.'

"I have no personal interest in this, Mr. Speaker. I get nothing out of this. I'm doing what I think is right for our state, and our community, and our party. And others can disagree, Mr. Speaker, but nobody knows that what I'm saying today is not from my heart. It hasn't been overanalyzed. It's the truth. And I would encourage the majority members to pass this so they can get their vice committee chairmanships back and we can move onto business. Thank you."

Representative Lee rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition. I rise in opposition because I'm disappointed. I'm disappointed that certain members of the minority party would not want to work together. As politicians and as elected officials, we recognize that we are not ever going to be able to do everything we want. As Democrats, we're not going to get everything we want. As Republicans, we're not going to get everything that we want.

"That's why we work together. That's why we compromise. That's why we are here today, to come up with solutions that work for everybody. But to have extreme right members of one party say that we don't want to work together anymore because we don't get our way on one issue, is exactly the kind of partisan gridlock that has plagued Washington and has ground things to a halt. It has created division, and we cannot have that here, and so I'm just disappointed."

Representative Ward rose to a point of order, stating:

"Mr. Speaker, impugning motives of using the term 'extreme right' I think is offensive, and we were called out by the lady about the gentleman. I think that's an extreme comment."

Speaker Souki: "Please temper your remarks."

Representative Lee continued, stating:

"Sure, let me revise my remarks. Thank you. Instead of 'extreme right' let me say 'members of minority party.' And with that I'd like to finish. Thank you."

Representative Saiki rose to speak opposition to the measure, stating:

"Mr. Speaker, brief comments in opposition to this resolution. I just wanted to say that I have the utmost respect for the introducer of this measure. What I wanted to say was to reiterate something that you've told us from day one, which is that you have made a commitment to work with all Members of this House, regardless of partisan affiliation, regardless of

ideology, and that you believe that working together, we can advance our state. I know that you would want the members to know that you will continue to work with all of us to reach that objective. Thank you."

Representative Oshiro rose to respond, stating:

"Mr. Speaker, I just want to make sure that my thoughts and my comments for the record are clearly understood. I am not commenting upon the wisdom or lack thereof of the Republican Caucus to reorganize as they see fit, but I just want to underscore that the law or the rule that's at play here allows them to decide what they will do with their leadership team. It's their discretion, it's their decision alone. So it's a properly made motion for consideration by the entire Body, but ultimately pursuant to the rule, it's their decision alone to be made.

"Furthermore, Mr. Speaker, as a member of the Democratic, or Majority Caucus, I certainly welcome the ability to again have the authority that we already have in the rules, as a Majority Caucus, to go and appoint whomever we might have on those three committees. EEP, Finance, and Economic Development. So insofar as the Republican Caucus has this resolution before us, I think we should take it upon us to maybe bifurcate this resolution here, separate out the portion dealing with the Republican Caucus and their leadership and their organization, but through a friendly amendment, if that's acceptable, allow us to receive back the vice chairmanships and give you the authority, Mr. Speaker, to make the proper appointment at the proper time.

"Insofar, there are already several committees without full staffing of chair and vice chair, and even the idea of creating a new committee sometime in the future. So I just bring that to the Body, and especially to you, Mr. Speaker. Thank you."

At this time, Representative Saiki called for the previous question.

Representative Har rose, stating:

"Mr. Speaker, I understand that the question has been called, but Mr. Speaker, as you know, may I please be recognized."

The Chair then stated:

"The question has been called so I'm going to be asking for the vote."

Representative Har continued, stating:

"Mr. Speaker, I'd like to please note that again, as somebody who was a victim of a complaint, a baseless, frivolous complaint brought by the Democratic Party of the State of Hawaii, I am recognizing that this particular resolution, by voting up, does endanger some of the members in the Democratic Party. So, Mr. Speaker, I would reiterate the comments made by the speaker from Wahiawa, and consider breaking up this resolution. Thank you very much, Mr. Speaker."

The motion was put to vote by the Chair and upon a voice vote, failed to carry, and H.R. No. 5 was not adopted, with Representatives Johanson, Lee, Saiki and Thielen voting no, and with Representatives Choy, Fukumoto, Nakashima, Tokioka and Yamane being excused.

At 12:32 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:34 o'clock p.m.

By unanimous consent, the following resolutions (H.R. Nos. 6 and 7) were referred to Printing and further action was deferred:

H.R. No. 6, entitled: "HOUSE RESOLUTION REQUESTING THE UNITED STATES DEPARTMENT OF AGRICULTURE EXPAND THE INCOME ELIGIBILITY GUIDELINES OF CHILD NUTRITION PROGRAMS," was offered by Representative Fale.

H.R. No. 7, entitled: "HOUSE RESOLUTION URGING THE GOVERNOR TO GIVE PRIORITY TO CHILDREN IN POVERTY," was offered by Representative Fale.

ANNOUNCEMENTS

COMMITTEE ASSIGNMENTS

The following measures were referred to committee by the Speaker:

<u>H.B. Nos.</u>	<u>Referred to:</u>
6	Jointly to the Committee on Judiciary and the Committee on Finance
7	Jointly to the Committee on Judiciary and the Committee on Finance
8	Jointly to the Committee on Judiciary and the Committee on Finance
9	Jointly to the Committee on Education and the Committee on Finance
10	Jointly to the Committee on Education and the Committee on Finance
11	Jointly to the Committee on Education and the Committee on Finance
12	Jointly to the Committee on Judiciary and the Committee on Finance

<u>H.R. Nos.</u>	<u>Referred to:</u>
6	Jointly to the Committee on Education and the Committee on Finance
7	Jointly to the Committee on Human Services and the Committee on Finance

ADJOURNMENT

At 12:35 o'clock p.m., on motion by Representative Cabanilla, seconded by Representative Johanson and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Wednesday, October 30, 2013. (Representatives Choy, Fukumoto, Nakashima, Tokioka and Yamane were excused.)

THIRD DAY**Wednesday, October 30, 2013**

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:07 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Lauren Kealohilani Matsumoto, after which the Roll was called showing all Members present with the exception of Representatives Carroll, Choy, Nakashima and Yamane, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Second Day was deferred.

INTRODUCTIONS

The following introduction was made to the Members of the House:

Representative Matsumoto introduced her husband, Mr. Scott Matsumoto.

At 10:13 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:05 o'clock a.m.

ORDER OF THE DAY**UNFINISHED BUSINESS****H.R. No. 2:**

On motion by Representative McDermott, seconded by Representative Ward and carried, H.R. No. 2, entitled: "HOUSE RESOLUTION RELATING TO THE COMMITTEE ASSIGNMENTS OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was laid on the table, with Representatives Choy, Nakashima, Say and Yamane being excused.

H.R. No. 3:

On motion by Representative McDermott, seconded by Representative Ward and carried, H.R. No. 3, entitled: "HOUSE RESOLUTION RELATING TO THE COMMITTEE ASSIGNMENTS OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was laid on the table, with Representatives Choy, Nakashima, Say and Yamane being excused.

H.R. No. 4:

On motion by Representative McDermott, seconded by Representative Ward and carried, H.R. No. 4, entitled: "HOUSE RESOLUTION RELATING TO THE BIPARTISAN COALITION OF THE HOUSE OF REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE," was laid on the table, with Representatives Choy, Nakashima, Say and Yamane being excused.

SUSPENSION OF RULES

Representative McDermott moved to suspend the rules of the House to pull from committee H.B. No. 5, entitled: "A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO RESERVE MARRIAGE TO OPPOSITE-SEX COUPLES," seconded by Representative Ward.

Representative McDermott then stated:

"On this motion, at the appropriate time after all debate has been exhausted, I would like to request a roll call vote, at that time, on this motion which I assume is going to occur later in the day, for this matter, sir."

At this time, the Chair stated:

"Members, the Chair is going to respectfully defer the motion to suspend the rules to pull House Bill 5 on the Floor, to the end of the calendar. Thank you."

By unanimous consent, action was deferred to the end of the calendar.

On motion by Representative Cabanilla, seconded by Representative Fukumoto and carried, the rules were suspended for the purpose of considering certain House Bills for Third Reading by consent calendar. (Representatives Choy, Nakashima, Say and Yamane were excused.)

THIRD READING**H.B. No. 1:**

On motion by Representative Saiki, seconded by Representative Cabanilla and carried, H.B. No. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," passed Third Reading by a vote of 47 ayes, with Representatives Choy, Nakashima, Say and Yamane being excused.

H.B. No. 2:

On motion by Representative Saiki, seconded by Representative Cabanilla and carried, H.B. No. 2, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," passed Third Reading by a vote of 47 ayes, with Representatives Choy, Nakashima, Say and Yamane being excused.

At 11:08 o'clock a.m., the Chair noted that the following bills passed Third Reading:

H.B. No. 1
H.B. No. 2

At this time, the Chair stated:

"Members, we will be in recess until 2:00 p.m."

At 11:08 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 2:15 o'clock p.m., with Speaker Souki presiding.

At 2:15 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:32 o'clock p.m.

LATE INTRODUCTIONS

The following late introductions were made to the Members of the House:

Representative McDermott introduced Mr. Jim Hockberg, Mr. Garrett Hashimoto, Pastor Elwin Ahu of New Hope Metro, Pastor Greg and Mrs. Joan Hood of Life Church, Mr. Walter Yoshimitsu, Ms. Ewa Andrade from the LDS Church, and Mr. Todd Hargrove.

Representative Awana introduced Pastor Allen Cardines of Nanakuli Hope Chapel.

Representative Ohno introduced Pastor Elwin Ahu of New Hope Metro.

Representative Oshiro introduced Bishop Carl Harris and Mrs. Marsha Harris of Emmanuel Temple in Wahiawa.

Representative Fale introduced his constituents, Mr. Arthur Hanneman and Mr. Aaron Shumway.

Representative McDermott moved to recall H.B. No. 1004 from the Committee on Judiciary, seconded by Representative Ward.

Representative McDermott then stated:

"This is a bill that appropriately defines a marriage between a man and a woman, introduced by the Vice Speaker. At the appropriate time after debate is finished, because the constitution allows us to have debate on this motion, I would like a roll call vote at that time. Thank you, sir."

At 3:36 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:45 o'clock p.m.

At this time, the Chair ruled the previous motion out of order.

Representative McDermott moved to appeal the ruling of the Chair, seconded by Representative Ward.

Representative McDermott rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, with all due respect, I'd like to appeal the ruling of the chair and explain why.

"Mr. Speaker, I rise in support of the appeal. By the way, just so everyone knows, I'm very fond of you on a personal level. Sometimes they don't know that. I know I'm giving you some more gray hair, but that's okay.

"Mr. Speaker, we have convened this special session and I will admit my ignorance to some of the rules and procedures, but what occurred to me while I was sitting here is that we are not operating under any set standard House Rules, unless they were the House Rules that we came into session with.

"So I assumed that the same would be true for the pulling of bills and those things. The Majority Leader is right, he showed me in the constitution that, apparently it doesn't apply to this special session, the ability to pull a bill from committee. I exercised that tactic because I've been trying six ways from Sunday to get a vote on the constitutional amendment, and it seems to be bottled up in the committee and we can't get it out. And I would beg my democratic colleagues to take a vote on it and let the people decide. Thank you."

Representative Saiki rose to speak in support of the Chair's ruling, stating:

"Mr. Speaker, I rise in support of the Chair's ruling. I just have a couple of brief comments because the issue that is raised in this motion is addressed both in Mason's Parliamentary Practice as well as in our State Constitution.

"What Mason's tells us, which is the model for legislative procedure, is that there are various sources of legislative procedure, and they list them in order of precedence. The first category is procedure that is dictated through constitutional provisions. And that is exactly what we have here in Hawaii.

"In Article III, Section 15 of the Hawaii Constitution, there is a provision that states that bills, such as the one that is attempted to be recalled, cannot be recalled in a special session. And the reason for that, and I'll just read the language from the provision, which states, quote, 'Any bill pending at the final adjournment of a regular session in an odd-numbered year shall carry over with the same status to the next regular session.' Carryover of bills do not apply to a special session. Thank you."

Representative Ward rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, I support the appeal of the Chair's decision. Mr. Speaker, our constitution also says that all power rests with the people of Hawaii. Mr. Speaker, this is the ideal opportunity to let this process go back to the people, of which I've cited a poll by Hawaii Family Advocates, 70% of the people think this is their issue and their vote. KITV, who may be here today, has a poll that has 67% of the people..."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order..."

The Chair addressed Representative Ward, stating:

"Representative, you're out of order, please stick to the appeal."

Representative Ward: "I thought you were the Speaker, sir, not him."

Speaker Souki: "No, he's calling you out of order and I concur."

Representative Ward: "Well you can call me out of order. This is déjà vu."

Speaker Souki: "You're out of order. I don't want to yell at you again, so I want to be very nice, I'll have somebody else yell at you."

Representative Ward continued, stating

"Like my good colleague from Ewa Beach, I'm very fond of you. So, stick to the motion. Because the motion is, let's mobilize the constitution that says, let's have all the power that's vested in the people actualized in a vote. That's all that the gentleman from Ewa Beach is asking for. And I was citing the good KITV station that verifies that now, with their survey, 67% of the people say they, the people, should be doing this, not we the people here. That's a fact, I'm not spinning anything, that's just fact."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order..."

Speaker Souki: "Representative, again you are out of order. I don't want to be calling the Sergeant-at-Arms again, this is such a déjà vu, would you please..."

Representative Ward: "Déjà vu all over again. That's basically all I wanted to say, this gives us an opportunity to really let the people decide. Thank you."

Representative Fale rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, I rise in support of the appeal of the Chair's decision. Mr. Speaker, I'm a farmer, I'm a soldier. I'm not sophisticated. They brought up a really big, thick book that showed, there's a bunch of fancy writing in there, Mr. Speaker.

"I'm just like the regular people here in the State of Hawaii, and the regular people here in the State of Hawaii have simply asked that they be allowed, for their voices to be heard. And I'm just trying to represent those people, Mr. Speaker, and I believe that the people of Hawaii would support this decision to allow, simply allowing us to do our jobs. They've gathered here in the Capitol in the thousands, simply to allow us to do our jobs.

"I believe that the opportunity that the good Representative from Ewa is asking for is just simply for us to do our jobs so that the regular people who don't understand big, thick books, who don't understand fancy rules, who don't understand the sophistication and intricacies of what it takes. The people here are gathered here and they say, 'is this what we gathered for here, so that people can wander around the Floor and hug each other and slap each other on back?'"

"They wanted to see us take action, Mr. Speaker, and the good Representative from Ewa's motion allows us to do the jobs that we were sent here to do. So for those reasons, I support the appeal."

At this time, the Chair stated:

"Alright, we'll take a vote. It should be known that an 'aye' is in support of the Chair's ruling, that the motion that was made by the Representative from Ewa is presently illegal, due to the fact that this is a special session and not a regular session, as stated in the constitution."

At 3:52 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:01 o'clock p.m.

Representative Saiki rose, stating:

"Mr. Speaker, I rise on a point of clarification. Because I'm actually very confused, I wanted to see if I could explain it to myself.

"We are deciding an appeal by the Representative from Ewa Beach. The appeal is on the Chair's ruling that his motion to recall is out of order. So therefore, the question posed to the members will be whether or not they support the Chair's ruling that the motion was out of order. A 'yes' vote is in support of the Chair's ruling. Thank you."

The motion to appeal the ruling of the Chair was put to vote by the Chair, and on a show of hands, the ruling of the Chair was sustained, with Representatives Fale, McDermott and Ward voting no, and with Representatives Choy and Say being excused.

SUPPLEMENTAL CALENDAR #1

SENATE COMMUNICATIONS

The following communication from the Senate (Sen. Com. No. 1) was received and announced by the Clerk:

Sen. Com. No. 1, transmitting S.B. No. 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," which passed Third Reading in the Senate on October 30, 2013.

Representative Cabanilla moved that S.B. No. 1 pass First Reading by title, seconded by Representative Thielen.

Representative Ward rose, stating:

"Mr. Speaker, point of order. Parliamentary order. Rule Number 733.3, paragraph 3 says that you can speak on First Reading unless there's a law that says you cannot speak on First Reading. There's nothing in our rules that say you cannot speak on First Reading. Why are you muzzling us?"

The Chair then stated:

"You can appeal the ruling of the Chair if you wish."

Representative Ward: "Oh come on. It's in the rules. The rules say, Mason's rules, I got it right from him, 733.3."

Speaker Souki: "You can appeal the Chair's ruling if you wish. If not, you're out of order."

Representative Ward: "Mr. Speaker, we cannot appeal Mason's rulings, it's in the book."

At 4:04 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:18 o'clock p.m.

Representative Ward rose, stating:

"Thank you, Mr. Speaker. I know on Monday I spoke on First Reading and I was told that it was a mistake. So I will withdraw that, I guess you would call it opposition to speaking on First Reading, and then I would then move, Mr. Speaker, to Rule 46, for SB 1 to be indefinitely postponed."

At this time, Representative Ward moved that S.B. No. 1 be postponed indefinitely, seconded by Representative McDermott.

At 4:19 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:46 o'clock p.m.

At this time, the Chair ruled the previous motion out of order.

Representative Ward moved to appeal the ruling of the Chair, seconded by Representative McDermott.

Representative Ward rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, all I wanted to take was two minutes to say that the thing that the Senate passed over to us, which they made sound like it was the best thing since sliced bread, has some real holes in it. Two hours ago we could have been out of this, except we kept blocking the freedom of speech.

"So why I'm asking you to not stop the debate, is that on First Reading, the people of Hawaii need to know where some of us stand on this particular issue. The flaws in that bill are three, and there's three groups that are very much in jeopardy because of this bill.

"Number one, it hasn't been vetted according to what otherwise people would say in a five, six or seven day session is not sufficient. Number two, the survey is, as indicated earlier, 70% of the people wanted them to decide, and not us. And three, pastors, churches, teachers, professionals, are not protected by that bill.

"The point is, that bill puts in jeopardy one community, and another community, and another community. For example, the bill will say that pastors are able to be absolved from doing any solemnization. Well, what about celebration? What about having your church for a reception?"

The Chair addressed Representative Ward, stating:

"You are speaking on the content of the bill, and not on the motion to indefinitely postpone. This is limited debate, to why you are having this motion."

Representative Ward continued, stating:

"Because I wanted to know whether the bill covered baptisms and burials, if they refused those would they be covered? With teacher's refusal, would they be covered? With parents who want to object out of that. This is not imaginary and spooky, this is what's going to happen. But we have empirical evidence from Massachusetts, empirical evidence from Canada, that says when this happens, those things, because it is the law, Mr. Speaker, all this stuff follows."

The Chair addressed Representative Ward, stating:

"Representative, it's clear that you cannot debate on the First Reading, and you are, in fact, debating on the First Reading, and using a motion, that's basically not accepted, to get your point across. So therefore, I would ask you to..."

Representative Ward continued, stating:

"Okay, Mr. Speaker, let me wrap this up in 15 seconds. Having said that and not having the ability to speak on the Floor of a democracy, the greatest democracy in the history of the world, let me say this. That anybody who thinks this is a good bill, and if you vote for it you're helping the people of Hawaii, you're mistaken. If you want something to protect the people of Hawaii, this bill has got to be amended. Thank you, Mr. Speaker."

Representative McDermott rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, I also rise in support of my colleague in appealing the ruling of the Chair. Earlier today, when it was pointed out to me in black and white, the particular rule that we discussed earlier said, no Bob, you've got to read it literally. And I said, okay, and basically I admitted that on the Floor.

"Now it comes to us that, no, you don't read it literally, you infer things to the particular rule. You can't have it both ways, Mr. Speaker. Either you read it literally, or you can infer things.

"My good friend from Hawaii Kai made the motion to defer indefinitely this item in front of us, which is dripping with hubris and arrogance, in not letting the people decide. He made a motion to defer and we're told, well that's a motion to object. No it's not, it's a motion to defer. It's two different things. So his motion is to defer indefinitely, it's not objecting. He didn't say 'I object,' he didn't say anything else, he said 'a motion to defer'.

"So when it suits the purposes to read the rule literally, we do that, if we don't want to have any debate. When it suits the purposes to read the rule with a great deal of latitude, we read it that way. I can't operate under floating rules that are in flux. I need clear, clarion clear standards. If we're going to read it literally, that's fine, okay I know the rules. And I admitted to that earlier, hey ok he said it, there it is in black and white. I'm okay, I made a mistake, Mr. Speaker.

"But now we come in and the rules aren't black and white, it's an inference. And so for those of us who are trying to move this along and get some action on these measures, it's very frustrating because the rules of the debate keep changing, in my opinion. I see you're losing patience with me, so as my fondness for you, I will stop speaking, sir."

Representative Fale rose to speak in opposition to the Chair's ruling, stating:

"Mr. Speaker, I rise in support of the appeal. There's a number of issues that the good Representative from Hawaii Kai raised with the measure that came over to us from the Senate. Amongst those are the changing rules. The testimony that they went through, first it was two minutes, then they cut it down to one minute, then they said, okay all you other three or four thousand people who signed up to testify, you guys won't be able to testify, we're cutting off testimony."

The Chair addressed Representative Fale, stating:

"That was the Senate, please don't bring the Senate problems to us. Please proceed."

Representative Fale continued, stating:

"That's exactly why we should defer this bill indefinitely, because we shouldn't bring the problems of the Senate onto the people's House's Floor. And that's exactly what I'm saying. I agree with you 100 percent, let's not

bring the Senate's problem here to the House. And that's why, Mr. Speaker, I believe that this measure should be deferred indefinitely.

"I've played, just as the good Representative from Ewa talked about, I've played in rugby games, Mr. Speaker, where essentially our team was a sacrificial lamb that got obliterated by the eventual national champions. Even though we know that we are few, but somebody has to stand up and say what the people of Hawaii want, and that's what we few must do. And that's why it's great to have one of the few, the proud, and the one marine that we got over here, the good Representative from Ewa. But somebody's got to stand up and fight against what's going on here, Mr. Speaker. That's why I support the appeal."

Representative Ward rose, stating:

"Mr. Speaker, more of a question. A point of parliamentary inquiry. How does one, whether they're for or against the bill, express their view of this bill? For example, somebody wants to vote no. From what I heard during all of these recesses, there's no way to vote no on the bill. Is that correct or is that incorrect?"

The Chair then stated:

"You can vote no, it would be a voice vote between 'ayes' and 'nays' and you can say your 'nay' if you wish, and as loud as you want."

Representative Ward: "But I thought it was automatic, First Reading, and there was no..."

The Chair then stated:

"No, there is a vote, a voice vote. And I would advise the members, from both of the sides, to please read the rules in Mason's so that we can proceed orderly in this business.

"Alright members, I'm going to call for the vote, and the vote is to support the Speaker on his decision to rule that the motion is out of order to postpone Senate Bill 1 indefinitely. All those in favor of the Speaker's recommendation, please vote aye."

Representative Saiki rose to speak in support of the Chair's ruling, stating:

"Can I make brief comments in support of the Chair's ruling? I just want to explain why the Chair's ruling is correct.

"We need to look at Mason's, Section 733, Section 4 which reads as follows..."

Representative McDermott rose, stating:

"Mr. Speaker, objection, you've called for the vote, Mr. Speaker."

At 4:55 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:56 o'clock p.m.

Representative Saiki continued, stating:

"Mr. Speaker, I just wanted to explain why the Chair's ruling is correct. Mason's, Section 733, Section 4 reads as follows. 'When the rules require that all bills be referred to committee or make other like provisions, the introduction of a bill may not be objected to without first suspending the rules.'

"The bill that is at issue here is subject to this provision because our House Rules do require that bills be referred by the Speaker within four session days. So that rule, in our House Rules, is Rule 2.1, and that is what triggers Section 733.

"The gist of the motion, which is to postpone indefinitely, is considered to be an objection because the motion seeks to dispose of the measure permanently.

"I'd also like to address a point raised on the point of inquiry by the Representative from Hawaii Kai, whether members have an opportunity to vote no on this measure on First Reading. As you mentioned, Mr. Speaker, members may voice their no vote. I would also note in the past, members who have wished to not vote on a measure, may be excused from the Floor. That would apply in this situation as well on this vote.

"I'd also like to note that by virtue of these comments, that the record would reflect what the purpose was in being excused."

Representative Ward rose, stating:

"Mr. Speaker, point of query. If we have an audible no vote, how does that go in the Journal as a no vote? How do you record a no vote if it's just a shout from a group of people?"

The Chair then stated:

"It is a decision that the Speaker will make, and the Chairman will make a call on whether the motion passes or doesn't pass. And that's the way it has been done historically."

Representative Ward: "Mr. Speaker, as to one going on record as having voted, is my question. Not as to whether a yay wins or a no is not so allowed. But how does one know who's done which and when, that's the point."

Speaker Souki: "In the state and in this nation, the majority vote usually prevails, and always prevails. If the minority wished to prevail, they should take your advice and yell louder. So can we proceed with the vote."

Representative Oshiro rose to speak in opposition to the ruling of the Chair, stating:

"Thank you, Mr. Speaker. I'd like to thank the Majority Leader for clarifying the effect of this particular appeal and denial of the appeal. I think it's important, the motion to table a measure like this indefinitely, I believe does have the effect of killing the bill for this session. So I appreciate the Majority Leader for pointing that out.

"In light of that effect and consequence of this, I would have to support appealing the ruling of the Chair, Mr. Speaker, so that the proper record that we are making today, the public record of my vote on this particular bill, is reflected based upon the Majority Leader's comments. That to allow this particular appeal not to be denied would be to have the consequences of tabling indefinitely, or permanently tabling Senate Bill 1 from further discussion in this special session. So accordingly, Mr. Speaker, I need to agree with my colleagues to the right and support them on appealing the ruling of the Chair."

Representative Har rose to speak in opposition to the ruling of the Chair, stating:

"Thank you, Mr. Speaker. With all due respect to the Speaker's recommendation, I too will have to support the appeal, and I would like the comments of the speaker from Wahiawa entered into the Journal as if they were my own. Thank you, Mr. Speaker," and the Chair "so ordered." (By reference only.)

Representative Ward rose, stating:

"Can we have a roll call vote when it comes to the First Reading, please?"

The Chair then stated:

"Normally, on this measure here, it's down to raising the hands. They will raise the hand which has the same effect as the roll call vote."

The motion to appeal the ruling of the Chair was put to vote by the Chair, and on a show of hands, the ruling of the Chair was sustained, with Representatives Fale, Har, McDermott, Oshiro and Ward voting no, and with Representative Choy being excused.

Representative Fale rose, stating:

"Mr. Speaker, just real quick. Will that vote be reflected in the record? Individually, each individual vote?"

The Chair then stated:

"No, it won't be reflected in the record. It was just a count made, they didn't take the names down."

Representative Ward rose, stating:

"Point of inquiry, Mr. Speaker, point of parliamentary inquiry. How do we go on record voting against SB 1? That's the question."

The Chair then stated:

"You will have an opportunity on Second and Third Reading, when the bill comes up here."

Representative Ward: "So there's no way to vote no against this bill?"

Speaker Souki: "No, you don't vote no on First Reading. Thank you, Representative, thank you very much."

(Main Motion)

At 5:04 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:23 o'clock p.m.

At this time, the Chair stated:

"There has been a request for a roll call. Clerk, can you see if they have sufficient numbers for roll call? All those in favor of having a roll call, please raise your right hand."

The request for roll call was put to vote by the Chair and upon a show of hands, the request was denied. (Representatives Aquino, Awana, Belatti, Choy, Cullen, Fukumoto, Ito, Johanson, Jordan, Matsumoto, Oshiro, Tsuji, Ward, Woodson and Yamane were excused.)

Representative Har rose, stating:

"Mr. Speaker, respectfully, can you please have the clerk register a no vote for me, thank you."

Speaker Souki: "In this case, we cannot register the up or down vote. We cannot register votes."

The motion was put to vote by the Chair and carried, and S.B. No. 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," passed First Reading by title and further action was deferred. (Representatives Aquino, Awana, Belatti, Cachola, Choy, Cullen, Fale, Fukumoto, Har, Ito, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Tokioka, Tsuji, Ward, Woodson and Yamane were excused.)

At 5:24 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:25 o'clock p.m.

Representative Tokioka rose, stating:

"Mr. Speaker, point of clarification. On the previous vote, because there was some distraction, my question to you, Mr. Speaker, Mr. Chair is, how can we find out what members who were walking off the Floor at the time, how our vote was recorded."

The Chair then stated:

"I believe the vote that was counted was an aye. We had sufficient votes to pass Senate Bill 1 on First Reading, and I ruled that the bill passed, Senate Bill 1."

Representative Saiki rose, stating:

"Mr. Speaker, just a point of clarification. I'd just like to note that the Journal will reflect the members who were excused from the vote, and we're construing those excused members as voting no. Thank you."

Representative Ward rose, stating:

"Mr. Speaker, point of inquiry. Did you count the people who were off the Floor as part of the count, that would count towards the roll call."

Speaker Souki: "We counted the people that were present."

Representative Ward: "Counted the people that were present. So the amount that we needed was..."

Speaker Souki: "Was insufficient."

Representative Ward: "But Mr. Speaker, you told me, I don't know, 45 minutes earlier, that there's no way to vote no on this bill. So I walk off the Floor. You said that was the only way that you could be not there. Now you say have a roll call vote, and as confused as that other issue that we did, that's very confusing for us. Can we have a revote, Mr. Speaker?"

Speaker Souki: "No revote."

Representative Ward: "Now that everybody's here?"

Speaker Souki: "You're out of order."

Representative Har rose, stating:

"Mr. Speaker, point of clarification. For those of us who were walking off the Floor when the vote was being counted, could we please be excused?"

Speaker Souki: "Representative, there was a voice vote that was taken. The ayes won, the noes didn't, and that is sufficient."

Representative Saiki rose, stating:

"Mr. Speaker, point of clarification. Members who were not seated at the time of the vote will be marked as excused in the Journal. Thank you."

Representative Oshiro rose, stating:

"Mr. Speaker, so given the preceding remarks of the Majority Leader, you must be present in your seats to cast a vote, yes or no. So those members who are not physically in their seat, their votes will not be counted, they will be marked as excused. Is that correct, Mr. Speaker?"

Speaker Souki: "That is correct."

Representative Oshiro: "Thank you very much."

COMMITTEE ASSIGNMENTS

At this time, the Chair stated:

"Members, please note that Senate Bill Number 1 has been referred to the Committees on Judiciary and Finance, as noted on House Committee Referral Sheet Number 3. Referral sheet has been placed on your desk."

The following measure was referred to committee by the Speaker:

S.B. No.

Referred to:

1	Jointly to the Committee on Judiciary and the Committee on Finance
---	--

END OF CALENDAR

SUSPENSION OF RULES

Representative McDermott rose, stating:

"I believe where we left off is that I had made a motion to suspend the House Rules and recall House Bill 5, which was introduced in this special session. And it's a constitutional amendment relating to marriage, defining it as marriage between a man and a woman only. I would like to discuss that matter, but in order to do that, we need to suspend the House Rules. So at the appropriate time, I would like a roll call vote on that, so we can peg people down on their vote, whether the people should decide. Thank you, sir."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order. There is no debate allowed on the motion to suspend the rules."

At 5:31 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:36 o'clock p.m.

At this time, Representative McDermott withdrew his motion, and Representative Ward withdrew his second.

At this time, the Chair stated:

"Thank you very much, the motion is withdrawn. That's the motion to suspend the rules in order to bring that House bill to the Floor. That has been withdrawn. Thank you."

ANNOUNCEMENTS

Representative Rhoads: "Thank you, Mr. Speaker. The House Committees on Judiciary and Finance will be holding a public hearing on Senate Bill Number 1 tomorrow at 10:00 a.m. in the auditorium with decision-making to follow. Public notification in anticipation of this joint hearing was posted and distributed on Monday, October 28th. In addition, the bill was made available for inspection and review on that same date. *Mahalo.*"

Representative Fale: "Tomorrow is Halloween, and more likely than not, we will be here at the Capitol for a long time, and there will be a lot of families from across the state here. Very likely they'll have little children with them. So we have distributed this. We have asked the people to come participate in trick-or-treat here at the Capitol. That will begin at sunset, which will begin right about six o'clock. So it's probably better to have candy ready for that, it'd be definitely unfortunate if a five or six year-old knocks on a Representative's door and they get a trick instead of a treat, Mr. Speaker, so it would be very good if our Representatives were able to accommodate the little children of the State of Hawaii, Mr. Speaker."

Representative Takai: "Thank you, Mr. Speaker. We've had about four hours of debate, but on the other side of the Legislature in the Senate, one member was not present today and I just wanted to mention to our

colleagues that a former member of this House, currently a Senator, Senator Glenn Wakai, lost his mom today. So at the appropriate time I'd like to request a moment of silence for Mrs. Wakai and their family."

At this time, the Members of the House of Representatives stood for a moment of silence in honor of the late Mrs. Ruth Wakai.

ADJOURNMENT

At 5:40 o'clock p.m., on motion by Representative Cabanilla, seconded by Representative Thielen and carried, the House of Representatives adjourned until 8:30 o'clock a.m. tomorrow, Thursday, October 31, 2013. (Representative Choy was excused.)

FOURTH DAY

Thursday, October 31, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 8:41 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Cindy Evans, after which the Roll was called showing all Members present with the exception of Representatives Awana, Carroll, Choy, Ito and Yamane, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Third Day was deferred.

At 8:47 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 8:58 o'clock a.m.

ORDER OF THE DAY

SUSPENSION OF RULES

On motion by Representative Cabanilla, seconded by Representative Fukumoto and carried, the rules were suspended for the purpose of considering a certain House Bill for Third Reading by consent calendar. (Representatives Awana, Choy, Ito and Yamane were excused.)

THIRD READING

H.B. No. 3, HD 1:

Representative Saiki moved that H.B. No. 3, HD 1 pass Third Reading, seconded by Representative Cabanilla.

Representative Morikawa rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. First of all, I'd like to thank the Chairs of Health and Finance for the increased request from 2.5 to 7.3 million. This increased appropriation will assure that our Kauai rural hospitals can stay open until HHSC's emergency funding appropriation can be worked on next session.

"The appointment of a new Kauai CEO, who I personally know, is committed to work to a more efficient and accountable hospital system. So for that, thank you, Mr. Speaker."

Representative Kawakami rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. On behalf of the Kauai delegation, I'd like to thank the House and Senate leadership, the Chairs of Finance and Health, and all of you for your support for Kauai and her people.

"I'd also like to thank and point out, a big *Mahalo* to Vice President Kouchi for helping to get this on the agenda this special session. Mr. Speaker, I'd also like to ask for additional written comments into the Journal. Thank you, Mr. Speaker."

Representative Kawakami's written remarks are as follows:

"Mr. Speaker, I stand in strong support of HB 3. Mr. Speaker, I would like to thank the administration and House Committees on Finance and Health for responding quickly to what could have been a dire situation for residents and communities that would have been affected by the possible closure or break in service of KVMH. Besides the loss of critical services, over 400 employees are employed by KVMH and Samuel Mahelona Memorial Hospital. The potential loss of jobs and income would have a

chilling effect on our local economy as well as the ability for these employees to provide for their families."

Representative Tokioka rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In strong support, and I'd like to ask to insert written comments into the Journal. Thank you."

Representative Tokioka's written remarks are as follows:

"I would like to thank the Governor, Senator Kouchi, the Senate and my colleagues in the House of Representatives, for their support of HB 3, HD 1. Not only will this bill keep the two most rural hospitals on Kaua'i open thereby helping to ensure the safety of Kaua'i residents and visitors, but it will also secure the jobs of Hospital Employees."

Representative Fale rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Fale's written remarks are as follows:

"Mr. Speaker, I rise to support HB 3, HD 1. According to the bill, 'The purpose of this Act is to make an appropriation to provide stopgap funding to sustain the operations of the Kauai regional health care system of the Hawaii Health Systems Corporation.'

"As a Representative from North Shore of 'Oahu, which has Kahuku Medical Center, I am sensitive to the needs for this type of funding to support hospitals that provide essential medical services to our constituents in rural communities. For many of our citizens in rural communities, funding such hospitals can make the difference between life and death, because of the necessity for rapid response in the case of medical emergencies.

"For these reasons, Mr. Speaker, I rise to support HB 3, HD 1."

The motion was put to vote by the Chair and carried, and H.B. No. 3, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION," passed Third Reading by a vote of 47 ayes, with Representatives Awana, Choy, Ito and Yamane being excused.

At 9:01 o'clock a.m., the Chair noted that the following bill passed Third Reading:

H.B. No. 3, HD 1

ANNOUNCEMENTS

Representative McDermott: "Mr. Speaker, I rise on a point of personal privilege. Mr. Speaker, I'd like to explain myself on a matter that happened yesterday. I have been criticized by some of the members relating to my actions filing a lawsuit naming some of the fellow members of this Body.

"My intent is never to hurt any member of this Body, I have much *aloha*. But the purpose of the lawsuit is to seek declaratory ruling on the 1998 constitutional amendment. And the issue here, Mr. Speaker, is that the Office of Elections aggressively and publicly advertised to the public, communicated to the public, that the amendment meant marriage would be reserved to opposite-sex couples only.

"That is the word that the Office of Elections used, the word 'only'. I was here at the time. And so I'm partially responsible for that. So we need to go in and get clarity. There is a Supreme Court case that says, 'the intent of the people, on a constitutional amendment, supersedes the amendment itself and underlying statutory language and committee reports.'

"It's Supreme Court law, it's good law, we had to look long and hard to find it, but we found it. The timing of the issue was, the issue wasn't right until the Senate acted. Now it's right. That is why we filed the lawsuit. And

no offense to my good friend, the Judiciary Chair, I know he's an esteemed colleague. But that's why we filed it yesterday, and that's what is done. And so I just want to explain that to you. Thank you, sir."

Representative Ward: "Mr. Speaker, good news about tomorrow's lunch. There's a free lunch, there's a lunch to celebrate the U.S. State Department interns from Ukraine and Armenia, who are going to give what they've learned. And let me say this if they don't say it tomorrow very clearly, that they were so impressed with how open and accessible we are democratically. How we let people into our office without even appointments or screening or permissions. And then they actually go in the room and meet with us without any formal permissions therefore.

"So tomorrow at noon, there's going to be a luncheon of which, if you could call my office, Paige Altonn is taking RSVP, because she's got a great menu planned, to hear them speak. The room number is 423. 423 at noon tomorrow, a lunch to hear Armenia and the Ukraine speak about democracy, and what they've learned in Hawaii. Thank you, Mr. Speaker."

Representative Fale: "Mr. Speaker, just a reminder about the Halloween trick-or-treat here at the Capitol. If all Representatives could send whether they are participating or not. Remember, we're going to have a bunch of little children here, make sure that they don't miss out on trick-or-treat this Halloween. But, just so that we can assist the sheriff's office and the Sergeant-at-Arms maintain orderliness with the activity today."

LATE INTRODUCTIONS

The following late introductions were made to the Members of the House:

Representative Har introduced her constituent, Pastor John Honold of One Love.

Representative Ing introduced Maui High Class President, Brian Tolentino Zamora.

Representative Oshiro introduced Pastor Mark and Pastor Randy.

Representative Ing introduced his constituent, Ms. Eileen McKee.

Representative Har introduced Ms. Colette Machado, Office of Hawaiian Affairs.

At 9:07 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 9:08 o'clock a.m.

ADJOURNMENT

At 9:08 o'clock a.m., on motion by Representative Cabanilla, seconded by Representative Fukumoto and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Friday, November 1, 2013. (Representatives Awana, Choy, Ito and Yamane were excused.)

FIFTH DAY**Friday, November 1, 2013**

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:14 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Cynthia Thielen, after which the Roll was called showing all Members present with the exception of Representatives Choy and Jordan, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Fourth Day was deferred.

adjourned until 10:00 o'clock a.m., Monday, November 4, 2013. (Representatives Brower, Choy, Fale, Har, Ichiyama, McDermott and Tokioka were excused.)

INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative Matsumoto introduced her intern, Ms. Iren Danielyan.

Representative Har introduced people who came to testify on S.B. No. 1.

Representative Tokioka introduced his former classmate, Ms. Shawna Okami.

Representative Ward introduced his intern, Ms. Nadiya Pashkova.

Representative Ito introduced his Office Manager, Ms. Melissa Miranda-Johnson, and requested to insert written remarks in the Journal, and the Chair "so ordered."

Representative Ito's written remarks are as follows:

"I rise to inform this Body that Ms. Melissa Miranda-Johnson has resigned her position as my Office Manager and has taken a position in the Managing Director's office with the City and County of Honolulu. During her employment I served as the Chair of the House Committee on Water, Land, & Ocean Resources, and for a short period Hawaiian Affairs. Melissa's ability to digest bills, especially land issues, was a great asset to the committee. Because of this, I was able to discuss with her the pros and cons of each measure that was being heard by the committee. Additionally, during the interim periods, Melissa kept me abreast of measures I personally introduced and were passed by the Legislature and signed into law by the Governor. Melissa will be sorely missed and I wish her continued success through the years."

Representative Fale introduced his constituent, Mr. Sione Lavulavu.

Representative Thielen introduced her former Office Manager, Ms. Melody Heidel, and her current Office Manager, Ms. Charlotte Farmer.

At 10:22 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:52 o'clock a.m.

ANNOUNCEMENTS

Representative Rhoads: "Thank you, Mr. Speaker. I just wanted to let everybody know that we will be going back into the Joint Judiciary-Finance meeting on SB 1 in the Auditorium as soon as we're done with the session here. We'll be going, I don't really know how long we'll be going, but we'll try to keep everyone updated on what the prognosis is for the progress of the hearing."

ADJOURNMENT

At 10:54 o'clock a.m., on motion by Representative Cabanilla, seconded by Representative Fukumoto and carried, the House of Representatives

SIXTH DAY**Monday, November 4, 2013**

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:08 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Takashi Ohno, after which the Roll was called showing all Members present with the exception of Representatives Carroll, Choy, McDermott and Wooley, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Fifth Day was deferred.

INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative Thielen introduced former Representative, Ms. Jackie Young.

Representative Har introduced her constituent, Pastor John Honold of One Love.

Representative Ward introduced his former constituents, Mrs. Suzanne and Mr. Roland Mauer.

Representative Ohno introduced Pastor Max Fowler of Kakaako Christian Fellowship.

Representative Fale introduced his constituents, Mr. Seek Hanneman and Mr. Shem Hanneman.

Representative Oshiro introduced his constituent, Bishop Carl Harris of Emmanuel Temple in Wahiawa.

Representative Har introduced Pastor Ron Yoshida of New Life Church.

Representative Ward introduced Bishop Greg Hood and Mrs. Joan Hood.

Representative Hashem introduced his friend, Ms. Jinsong Riles.

ORDER OF THE DAY**ANNOUNCEMENTS**

Representative Fale: "Mr. Speaker, I just wanted to say thank you to everybody for participating in the first annual Halloween party that we hosted here at the State Capitol. Thank you for everybody who did. There were a lot of kids that otherwise would have missed out on Halloween if it weren't for the participation of Sergeant-at-Arms, everybody that was here at the Clerk's office, and the members here. So, thank you very much, Mr. Speaker."

ADJOURNMENT

At 10:16 o'clock a.m., on motion by Representative Cabanilla, seconded by Representative Fukumoto and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Tuesday, November 5, 2013. (Representatives Carroll, Choy, McDermott, Wooley were excused.)

SEVENTH DAY

Tuesday, November 5, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:10 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Ms. Haleaka Iolani Pule of Mission Aloha, after which the Roll was called showing all Members present with the exception of Representatives Cachola, Choy, Ing and Jordan, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Sixth Day was deferred.

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 2 and 3) were received and announced by the Clerk:

Sen. Com. No. 2, transmitting H.B. No. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," which passed Third Reading in the Senate on November 4, 2013.

Sen. Com. No. 3, transmitting H.B. No. 2, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS," which passed Third Reading in the Senate on November 4, 2013.

INTRODUCTIONS

The following introduction was made to the Members of the House:

Representative Har introduced 8th grade students from Kapolei Middle School, accompanied by teachers, Ms. Ubilas and Ms. Yeung.

ORDER OF THE DAY

ANNOUNCEMENTS

Representative Luke: "Thank you, Mr. Speaker. Last night at the hearing I mistakenly adjourned the Finance Committee portion when I shouldn't have. It should have been a recess. I had no authority to call for an adjournment because the Judiciary Chair wasn't there. So the mistake was caught right away thanks to the Vice Chair of Judiciary, and I think the intent was to say 'recess' not 'adjournment'.

"But just out of precaution, I request a waiver of the 48-hour ruling to continue the hearing for SB 1, to continue hearing today at 10:30 in the Auditorium. Thank you very much," and the Chair "so ordered."

At 10:19 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 6:04 o'clock p.m., with Speaker Souki presiding.

At 6:04 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 6:17 o'clock p.m.

Representative Rhoads: "Thank you, Mr. Speaker. My apologies to those of you who are here to witness the proceedings on Second Reading of Senate Bill 1, House Draft 1. Due to some last minute changes in the language, reflecting the testimony that we heard earlier this week, and

probably also partly due to the fact that the staff haven't had any sleep for about a week, we will not be getting the committee report done tonight.

"So it'll be tomorrow morning at 10 a.m., I believe, is when we take up the measure. *Mahalo*."

Representative Ward: "Mr. Speaker, may I also make an apology to the people? That I will have the exemption of the *keiki* in this bill by amendment for tomorrow morning, instead of today. I will have an amendment to exempt teachers in the floor amendment for tomorrow. And I'll have an exemption to take a carve out of the churches in the public accommodations tomorrow.

"So my apologies to the people who may have been able to see that tonight. Thank you."

ADJOURNMENT

At 6:19 o'clock p.m., on motion by Representative Cabanilla, seconded by Representative Fukumoto and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Wednesday, November 6, 2013. (Representatives Cachola and Choy were excused.)

EIGHTH DAY

Wednesday, November 6, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:09 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Dee Morikawa.

At this time, the Chair stated:

"Members of the audience, in order to maintain decorum in this Chamber, I will ask that the audience refrain from any outbursts or demonstrations which may disrupt the deliberations and proceedings on the Floor."

The Roll was then called showing all Members present with the exception of Representatives Cachola, Choy and Nishimoto, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Seventh Day was deferred.

SENATE COMMUNICATIONS

The following communication from the Senate (Sen. Com. No. 4) was received and announced by the Clerk:

Sen. Com. No. 4, transmitting H.B. No. 3, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION," which passed Third Reading in the Senate on November 5, 2013.

INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative Ohno introduced Pastor Paul Schuler of City Church of Honolulu.

Representative Awana introduced her friends from Hope Chapel Nanakuli.

Representative Tokioka introduced his constituent, Ms. Annette Oda.

Representative Ward introduced people who testified on S.B. No. 1.

At this time, the Chair stated:

"Members, we will be in recess until 11:00 a.m."

At 10:15 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:32 o'clock p.m., with Speaker Souki presiding.

ORDER OF THE DAY

SUPPLEMENTAL CALENDAR #1

REPORTS OF STANDING COMMITTEES

Representatives Rhoads and Luke, for the Committee on Judiciary and the Committee on Finance, presented a report (Stand. Com. Rep. No. 4) recommending that S.B. No. 1, HD 1 pass Second Reading and be placed on the calendar for Third Reading.

Representative Saiki moved that the report of the Committees be adopted, and that S.B. No. 1, HD 1 pass Second Reading and be placed on the calendar for Third Reading, seconded by Representative Cabanilla.

At this time, Representative Oshiro offered Floor Amendment No. 5, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. The legislature finds that the issue of legalizing same-sex marriage is the most contentious issue of this generation. After receiving Senate Bill No. 1, during the second special session of 2013, the joint house committee on judiciary and finance conducted a public hearing on the measure, which began on October 31, 2013, and lasted until November 4, 2013. No other issue has ever precipitated as much public testimony at a single public hearing in the history of the house of representatives. After receiving more than forty hours of oral testimony from 5,184 individuals, memorialized in over fifteen thousand pages of documents (or the equivalent of thirty reams of paper), it is immediately evident that the issue of legalizing same-sex marriage has divided Hawaii's community and raised compelling points both in support of and opposition to this monumental legislation.

Be that as it may, however, in a very short amount of time, the house of representatives has learned that:

- (1) The majority of federal benefits that are available to same-sex couples may already be obtained by Hawaii citizens who get married in a state that authorizes same-sex marriage and return to Hawaii to reside;
- (2) Because many federal agencies are still trying to determine how the United States Supreme Court's decision in United States v. Windsor, 133 S. Ct. 2675 (2013), would affect their operations, the total number of benefits and services, as well as the obligations that would apply to married same-sex couples have not yet been determined;
- (3) Couples who are situated in loving, committed relationships have been denied access to federal benefits for a period much longer than same-sex couples because the State of Hawaii does not recognize common-law marriage;
- (4) The bill, as received from the senate, may contravene domiciliary requirements for divorce and may pose questions on the validity of Hawaii state judicial decisions as they are recognized in other states. In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the State. By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce decree, it is arguable that the bill, as received from the senate, will jeopardize the validity of all divorce decrees issued in the State of Hawaii as they are recognized in other states;
- (5) The bill, as received from the senate, may extinguish parental rights and entitlements of children. In the senate version, the bill does not take into account that existing law takes gender into consideration regarding paternity, maternity, and parentage. While the policy goal of eliminating gender discrimination is a worthwhile and noble goal, the application of a blanket definitional statutory change that does not take into account the context of how these terms are used, may precipitate enormous difficulties in the application and implementation of family law. This is clearly evident by its potential impacts on parentage rights insofar as the rights of a same-sex parent might supersede, or even extinguish the parental rights of the biological parent. Likewise, the blanket definitional statutory change may raise questions on the manner in which the race of the child of a same-sex couple will be determined, and whether such a determination would effectively bar the child from receiving entitlements regardless of the child's genetic makeup;

- (6) Because the legal recognition of same-sex couples will require employers to provide certain benefits to employees and their spouses differently in accordance with a statutory change, it is unclear whether the enactment of the senate version of this bill would constitute a material change to the application of the prepaid health care act, chapter 393, Hawaii Revised Statutes, and result in the State of Hawaii losing its exemption from preemption under the federal Employee Retirement Income Security Act (ERISA) in accordance with 29 U.S.C. §1144(b)(5)(B)(ii); and
- (7) Lastly, the bill, as received from the Senate, would fundamentally alter religious freedoms and denigrate First Amendment rights. This bill, as received from the Senate, would provide the Hawaii civil rights commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment or subject to the Hawaii public accommodations law, chapter 489, Hawaii Revised Statutes. Not only will this create a chilling effect that will interfere with religious exercise, the senate version of this bill might not provide any protections whatsoever for individual religious and conscientious beliefs. While the house of representatives has considered broader religious exemptions modeled after the State of Connecticut's public accommodations law, the house of representatives acknowledges that the State of Connecticut, which is nicknamed "the Constitution State" because its constitution is one of the oldest in North America (1662), has a long history of protecting religious freedom, and that these protections are embedded throughout its constitution, statutes, and common law. Founded by Congregationalists who split away from the Massachusetts colony because of religious persecution, Connecticut enacted strong protections within its laws to protect religious and conscientious beliefs. In particular, article seven of the Constitution of the State of Connecticut states:

"It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the State. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship."

As such, while it is true that the religious exemption found in the Connecticut public accommodations law appears to be broader than what is proposed in the bill received from the senate, Connecticut might not be a suitable model because unlike that state, Hawaii does not have these additional constitutional, statutory, and common law protections for religious and conscientious liberty that would be applicable to not only religious organizations, but to individuals as well.

In light of these findings, and to afford the house of representatives with the maximum flexibility to review the enormous and unprecedented volume of testimony received, the purpose of this Act is to facilitate continued discussions on the issue of legalizing same-sex marriage during the remainder of the second special session of the twenty-seventh legislature of the State of Hawaii, 2013.

SECTION 2. The Hawaii Revised Statutes are amended to implement the purpose of this Act.

SECTION 3. This Act shall take effect on July 1, 2030."

At 12:33 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:33 o'clock p.m.

Representative Oshiro moved that Floor Amendment No. 5 be adopted, seconded by Representative Say.

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. Hopefully I can speak up loud enough. I will do my best, Mr. Speaker.

"Mr. Speaker, after deliberating over, I think by the time we got done, about 57 hours of testimony, more than 5,100 testifiers, and I think according to one of the media releases from this House of Representatives, up to 22,000 written testimonies that have been received by this Joint Committee on Judiciary and Finance on our House side. I sat through many of those hours."

At 12:35 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:36 o'clock p.m.

Representative Jordan continued, stating:

"Thank you very much, Mr. Speaker. Mr. Speaker, after all those many hours of testimony with my fellow members on Finance and Judiciary, trying to absorb almost 23,000 pieces of written testimony, trying to just be able to sleep a little bit and get back here to the Capitol for the next hearing, I found it very compelling to absorb all that within five days.

"We only had the opportunity to read Senate Bill 1 when it was passed over to us the day of our hearing. We vetted it, we heard from many..."

At this time, the Chair stated:

"Excuse me, the door is supposed to be closed. okay, please proceed. I'm sorry for the disruption."

Representative Jordan continued, stating:

"Thank you, Mr. Speaker. That's quite alright, Mr. Speaker, I totally understand the passion. And I think, Mr. Speaker, they might be speaking louder than I am at this point in time. This is what this measure is about.

"I myself have been involved with this issue since the 1990's. I have been watching it. And here we come to hearings on one particular measure that we only had on Monday, or by time we had a hearing on Thursday, to start hearing from the people, to start hearing from the experts on these different intricate pieces of this measure.

"I found myself even a little absorbed with all this, and trying just to have a clear mind after 10, 12 hours of hearing, Mr. Speaker. It became a little foggy after a while, and I'm hoping my other 30 members on that committee would attest to that.

"I too watched in June as the Windsor case was handled by the Supreme Court, and I too understood that the Windsor case provided benefits for individuals that weren't receiving them on federal levels.

"Currently our state doesn't have marriage. I understand that. We have civil unions, which the federal doesn't recognize. But the Windsor case did not say our marriage law was incorrect and needed to be corrected. The Windsor case did not say we were denying anybody at any point in time. The Windsor case did not say we needed to rush to this at this point in time.

"Mr. Speaker, no, I was not pleased coming in to special session. I did not support our Governor's stance on bringing us back here. I felt that individuals in this Body needed the opportunity to vet these measures as we have just heard in our private caucus. There's a lot of components to this particular measure. Not just about saying we need to provide opportunities to same-gender couples as traditional couples.

"Mr. Speaker, I wholeheartedly support equal opportunities for same-gender couples. Because I may afford that opportunity at some point in time, Mr. Speaker. That was not my problem with this. My problem with this is vetting all this material, absorbing it, putting a great piece of legislation forward where I can feel confident to vote 'yay' on, and move

forward, to where we would have a bright line, completed by legislation, not by judicial review. And I think we should be providing that guidance.

"So, Mr. Speaker, I had proposed this during our vetting of our House Draft 1 of SB 1, and it was refuted, we don't want to discuss it. I understand that. So I thank the great Representative from Wahiawa for bringing this back for discussion on this Floor. And I would appreciate the discussion and maybe the opportunity to even look at this.

"This provides some explanation of the Connecticut law that we are placing slivers of in SB 1, HD 1. This also would ask we continue this discussion during this second special session on this measure so we can properly vet it. We passed out a measure yesterday, out of our committee. The public will not be able review that HD 1 of SB 1."

Representative Say rose to yield his time, and the Chair "so ordered."

Representative Jordan continued, stating:

"Thank you very much, Representative. So Mr. Speaker, all this measure is asking is for us to be able to afford the opportunity to vet this information a little bit more during this second special session. Because of course we have up to 30 days in special session, and possibly an extension of another 15 days.

"I would clearly like to hear some more dialogue with my constituents, and for me to review all these many, many laws that we have to see if we are truly moving a measure forward.

"That's all I'm asking, Mr. Speaker, and I truly thank the Representative from Wahiawa for bringing this forward to us today."

At 12:42 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:47 o'clock p.m.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'm rising in support of the floor amendment. Thank you. I just wish the active members practicing their First Amendment freedom of speech would be a little bit quieter, but that's okay. It's beautiful to some.

"I support this floor amendment, Mr. Speaker. What it does is have the effect and cause of creating a short form type bill to allow the discussion to continue. Given that there's a lot of questions on what's in and what's out of the current House draft on the Senate bill.

"I think the chairs did a great job in maintaining the committees' work on this very important issue. However, I think it's humanly impossible to expect that they would be able to turn it around in less than 24 hours and masticate and review and consider and reflect upon the volume of testimony that was submitted both orally and in the written format.

"So I think this vehicle here as a floor amendment will allow them, and allow the members, to really understand the draft we have before us that we received less than an hour ago.

"There are several items that this floor amendment highlights, and I want to just go through it very briefly, Mr. Speaker. First of all, the majority of federal benefits that are available to same-sex couples may already be obtained by Hawaii citizens who get married in a state that authorizes same-sex marriage and return to Hawaii to reside.

"It's not the perfect solution, Mr. Speaker, and I certainly do not believe it is the best solution, but it is a solution in the meantime, should the existent circumstances present themselves to a Hawaii citizen to get married.

"Number two, because many federal agencies are still trying to determine how the United States Supreme Court's decision in the United States v. Windsor case, 133 Supreme Court 2675; 2013, would affect their operations, the total number of benefits and services, as well as the obligations that are applied to married same-sex couples. They have yet to be determined.

"I think most of the literature you have been receiving, to testimony from the Attorney General's office, speak to the Office of Veteran's Affairs, Social Security, Medicaid, Medicare, maybe the Department of Housing, and of course, the Internal Revenue Code. But there are over a thousand different benefits, programs and services that have yet to be determined by the Obama administration and the various agencies and departments.

"Number three, couples who are situated in loving, committed relationships, have been denied access to federal benefits for a period much longer than same-sex couples, because the State of Hawaii right now does not recognize common-law marriage, Mr. Speaker. That's something I knew, I learned that actually we don't do that, but there are common-law marriages in the State of Hawaii that I think you might want to reconsider, or have the Governor consider, at this point in time.

"Number four, the bill as received from the Senate as passing on in the House Draft 1 may contravene domiciliary requirements for divorce, and may pose questions on the validity of Hawaii's State judicial decisions as they're recognized in other states.

"In the Williams v. North Carolina case, 317, US 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the state.

"By allowing any same-sex couple married in Hawaii, but not domiciled here, to access our courts, either six months or three months residency requirement, for the purposes of obtaining a divorce decree, separation decree, or annulment, it is arguable that the bill, as received from the Senate, will jeopardize the validity of all divorce decrees issued in the State of Hawaii as they are recognized in other states.

"Number five, Mr. Speaker, because the legal recognition of same-sex couples will require employers to provide certain benefits to employees and their spouses differently, in accordance with statutory change, it is unclear whether the enactment of the Senate version of this bill, which is contained within the present House Draft 1, will constitute a material change to the application of the Prepaid Health Care Act, Chapter 393, Hawaii Revised Statutes, and result in the State of Hawaii losing its exemption from preemption under the Federal Employee Retirement Income Security Act, otherwise known as ERISA, in accordance with 29 USC, Section 1144, Subsection b, Sub-subsection 5, Subsection B, Sub-subsection 2.

"Lastly, Mr. Speaker, this bill as received from the Senate would fundamentally alter religious freedom and denigrate First Amendment rights. This bill as received and passing from this Body would provide the Hawaii Civil Rights Commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment, or subject to the Hawaii Public Accommodations Law, Chapter 49, Hawaii Revised Statutes."

Representative Awana rose to yield her time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you very much, Representative from Nanakuli. Not only will this create a chilling effect that will interfere with religious exercise, the Senate version, and now the House draft, might not provide any protections whatsoever for individual religious and conscientious beliefs. The conscientious objectors, well, the House of Representatives have considered broader religious exemptions modeled after the State of Connecticut's public accommodations law, the House of Representatives

acknowledges that the State of Connecticut, which is nicknamed the 'Constitution State' because its constitution is one of the oldest in North America, 1662, has a long history of protecting religious freedom, and these protections are imbedded throughout its constitution statutes and common law decisions.

"Founded by congregations that split away from the Massachusetts colony because of religious persecution, Connecticut enacted strong protections within its laws to protect religious and conscientious beliefs, in particular, Article 7 of the Constitution of the State of Connecticut states: 'It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the state. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship.'

"As such, Mr. Speaker, while it is true that the religious exemption found in the Connecticut public accommodations law appears to be broader than what's proposed in the bill before us, Connecticut might not be a suitable model, because unlike that state, Hawaii does not have these additional constitution and statutory and common law protections for religious and conscientious liberty that will be applicable to not only religious organizations, but to individuals as well.

"It is in light of these findings to afford the House of Representatives with the maximum flexibility to review the enormous and unprecedented volume of testimony received, the purpose of this measure is to facilitate continued discussion on the important issue of legalizing same-sex marriage through the remainder of the Special Session of the 27th Legislature. Thank you, Mr. Speaker."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I support the intent of this amendment. Mr. Speaker, the intent is we need more time to digest the testimony we received. The intent is we had thousands of people come and testify. We heard them. Did we listen? That's the intent. But more importantly, Mr. Speaker, and I'm troubled. Although the chairs ran a very open and wonderful process where everyone got to speak and never cut it off, and I thank your chairs for doing that, and I guess I bear some responsibility for this, Mr. Speaker, our committee was the victim of a fraud last week.

"That fraud was, we had a molecular biologist come and testify before us, I won't mention his name, but he is a public figure. His information that he shared with members was actually used in some of the comments of members reporting it out of the committee. Now this gentleman was on Nightline, he was on the Tonight Show, and he was also on the cover of Time Magazine back in 1993 and '94.

"Members don't know that, he's a public figure, but I'm not going to mention his name. But members don't know this, this guy has made a living putting out false information. He came out with this study that, quote, 'there is a gay gene' in 1993-94. His research was subsequently debunked. Let me say that again, debunked.

"Now I can't talk to a molecular biologist in his language. Makes me look like a fool. Harvard meets Ewa Beach, I can't do it. So I went home and researched, but I can't read, I said, 'where is this guy from? Why didn't the media pick this up?' Oh, the media did pick it up. He's a fraud.

"Now what is science, Mr. Speaker? Science can be replicated. His research and experiments, which he shared with the members, Mr. Speaker, which they used to make their decisions, which is why they need more time."

The Chair addressed Representative McDermott, stating:

"Representative, are you speaking to the merits of the amendment or are you expanding a little bit?"

Representative McDermott continued, stating:

"Mr. Speaker, the merits are that we need more time. And I'm saying that the members were duped. And I'm explaining to you, sir, how they were duped. Mr. Speaker, it's embarrassing to actually have members quoting this fraud, and he is a fraud under investigation by the National Institutes of Health Research Integrity Office, go look at it folks, Google him up. And they quoted him coming out of committee."

The Chair addressed Representative McDermott, stating:

"Again, will you speak to the merits of the amendment, please? Speak to the merits of the amendment."

Representative McDermott continued, stating:

"Mr. Speaker, the merits are we need more time. This is an example of why we need more time, and I'm trying to explain to you why we need more time."

The Chair addressed Representative McDermott, stating:

"You have not been speaking on the merits of the amendment."

At 12:58 o'clock p.m., Representative McDermott requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:00 o'clock p.m.

Representative McDermott continued, stating:

"Thank you, Mr. Speaker, I'll wrap it up in 30 seconds or less. The amendment asks that we have more time to consider testimony and such. And sir, I was trying to point out that our members, a fraud was perpetrated upon them, and I want to protect them, because if they had more time to investigate the testimony, because the guy was very impressive, and I don't want our members to be harmed by fraudulent testimony. So that was my purpose sir, and I wanted to get it on the record. Thank you, sir."

Representative Carroll rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'd like to talk in support of this floor amendment. Just a comment. Yesterday in committee, this floor amendment was actually requested to be considered by our Representative from Waianae, and I'd like to support this because yesterday when I did vote no it was based on process, and I agreed that we need more time in deliberating the bill and the issue as well. So, for that reason, I'm supporting the amendment."

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the floor amendment. Thank you, Mr. Speaker. Before I begin, may I please have the words of the speaker from Wahiawa entered into the Journal as if they were my own? Thank you, Mr. Speaker.

"In addition, I won't say any additional comments other than the fact that this language in the findings section would, in fact, assist this bill, if it were to pass, in the event we have continued legal problems. That's all this amendment is being offered for, is to assist in the event of any additional legal problems that may assist.

"It talks about all of our legislative intent, Mr. Speaker. So Mr. Speaker, while I know you are not looking at me right now, I'd appreciate it if you would. Thank you, Mr. Speaker. So that being said, I do believe that this language is important because it could, in fact, assist us with respect to any

lawsuits that may ensue. Thank you very much. For those reasons I stand in support. Thank you, Mr. Speaker."

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the measure. Mr. Speaker, what we're doing is what you do all the time. You hit the gavel, you say recess, time out, there's a rush going, we want to slow things down, we want to stop it, we want to get the momentum to take a contemplative view.

"This is equivalent to the time out, the recess, the time when you stop the momentum in the House and you say, let's take a deep breath. This amendment says, let's take a deep breath. Let's be contemplative. My colleague from Ewa Beach says, let's look at some of the stuff that came out pretty loosey-goosey, pretty otherwise not true.

"Another case in point, this Body has been sold on the La Croix study. If we had time to contemplate what the Chinese economist said, he said there is 755 million dollars per year coming from the Chinese, coming from the Vietnamese, coming from the Indonesians, the Malaysians, the Asian equivalent of our tourist dollar is very important from that part of the world. He's saying if you take away 10 percent of that, you've got 75 million dollars per year, which is equal to what La Croix said, which was 71 million dollars per year, which we said, well the gay rights marriage is going to make a lot of money.

"My point is, Mr. Speaker, this is a time out, it's time to huddle. This amendment gives us that time to contemplate, *kuka kuka*, otherwise do stuff deliberately rather than rushing through. And I don't know how those people got the stamina to do that, but this is just the beginning of what I think is going to happen if we continue on our present plan without a deep breath, without a time out. Thank you, Mr. Speaker."

Representative Saiki rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to this floor amendment. I don't understand what relief is sought specifically in this floor amendment. I know that it calls for continued discussions on this issue, but I'm not sure what form is being requested.

"If the proponent is requesting that the committees conduct more public hearings, I'd like to note that what has happened over the past week is extraordinary in terms of the public hearing process at the Capitol. The joint committees received more than 23,000 pieces of written testimony, they heard from over 1,000 persons who testified at their hearing. This lasted for 55 hours over five days.

"I'm not sure if this floor amendment is requesting that more hearings be held. It does request that the discussion continue throughout the remainder of the special session. I would note to members that under the constitution, the special session is set for a maximum of 30 days with a 15 day extension. I'm not sure if the proponent is requesting that the special session be extended for 45 days for the purpose of discussing this issue. I'm also not sure in what form or in what manner this discussion should take place.

"Accordingly, I oppose this floor amendment, and I call for the question."

At this time, Representative Saiki called for the previous question.

The motion to end debate was put to vote by the Chair and carried, with Representatives Cachola, Choy and Nishimoto being excused.

The motion that Floor Amendment No. 5, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Saiki voting no, and with Representatives Cachola, Choy and Nishimoto being excused.

At 1:08 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:09 o'clock p.m.

Representative Oshiro rose, stating:

"Thank you, Mr. Speaker. I appreciate it very much. I understand that the debate was cut off by the proper motion, so I appreciate that. I simply wanted to have permission to submit additional written comments into the Journal in support of that particular floor amendment, Mr. Speaker. Thank you."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I rise in support of Floor Amendment No. 5.

"During the more than fifty hours of hearings on Senate Bill No. 1, and the receipt of over twenty-eight thousand pages of documents, your Joint Committee on Judiciary and Finance spent little more than two hours deliberating on it before reporting the measure to this Floor for Second Reading. As you know, that decision was not well received by many testifiers and observers and only added to the perception that this whole affair was a grand 'dog and pony' show – that those five days and nights of receiving public comment and testimony was a farce or big *shibai*. Certainly, why one would not even take a day or two to review the vast record and consult with the members of the Joint Committee suggest the fix was already in.

"And, if to add insult to injury, despite hearing experts from various fields identify major substantive and technical problems with the bill, your Committee recommended passage of a draft that seemingly does not address any of these concerns.

"Given the monumental shift in public policy that this bill will have, and the apparent lack of any meaningful analysis and discussion at the Committee level, the good Representative from Waianae, Makaha, Makua, and Maili offered an amendment for the Committee's consideration. Despite its good intentions, the amendment was summarily dismissed by the Co-Chairs without any discussion.

"Floor Amendment No. 5, which is presently before us, is the draft that was offered by the Representative from Waianae. It models the approach taken by this House during the Regular Session of 2012 when it approved on Third Reading Senate Bill No. 2429, RELATING TO FORECLOSURES. For Senate Bill No. 2429, this House took the extraordinary step of approving a 'short-form' bill on Third Reading to facilitate continued discussions among various stakeholders on a comprehensive codification of statutory foreclosure procedures to ensure the thorough legal and technical review of the statutory amendments offered to the Legislature. This step was taken to provide both the House of Representatives and the Senate with maximum flexibility during the remainder of the 2012 Regular Session to facilitate a meaningful resolution to the issue.

"During the public hearing on Senate Bill No. 1, this House learned that numerous problems existed with the bill. These problems would lead to serious complications to other laws and pose grave danger to the welfare of our People. From my perspective, to do nothing to address them while it is still within our power to fix them is nothing less than gross negligence on our part. As enumerated in the floor amendment:

"Number 1. The basic premise of this bill is faulty. The majority of federal benefits that are available to same-sex couples may already be obtained by Hawaii citizens who get married in a state that authorizes same-sex marriage and return to Hawaii to reside. Admittedly, this is not a perfect solution nor one that any may find feasible or financially viable, but it is a less-intrusive approach given the equities of the circumstance and irreversible general interests at stake. It is not irrational nor without merit and it is certainly not suggestive of any ill-will or animus. For a remedy, even temporary in scope and affect, is better than none. Moreover, the present known and readily available remedy does not preclude a more

satisfying resolution in the near future and does not curtail future benefits due to retroactive application of federal laws and services.

"Insofar as same-sex marriage is distinguishable from civil unions, so too must we approach legalizing same-sex marriage with the same careful and dispassionate analysis and reflection needed for such a weighty decision. For instance, the approval of House Bill No. 444, House Draft 1, Senate Draft 1, RELATING TO CIVIL UNIONS, began with the pre-filing of the bill on January 23, 2009. The bill did not pass Final Reading in the House until April 29, 2010, or about 400 days and two Regular Legislative Sessions later.

"Compare what we have before us in this Special Session and how much time has elapsed since we convened on October 28, 2013, and one can appreciate how quickly and expediently we are proceeding. Indeed, it is as if we are hell-bent on racing through this Special Session to fulfill the Governor's request regardless of any harm to our people it may cause and without any sign of legislative independence and restraint.

"Doesn't prudence scream out for a temporary delay in making any wholesale change to the definition of marriage that will have such far-reaching and irreversible effects on all people, both gay and straight?

"Number 2. We don't know what the total impacts of this policy change will be. Because many federal agencies are still trying to determine how the United States Supreme Court's decision in United States v. Windsor, 133 S. Ct. 2675 (2013), would affect their operations, the total number of benefits and services, as well as the obligations that would apply to married same-sex couples, have not yet been determined. Have we considered the fiscal ramifications of additional federal benefits to same-sex couples and whether the federal government could shift some of these costs to the states through federal mandates? Has anyone considered that not all same-sex couples will choose to be married, as marriage may not be the most financially advantageous classification for their particular needs? And, how many of the approximate 2,000 civil union partners will be seeking to change their status to married couple?

"Number 3. There are other similarly situated couples that currently are denied federal benefits. In Parke v. Park, 25 Haw. 397 (1920), the Hawaii Supreme Court held that a license was prerequisite to a valid marriage, and as such all rights, benefits, and obligations that were previously recognized in common law marriage were extinguished.

"Yet, since 1958, the federal Internal Revenue Service (IRS) has stated that a couple would be treated as married for purposes of federal income tax filing status and personal exemptions if the couple entered into a common-law marriage in a state that recognizes that relationship as a valid marriage. The IRS further concluded that its position with respect to a common-law marriage also applies to a couple who entered into a common-law marriage in a state that recognized such relationships and who later moved to a state in which a ceremony is required to establish the marital relationship. The IRS therefore held that a taxpayer who enters into a common-law marriage in a state that recognizes such marriages shall, for purposes of federal income tax filing status and personal exemptions, be considered married notwithstanding that the taxpayer and the taxpayer's spouse are currently domiciled in a state that requires a ceremony to establish the marital relationship.

"This is especially pertinent since this ruling, Revenue Ruling 58-66, was cited in Revenue Ruling 2013-17, which was promulgated shortly after the Windsor Decision, and held that same-sex couples married in states that legalize same-sex marriage shall be considered married for purposes of federal income tax filing status and personal exemptions, regardless of whether they are currently domiciled in a state that requires a ceremony to establish the marital relationship.

"So couples who are situated in loving, committed relationships have been denied federal benefits for over seven decades. If, as the Governor says, 'benefits delayed are benefits denied', shouldn't this Legislature legalize common-law marriages? After all, same-sex couples have been denied these federal benefits for just a few months.

"Number 4. This bill may contravene domiciliary requirements for divorce and may pose questions on the validity of Hawaii State judicial decisions as they are recognized in other states. In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the state. By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce decree, it is arguable that the bill, as presently drafted, will jeopardize the validity of all divorce decrees issued in the State of Hawaii as they are recognized in other states. At a minimum, we should obtain clarification before we proceed.

"Number 5. Hawaii might lose its ERISA preemption exemption. Because the legal recognition of same-sex couples will require employers to provide certain benefits to employees and their spouses differently in accordance with a statutory change, it is unclear whether the enactment of this bill would constitute a material change to the application of the Prepaid Health Care Act, Chapter 393, Hawaii Revised Statutes, and result in Hawaii losing its exemption from preemption under the federal Employee Retirement Income Security Act (ERISA) in accordance with 29 U.S.C. §1144(b)(5)(B)(ii). Should that happen, Hawaii may no longer be able to require employers to provide health insurance for its full-time employees by law. At the very least, one should obtain a federal ruling or opinion letter before proceeding further. It is only reasonable.

"Mr. Speaker, ask yourself, If Hawaii was no longer able to require employers to follow this law, don't you think many of Hawaii's citizens and their families will be harmed?

"Number 6. This bill will fundamentally alter First Amendment rights. As presently drafted, this bill would ostensibly provide the Hawaii Civil Rights Commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment or subject to the Hawaii Public Accommodations Law, Chapter 489, Hawaii Revised Statutes. Not only will this create a chilling effect that will interfere with religious exercise, the bill might not provide any protections whatsoever for individual religious and conscientious beliefs. Emmanuel Temple v. Abercrombie, Civ. No. 11-00790 JMS-KSC (U.S. District Court, District of Hawaii, 2011) is a case-in-point of how these laws may affect the day-to-day functions of a church and affect the religious practices and actions of its adherents.

"While the Joint Committee on Judiciary and Finance considered broader religious exemptions modeled after the State of Connecticut's Public Accommodations Law, this language might not be suitable because of that state's very different history.

"Connecticut is nicknamed the 'Constitution State' because it has one of the oldest constitutions in North America. It was founded by colonists escaping Massachusetts because of religious persecution. Because of this, the people of Connecticut have long revered religious freedom and provided protections for their beliefs throughout their constitution, statutes, and common law.

"In particular, Article Seven of the Constitution of the State of Connecticut states:

"It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the State. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship."

"Number 7. It should be noted that another problem identified – that the blanket application of non-gender terms in statutes relating to paternity, maternity, and parentage might cause the rights of a same-sex parent to

supersede or even extinguish the parental rights of a biological parent – was eliminated in the House Draft 1. And, that change to Senate Bill No. 1, is appreciated and demonstrates the knowledge that such amendments can be made in spite of or even in opposition to the unequivocal proclamations of the Attorney General who opined on SB 1, on October 31, 2013, that:

"In the Department's view, no amendments are necessary for the bill to accomplish the bills stated intent and purpose". [Emphasis Added.]

"Yet, clearly, there are many, many problems with this bill that need to be fixed before it should be approved on Third and Final Readings. And, I for one have little confidence in our Attorney General whose consistent legal analysis of every draft, from the Governor's same-sex marriage bill, AG.8.22.13 and AG.9.9.13 and AG 8/15/13 through Senate Bill No. 1, House Draft 1, have been akin to Bobby McFerrin's 'Don't Worry, Be Happy'.

"In our reckless zeal to ensure the equal protection of the laws to same-sex couples, this bill has the potential of doing irreparable harm to all of our people. We must not proceed foolishly any further. And, we should take pause to make sure that we do this in the right way and for the right reason.

"I beg my colleagues to support this floor amendment."

At this time, Representative Oshiro offered Floor Amendment No. 7, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

The legislature further finds that, while same sex marriage would be a great advancement for human liberty, this change, could have serious implications if steps are not taken to protect the liberties and equal rights of those religious organizations and believers who cannot conscientiously recognize or facilitate same-sex civil marriages. There will be no net gain for human liberty and equal rights if same-sex couples are permitted to oppress religious dissenters in the same way that those dissenters, when they had the power to do so, oppressed same-sex couples. There is no reason to let either side oppress the other. Same-sex couples should not be denied the right to marriage, and the State should not force dissenting religious believers or organizations to recognize or facilitate same-sex marriage.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State; and
- (2) Protect religious freedom and liberty by:
 - (A) Ensuring that no clergy or other officer of any religious organization will be required to solemnize any marriage, in accordance with the Hawaii State Constitution and the United States Constitution; and
 - (B) Clarifying that unless a religious organization allows use of its facilities or grounds by the general public for weddings for a profit, such organization shall not be required to make its

facilities or grounds available for solemnization of any marriage celebration; and

- (3) Harmonize the right to equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

RELIGIOUS FREEDOM RESTORATION ACT

§ -1 Findings. (a) The legislature finds that:

- (1) The authors of the Bill of Rights secured the free exercise of religion as an unalienable right under the First Amendment of the United States Constitution;
- (2) The free exercise of religion is also guaranteed under article I, section 4 of the Constitution of the State of Hawaii;
- (3) Laws neutral toward religion may substantially burden religious exercise as surely as laws intended to interfere with religious exercise;
- (4) Government should not substantially burden religious exercise without compelling justification;
- (5) The United States Supreme Court in a recent decision virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
- (6) The compelling interest test in the free exercise of religion established by the United States Supreme Court is a workable test for striking sensible balances between religious liberty and competing government interests.

(b) The legislature declares its intent that:

- (1) It shall be the policy of the State that the compelling interest test in the free exercise of religion, as established by the United States Supreme Court under Shubert v. Verner, 374 U.S. 398 (1963), shall be the standard applicable by the courts of this State in all cases where religious exercise is substantially burdened; and
- (2) This chapter shall provide a claim or defense to persons whose religious exercise is substantially burdened by government.

§ -2 Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through solemnization of the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. Nothing in this chapter shall be construed to require any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter to solemnize any marriage. No such person who fails or refuses to solemnize any marriage under this section for any reason shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil liability for the failure or refusal.

§572-E Religious organizations and facilities; liability exemption under certain circumstances. Notwithstanding any other law to the contrary, no religious organization shall be subject to any fine, penalty, injunction, administrative proceeding, or civil liability for refusing to make its facilities or grounds available for solemnization of any marriage celebration under this chapter; provided that the religious organization does not make its facilities or grounds available to the general public for solemnization of any marriage celebration for a profit.

For purposes of this section, a religious organization accepting donations from the public, providing religious services to the public, or otherwise permitting the public to enter the religious organization's premises shall not constitute "for a profit".

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be ~~[only between a man and a woman;]~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be

lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;

- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~;~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~[man and woman]~~ parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of

marriage, the form and contents of which shall be prescribed by the department of health[-]; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Nothing in this section shall be construed to require any person authorized to perform solemnizations [~~pursuant to chapter 572 or~~] of civil unions pursuant to this chapter to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal."

SECTION 9. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

"[~~§572C-2~~] **Findings.** [~~The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~]

~~However, the legislature concurrently~~ The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by [~~such~~] legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son[, or two individuals who are of the same gender]. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."

SECTION 10. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 11. The department of health may, in its discretion, make any changes that it deems necessary to internal procedures or forms, to aid in the implementation of this Act.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 13. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on November 18, 2013."

Representative Oshiro moved that Floor Amendment No. 7 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of Floor Amendment Number 7. Let me give you some of the big picture parts of this. What it does is delete the paragraph 2 findings on page 2, lines 4 through 10, from the current Senate bill.

"What it also does is insert Section 2 from House Bill Number 6, which is a religious freedom restoration act provision. It also, in Section 14, adds an inserverability clause, which is contained in the New York statute and

also the Maryland statute. It also deletes 572-C, rights of parents, from Senate Bill Number 1, which is also in our House Draft Number 1. It also deletes Section 9 of Senate Bill 1, which allows a party to a same-sex marriage access to Hawaii's courts and to the divorce, annulment or separation authorities.

"Let me get back to the first thing, first. The reason why I object to that particular provision in the bill, Mr. Speaker, is that I have grave concerns of what that language could mean, or could be construed as. As I think, articulated quite well by Justice Levinson, and then by retired Judge Ahu, who said that if there's any questions on the legislative intent of a particular measure, the courts would look to the language of the measure, including the Section 1, which is commonly known as the findings of facts or the purpose clause in our statute.

"That particular provision that's in the current House Draft 1 reads as follows, Mr. Speaker. It says that, 'It is the intent of the legislature to ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State.'

"Subsection 2. This is the part I'd like to delete from the current draft through this amendment. It says this, Mr. Speaker. 'Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law.'

"Mr. Speaker, that's an extraordinary grant of authority to interpreters weighing in on this act. That they could interpret this to mean an amendment or construction of law where we have not gone in and touched any of the existing Hawaii Revised Statutes. So that's one of the reasons why I've added that element into this floor amendment. I don't really know what it means, but the plain reading of it says that there'll be no legal distinction, and whether this act does or does not amend any particular provision of law. The policy and the intention would supersede any of the existing laws whether we as a Body amend them or do not amend them.

"I believe that may be construed to trump any of the amendments here regarding public accommodations or any of the religious exemptions. I think that's too much authority, given to a court, through their interpretative powers.

"Another provision, Mr. Speaker, is regarding the Religious Freedom Restoration Act, and I'll ask for permission to submit written comments into the Journal, Mr. Speaker. But basically this is it. Right now we have no real standard on how to go and decide these important cases between religious freedoms, feelings of conscience, and equal protection of due process.

"Ever since the United States Supreme Court in the Employment Division v. Smith case, the Oregon peyote case by the Rehnquist Court came into being, we have lost that authority and ability to have a weigh-in of test of these two important issues.

"What the Religious Freedom Restoration Act, which is based upon congressional enactment back in 1993 does, Mr. Speaker, it gives the courts and the deciding bodies..."

Representative Say rose to yield his time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you, Mr. Speaker. The ability to have a legal standard in place on how to resolve these inevitable conflicts between religious freedoms, freedom of conscience, and civil rights, or other policies of government which are important. It basically would codify the previous laws in place, the Sherbert Test, that was basically repealed when Employment Division v. Smith became the law of the land.

"It also has the support of the ACLU, both on the national level and the local level. And let me read the fact sheet from their website. The ACLU, along with almost every religious and civil rights group in America that has taken a position on the subject, rejects the Supreme Court's notorious decision of *Employment Division v. Smith*. In *Smith*, Mr. Speaker, Justice Scalia, who is still in the court, wrote that the accommodation of religion should be left 'to the political process' where government officials and political majorities may abridge the rights of free exercise of religion.

"The Constitution does not endorse any religious creed, and it does not recognize any power of government to decide theological questions. Beliefs about the nature of God is a proper subject for individuals, families, religious communities, and theologians, but not for government bodies..."

"That's currently the position of the American Civil Liberties Union, and it's the correct decision, Mr. Speaker. I did some research. Back in 1993, in response to the decision of the Rehnquist Court, it was unanimously approved by the United States Senate and Congress. Even our own Senators Daniel K. Inouye and Daniel K. Akaka supported it. I think there are only three members of the U.S. Senate who opposed it. And they are all Republicans, Mr. Speaker. But it established a balancing test in which you could have an ability to reconcile these two important constitutional provisions, freedom of religion and freedom from religion, freedom of conscience, freedom of speech, along with civil rights, due process, and equal protection.

"This is the case, Mr. Speaker, in the peyote case. There was an Indian tribe that believed the sacrament of the peyote was part and parcel of their religion. That's what we're protecting here.

"It also protects, Mr. Speaker, minority religions like the Santerians, who believe that they need to worship their gods or goddesses, how many they have, with an animal sacrifice. It protects these people. It'll even go, Mr. Speaker, to protect the indigenous religions and practices of our first nation's people, or even our Native Hawaiians. That's the purpose of this.

"Finally, Mr. Speaker, there's an inseverability provision within this bill that's based upon New York and Maryland. And the intent of this inseverability provision, Mr. Speaker, is this. That you would prevent the fringe on both sides of this discussion from taking advantage of the law to their advantage, to either be a martyr for one cause or the other. But if one part would be deemed illegal, immoral, or unconstitutional, the whole thing goes away. This would be the final standoff between the two warring sides. And that's what this bill would do with an inseverability provision.

"Finally, Mr. Speaker, it's the divorce provision in Section 9 that I object to, I've spoken about it earlier, but for these reasons I ask that we consider this floor amendment. Thank you, very much."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I rise in support of Floor Amendment No. 7.

"This floor amendment would amend the House Draft 1 by:

- (1) Deleting certain language from the purpose clause;
- (2) Inserting SECTION 2 from House Bill No. 6, the 'little' Religious Freedom Restoration Act;
- (3) Inserting SECTION 14 from House Bill No. 6, the inseverability clause; and
- (4) Deleting SECTION 9 of House Draft 1, which would allow a party to a same-sex marriage access to Hawaii courts for divorce, annulment, or separation proceedings.

"The rationale for each change is as follows:

"I. Deleting Certain Language from the Purpose Clause

"This floor amendment deletes language found on page 2, lines 4 through 10 of House Draft 1, which states:

"Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and..." [Emphasis Added.]

"Because this language is in the purpose clause, the courts will use this language to construe the Legislature's intent should there be any conflicts that arise in the application of this Act. A black-letter reading of this language appears to assert that the Legislature intends that all provisions of law regarding marriage should be applied equally to same-sex couples and opposite-sex couples regardless of whether the language in statute provides the case. Moreover, this legislative intention – that no legal distinction be made between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State – is to be construed and manifested even without any direct action to amend or not amend any provision of law.

"Frankly, I have never seen any such provision before and the breadth and scope of its reach leaves me breathless. But, as even retired Supreme Court Justice Levinson reminded us, the choice of words and phrases and the language in the law has meaning and the legislative intent will be applied to existing law. Mr. Speaker, does this language truly mean what it says? Wouldn't this supersede any and all amendments we are approving in the remaining sections of the bill that treat same-sex couples and opposite-sex couples differently?

"There are countless instances where marriage status impacts how the law will be applied and as such, it is unclear whether an equal treatment would conflict with the manner the statute is supposed to operate. As previously discussed in the debates on this measure, there are numerous statutes that treat parties differently because of gender. This is especially the case in family law statutes. Currently, the law treats the birth mother differently from the biological father primarily because the mother carries the child before birth – a near self-evident fact. Likewise, it is a presumption that a child born to a married couple is the biological offspring of the husband and spouse.

"As previously discussed regarding the parenting provisions, a blanket statement to apply all of the laws equally regardless of gender, while perhaps noble in its goal, is patently negligent because such a broad application of public policy will undoubtedly conflict with the practical implementation of law. That nowhere in the public record had we received any comment from the Hawaii State Judiciary and Hawaii State Bar Association, Tort Law Division, cause us to pause and seek their input and comment.

"Finally, it cannot be repeated enough that this purpose clause provision does not rest squarely with the rest of this measure. It should not be construed to provide the overarching legislative intent that 'there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State'. I fear that such a broad, blanket policy statement could make all subsequent provisions and exemptions therein both meaningless and void.

"II. 'Little' Religious Freedom Restoration Act

"This floor amendment would also create a new right by codifying the federal Religious Freedom Restoration Act in Hawaii State Law to:

- (1) Establish the compelling interest test as the standard applicable by the courts of the State of Hawaii in all cases where free exercise of religion is substantially burdened; and
- (2) Establish a claim or defense to persons whose religious exercise is substantially burdened by government.

"Prior to 1990, the First Amendment was interpreted by the U.S. Supreme Court to give protection to religious belief and conduct in all cases where such belief or conduct was not outweighed by some compelling government interest in protecting life, liberty, property, or some other similarly weighty community concern. See, *Sherbert v. Verner*, 374 U.S. 398 (1962) (Sabbath-keeper's convictions protected); *Wisconsin*

v. Yoder, 406 U.S. 205 (1972) (Amish protected in conviction re need to educate children at home after age of 14); McDaniel v. Paty, 435 U.S. 618 (1978) (State cannot inquire into religious belief as condition of employment); Thomas v. Review Bd., 450 U.S. 707 (1972) (1981) (Jehovah's witness protected in conviction against making war materials); Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136 (1987) (employee protected in observing holy days even when conversion occurred after hiring). But in the 1990 case of Employment Division v. Smith, 494 U.S. 872 (1990), the U.S. Supreme Court decided that, in many cases, the First Amendment should only protect religious exercise from laws or regulations that were targeted at religion. Under the Court's reasoning, a law that forbade Orthodox Jews from wearing yarmulkes on government property would be unconstitutional, as it would be targeting religion. However, if the law were to forbid all people from wearing hats on state property, it would be constitutional – even though the law would require Orthodox Jews to violate either their consciences or the law in order to walk on government property. Because the law is 'neutral' toward religion and 'generally applicable' to all persons, the First Amendment would no longer apply, despite the very real burden the law placed on a religious minority.

"Because many difficulties faced by minority religions are caused by legislative ignorance or insensitivity and not by open malice, religious groups were dealt a severe blow by the Smith decision. Most legislatures are clever enough to couch even anti-religious legislation in neutral and generally applicable terms, thereby evading the First Amendment. Thus, as the Harvard Law Review put it, the Smith Decision as a practical matter 'eviscerated' and 'gutted' much of the protection previously enjoyed under the Free Exercise Clause of the First Amendment.

"For a brief period from 1993 to 1997, there was a federal law that protected religious freedom generally. Known as the federal RFRA, Freedom Restoration Act (RFRA), it no longer applies to state actions.

"The federal RFRA resulted largely from the efforts of the Coalition for the Free Exercise of Religion, which was formed in response to the Smith decision. With the support of unlikely allies such as the Catholic Church, the ACLU, the Christian Legal Society, the National Council of Churches, major Jewish organizations, the National Association of Evangelicals, the Southern Baptists' Ethics Religious Liberty Commission, the Mormons, and People for the American Way, the federal RFRA was passed by a virtual unanimous Congress in 1993. It restored the compelling interest standard to claims of religious freedom.

"Legislatively, the federal RFRA was originally introduced by Rep. Charles Shumer (New York) in the House and Senator Edward Kennedy (Massachusetts) and it was approved unanimously by the House of Representatives (voice vote). In the Senate, only three members voted no – Byrd (D – WV), Helms (R – NC) and Mathews (D – TN).

"Hawaii's entire congressional delegation supported this legislation – Congress Members Neil S. Abercrombie and Patsy Mink, and Senators Daniel Akaka and Daniel Inouye.

"In 1997, the United States Supreme Court held in City of Boerne v. Flores, 521 U.S. 507 (1997), that Congress exceeded its legislative authority in applying the federal RFRA to state law. Because of this, unless the state enacts the RFRA into its own laws, the compelling interest test would not necessarily apply. It must be reemphasized that after this decision, the ACLU worked with a broad coalition of religious groups and civil rights groups to enact the Religious Land Use and Institutionalized Persons Act which, among other important protections, gives religious groups added protections against local land use policies and restrictions.

"And why is this important within the context of same-sex marriage? The RFRA provision would require Hawaii's courts to balance a person's right to freely exercise religious beliefs with the just as important right of another to be treated equally under the law. Without this vital component, the rights to equal protection of a same-sex couple would supersede the rights of the religious believer or conscientious objector – an outcome that is abhorrent to our American way of life.

"Justice necessitates balance. As such, in my view, the enactment of RFRA into the same-sex marriage bill is not only relevant, but essential for there to be any balance in this legislation, or justice for that matter.

"Earlier, concerns were raised that such a provision would allow anyone to discriminate so long as it was done so because of a 'sincerely held religious belief'. However, the courts have long dealt with these issues.

"By establishing an affirmative defense, the burden of showing beyond a reasonable doubt that the 'sincerely held religious belief' was unconstitutionally infringed upon by the statute is placed upon the person asserting the defense. See, State of Hawaii v. Jonathan H. Adler, Slip Op. 25224, 118 P.3d. 652 (2005). Only after that was found would the state then have to justify the statute by compelling government interest, and show that the statute was narrowly tailored to minimize the effect on the person's religious exercise. Thus, it only arises where there is a 'violation' of 'sincere' beliefs that are 'religious' and not to situations that merely make religious people uncomfortable, nor to insincere beliefs asserted as a pretext for discrimination, nor to non-religious moral beliefs.

"Without the inclusion of specific protections for conscientious objections such as the religious freedom restoration act, the enactment of House Draft 1 will force religious organizations, businesses and individuals to compromise their deeply held beliefs to comply with the law. Again, these are constituents who have no objection to providing services to same-sex couples, but object to facilitating the marriage of a same-sex couple.

"Moreover, this concern is not a mere hypothetical or without any merit when one examines the language found on page 6, of the 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', which states in relevant part:

"The State of Hawaii has a compelling state interest in eliminating discrimination in public accommodations. Out public accommodation law is a law of general applicability that serves a compelling state interest and does not target any religion." [Emphasis Added.]

"Thus, if this is the standard by which the Hawaii Civil Rights Commission will conduct its analysis and application of Chapter 489, HRS, in the situation where there is a conflict between an individuals' liberty right under Section 489-3, HRS (Discriminatory practice prohibition), and another individual's First Amendment religious freedom right, without the balanced approach of the Sherbert Test, as would be established in the RFRA, the outcome will be a substantial and certain abridgment of one's First Amendment religious freedom right.

"As the preeminent and distinguished Professor of Constitutional Law, Erwin Chemerinsky, suggests:

"[Third] [S]tate government can enact their own religious freedom restoration act in order to have state courts apply strict scrutiny to state government actions or laws that burden religion. States, of course, pursuant to police power, may adopt any law not prohibited by the Constitution. Nothing in the Court's decision in Flores precludes a state from deciding that it will tolerate state actions and laws that burden religion only if they meet strict scrutiny.

*"There is no doubt that people have less protection for their religious practices after Flores than they did before. Hopefully, though, this will be only temporary as legislatures find other ways to protect individuals from neutral laws of general applicability that burden religion. Hopefully, too, the Supreme Court will uphold these laws and recognize that more is not less; **legislatures may protect rights greater than those found in the Constitution by the Supreme Court.**" [Emphasis Added.] (See, Erwin Chemerinsky, The Religious Freedom Restoration Act Is a Constitutional Expansion of Rights, 39 Wm. & Mary L. Rev 601 (1998) pg. 636.)*

"III. Inseverability"

"To ensure that the equal protection and religious freedom provisions are applied in tandem, the bill is specifically designed to become invalid in its entirety if any portion of the bill is stricken by the courts.

"This approach is the same taken in Maryland and New York State where an inseverability provision was included in the bill that legalized same-sex marriage to obtain support from both liberal and conservative members of the Legislature. It has the effect of curbing the fringe members of the various stakeholders from seeking to strike down any portion of the law it finds disagreement with and promotes a mutual level of interdependence to the effectiveness of the whole policy as each has a similar political veto power over the other.

"This provision has been in effect in Maryland and New York, since 2012 and 2011, respectively and no published legal action has been issued in either state. We should consider this provision if we are serious and sincere about promoting a policy on same-sex marriage that allows all to 'live and let live' in our island home and community in the middle of the sea.

"IV. Domiciliary Requirements Necessary for Recognition of Divorce Decrees Issued in the State of Hawaii"

"SECTION 10 of House Draft 1, page 17, line 9, through page 19, line 13, would allow any party to a marriage solemnized in the State of Hawaii to access Hawaii courts for the purpose of obtaining an annulment, divorce or separation if neither party is able to pursue an action for annulment, divorce, or separation where the parties are domiciled because both parties are domiciled in a jurisdiction or jurisdictions that do not recognize the marriage. This provision would exempt these parties from the three-month domiciliary requirement to use the courts in the State of Hawaii for purposes of divorce, annulment, or separation. Be certain that this provision would affect both out-of-state and out-of-country marriages and may have serious consequences upon child custody, support, visitation, and parental rights, without the current due process protections.

"Professor Lynn D. Wardle, a recent panelist at the House of Representatives Informational Briefing, October 23, 2013, former President of the International Society of Family Law, current President of the International Academy of the Study of the Jurisprudence of the Family, and author and co-author of six books about family law, and over 100 law review articles, mostly about family law, is a full-time law professor, having taught family law for 35 years. He strongly condemns the amendments to Section 580-1, Hawaii Revised Statutes (HRS), which allows the Hawaii courts to have jurisdiction to grant a divorce to any couple even living outside of Hawaii, regardless of where else they are domiciled, where else they live, where else they have their home, own property, or have children or custody of children, if they got married in Hawaii and now live in a state or country that does not recognize their marriage. Professor Wardle has shared with me that there is NO state that allows this radical extension of divorce jurisdiction and it is almost certainly unconstitutional under long-established precedents and standards set by the U.S. Supreme Court.

"In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the state. Mere residence will not do but domicile is necessary. The reason for such a high standard is the constitutional requirement of due process of law.

"In other words, courts of the state in which a party to a marriage is domiciled, just like the state in which land is situated, have the only constitutional authority to issue a court order regarding the res or matter that is the subject of litigation – the marriage in one case, the land in another case.

"Furthermore, we should be questioning the necessity for this special privilege to a same-sex couple that is not granted to a heterosexual couple.

Why are we creating this special privilege? What effects will it have upon the operations and policies of our family courts?

"By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce, annulment, or separation, it is arguable that the bill, as presently drafted, would jeopardize the validity of any divorce, annulment, or separation decree issued in the State of Hawaii as they are recognized by other states. SECTION 10 of House Draft 1, page 17, line 9, through page 19, line 13, is certain to run afoul of constitutional requirements of due process of law and place a cloud of uncertainty over Hawaii's Family Court decrees and orders.

"In conclusion, the amendments proposed in this floor amendment are necessary to correct fatal flaws in the House Draft 1. Should these flaws not be corrected, the potential for harm that this bill will have on our people is enormous, and in most cases irreversible and permanent.

"How can we forget the children who may or may not be Hawaii residents or even U.S. citizens or who are domiciled on the U.S. Mainland.

"Does this extraordinary change comport with all federal and state laws regarding the transfer of children across state and country borders?

"What occurs if the parties to the marriage do not consent to the family court's jurisdiction?

"What happens to the adjudication of child custody, spousal support, child support, property division, or other important matters such as educational opportunities, visitation rights, medical treatment, and other matters commonly disposed of under the present marriage laws and family court procedures?

"Do we understand how this change in our marriage laws and related family court rules and policies could, for all practical purposes, terminate and end a child's relationship with his or her own biological parent?

"Are we so sure that we may not be playing a part in an incremental pursuit to cut-off a child's link to his or her unique cultural legacy or ancestral heritage?

"The public record is lacking on any discussion of this provision and how it may affect children. The Attorney General's written testimony, dated October 31, 2013, page 4, does not even mention 'child' or 'children' or 'minor' or 'minors', which in my humble opinion only suggest a mere cursory review of the provision or a gross misunderstanding of how this provision could do great and irreparable harm to the child and children of a same-sex marriage couple.

"Mr. Speaker this kind of substantive change deserved much more discussion and review as it deals with children. That this Body did not examine and consider these foreseeable challenges underscores the great and grave danger in rushing this measure through.

"For this reason, I strongly urge your favorable consideration of this floor amendment."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. I am in support of this measure. I'd like to thank the great Representative from Wahiawa for introducing this floor amendment. I appreciate these items that he has placed in this measure. I can appreciate the Religious Freedom Restoration Act. I think it's very kind of him to put that in there to protect religious freedom. See, Mr. Speaker, that's one of the reasons why I had to vote the way I did yesterday. Because I have to balance rights of minorities with religious freedom rights of the majority. After all, I thought that's what I was placed here to do when I took that oath to follow the process and uphold the constitution.

"And I don't want to erode upon anybody's particular rights. And that's why I had to dig deep inside me and say, what comes first. So I appreciate

this measure, especially this Religious Freedom Restoration Act. As the kind Representative from Wahiawa was expounding upon, when this was voted on, our current sitting Governor voted and supported freedom of religion. So I think he would be very open, since he is so supportive of providing services for same-gender couples.

"I don't even know why this wasn't brought up. I brought this up many times during the hearings. I do appreciate the inseverability clause, obviously that has been placed in two other measures across the country. I think it creates a very fair, balanced playing field. I think it will resolve a lot of these issues that we heard over those five days of testimonies. Who's going to attack who first? Who's going to lose their property? Who's going to be subject in the long court battles? It's the small person. It's the individual who feels their rights have been subjected.

"I beg to differ, when people say our public accommodations law is the best in the land and nobody's challenged it, Mr. Speaker. Our poor and our meek find out that they have to pay for it, they'll just walk away and say, yeah my rights were violated, but it's okay, I just won't go back there again. These, as a Legislative Body dictating to the judicial system, are bright lines when we're making this measure, Mr. Speaker. Thank you very much."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the intent of the measure, Mr. Speaker. Given that the good Representative from Waikiki astutely pointed out that there are some serious flaws that we're going to have to deal with after this bill passes, Mr. Speaker, I believe it's in the wisdom of a very wise and prudent legislature to make sure that we minimize the damage that we do to our community if we move legislation forward in a rash manner and when it hasn't been properly vetted.

"Our community hasn't been able to weigh in on the amendments that were made to SB 1 given the short time that has transpired in between the time that the original bill was released, the time that the bill was amended, to where it is right now, Mr. Speaker.

"So I believe that it is very important for this Body to consider the amendments that have been placed before us, including this Floor Amendment Number 7, which is trying to deal with a number of the shortcomings of SB 1, Mr. Speaker, even with the few amendments that were made.

"Already we are seeing issues that are arising from the problems that have not been addressed with the amendments that were made to SB 1 recently. So this is definitely a very valiant and a very thought-out approach, Mr. Speaker, to address some of those issues.

"Given the fact that we are very aware of the rights that could very easily be trampled upon, Mr. Speaker, if we do not thoroughly address the concerns that are being raised. It is very clear that, having not been given the opportunity to take this measure back to my community, and the request was made in the hearing, Mr. Speaker, and they said to defer and ask you for a recess long enough for a few days, to take this measure back to our communities. That request was not granted, so this is the only opportunity we have to try and address some of these issues.

"It is still within the power of this Body to grant that recess long enough to allow us to educate our communities and to get the feedback necessary, whether this is good.

"I don't know, Mr. Speaker, if this amendment will address all of them. Maybe it will address some. But I think we need to understand, very clearly and without question, that there are some very serious flaws that need to be addressed in SB 1, even with the House draft, and these amendments, Mr. Speaker, I think, we need to be supportive of, given that we are not allowed the time to take the measure back and have our communities vet it, Mr. Speaker. Thank you very much."

Representative Brower rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. In reference to the comment from the previous speaker, I do have concerns over this measure and its unintended consequences. I raised that to the Attorney General, and he said that I was wrong, and I accept his answer. Thank you."

Representative Fale rose to respond, stating:

"Mr. Speaker, just a reference. I'm glad he got an answer from the Attorney General, Mr. Speaker, because the Attorney General wasn't able to answer a whole host of questions that were posed to him during the hearings. So I'm glad at least the good Representative from Waikiki got an answer that was clear and concise and actually addressed what was given him.

"So I appreciate that very much, Mr. Speaker, and I wish the Attorney General was to do as much when we did have the hearing. Thank you very much."

Representative Saiki rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to this floor amendment. I just wanted to make three points. First, for those members who oppose marriage equality, they should note that this floor amendment authorizes same-sex marriage.

"Second, for those members who are concerned about the process, and the legislative process in particular, they should note that this floor amendment adds brand new provisions that have not been discussed publicly. Such as, incorporation of the Religious Freedom Restoration Act.

"Third, for those members who are concerned about the scope of the religious exemptions, they should note that this floor amendment restricts the religious exemption for church facilities when compared to House Draft 1. And the reason why it's more restrictive is because this proposed language would not include protection for religious facilities that provide wedding operations, even if those operations are commercial in nature.

"For those reasons, I oppose this floor amendment and I call for the question. But please allow members to submit written comments if they have any. Thank you."

At this time, Representative Saiki called for the previous question.

At this time, the Chair stated:

"The question has been called. However, we will allow the mover to proceed, please, before the question is called."

Representative Oshiro rose to respond, stating:

"Thank you very much, Mr. Speaker. I hope this is not the pattern of the practice today. I think the Majority Leader and I share a common bond of having been Majority Leaders for the caucus, so he knows the importance of what I do today and the manner in which I do it. So thank you, Mr. Speaker. How much time do I have?"

The Chair addressed Representative Oshiro, stating:

"You have two minutes."

Representative Oshiro continued, stating:

"Okay, thank you very much, Mr. Speaker. Let me tell you why it's so important, Mr. Speaker. It's very important because, number one, we don't have to limit ourselves to 10 days, or 15 days, or 20 days, we can go up to 30 days. There is no rush. Unless you want to be the first legislature in the entire world to approve same-sex marriage in record time and disregard centuries of, thousands of years of culture and tradition, and forget about the religious rights and freedoms protected in our constitution.

"I don't think we want to do that, Mr. Speaker, so that's why I'm standing here today. Understand this, Mr. Speaker, members, that once we go out

there and we approve this, there's no going back. There's no going back to fix this bill, there's no going back to have a constitutional amendment to take away vested property rights, which would violate a person's due process rights under the state or federal constitution.

"So once the first marriage license is issued, Mr. Speaker, there's no going back folks. This is a one shot deal. And that's what the scholars talk about in this book, Same-Sex Marriage and Religious Liberty: Emerging Conflicts, this is a treatise of the law today. This should be read by anyone, civil libertarians, civil rights activists, legislators, executives, commissioners, etc.

"This is a treatise that should be studied, and these folks are saying to us, many of them who support same-sex marriage. You can't rush something like this, Mr. Speaker. Thank you very much."

Representative Say rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, may you record a yes vote for me on this floor amendment, since this is a voice vote. Thank you."

The motion that Floor Amendment No. 7, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Brower and Saiki voting no, and with Representatives Cachola, Choy, Nishimoto and Tokioka being excused.

At 1:30 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:37 o'clock p.m.

At this time, Representative Oshiro offered Floor Amendment No. 8, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S.Ct. 2675 (2013), which held that section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal benefits and protections to those couples. This legislature had previously extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not receive treatment equal to a marriage under federal law.

The legislature further finds that in *Garden State Equity v. Dow*, Docket No. L-1729-11 (New Jersey, September 27, 2013), the superior court of New Jersey granted summary judgment extending civil marriage to same-sex couples. Citing *Windsor*, the New Jersey appellate court held that by creating two distinct labels – marriage for opposite-sex couples and civil unions for same-sex couples – New Jersey civil union partners are excluded from certain federal benefits that legally married same-sex couples are able to enjoy. The court held that this unequal treatment requires New Jersey to extend civil marriage to same-sex couples to satisfy the equal protection guarantees of the New Jersey Constitution.

The legislature further finds that, while same-sex civil marriage would be a great advancement for human liberty, this change could have serious implications if steps are not taken to protect the liberties and equal rights of those religious organizations and believers who cannot conscientiously recognize or facilitate same-sex civil marriages. There will be no net gain for human liberty and equal rights if same-sex couples are permitted to oppress religious dissenters in the same way that those dissenters, when they had the power to do so, oppressed same-sex couples.

Sexual minorities and religious minorities make essentially parallel claims on the larger society, and the strongest features of the case for same-sex civil marriage make an equally strong case for protecting the religious liberty of dissenters. Both same-sex couples and committed

religious believers argue that some aspects of human identity are so fundamental that they should be left to each individual, free of all nonessential regulation, even when manifested in conduct. For same-sex couples, the conduct at issue is to join personal commitment and sexual expression in a multifaceted intimate relationship with the person they love. For religious believers, the conduct at issue is to live and act consistently with the demands made by the Being that they believe made us all and holds the whole world together.

There is no reason to let either side oppress the other. Same-sex couples should not be denied the right to civil marriage, and the State should not force dissenting religious organizations to recognize or facilitate same-sex marriages.

The legislature also finds that in some religious faiths, marriage is a contract composed of two parts – an agreement between the individuals being married, and an agreement between the couple and the church. While the first agreement ensures that the relationship between the individuals is based on mutual love and respect and be "to death" or for "eternity," the second agreement formalizes the couple's recognition in the church and memorializes the rights, duties, and obligations of the church and the couple.

For example, according to the Catechism of the Catholic Church (1631), "... marriage introduces one into an ecclesiastical order, and creates rights and duties in the church between the spouses and toward their children. ..." For the Church of Jesus Christ of Latter-Day Saints, "... [marriage] is a pledge, or solemn covenant, a spiritual sign or bond between the contracting parties themselves and between them and God. ..."

While the State has asserted its sovereign authority to regulate the civil aspects of marriage, the legislature also recognizes that the broad application of this authority may impair the exercise of religious freedom and the ability for the couple to "contract" with a religious organization in the context of marriage.

The Hawaii supreme court's seminal ruling in *Baehr v. Miike*, 74 Haw. 530, 852 P.2d 44 (Haw. 1993), spoke to the State's authority to issue marriage licenses by holding that the department of health could not deny a same-sex couple a marriage license solely on the basis of gender. But efforts to change the Hawaii marriage law to effectuate this principle run the risk of exceeding the scope of what is required under equal protection and entering into realms that are essential for citizens to fully exercise their religious freedom.

As such, the legislature asserts the need to separate the licensing aspects of marriage, which clearly may be governed under civil law, from the contractual aspects of marriage between the individuals being married and the religious organization solemnizing the marriage in accordance with common practice, canon, and common law for hundreds of years.

It is the intent of the legislature that:

- (1) Same-sex couples be able to take full advantage of federal benefits and protections granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Marriages solemnized in accordance with this Act be equal in all respects to the marriages of opposite-sex couples under the laws of this State;
- (3) There be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State;
- (4) All provisions of law regarding marriage be applied equally to same-sex couples and opposite-sex couples, regardless of whether this Act amends any such provision of law; and
- (5) The statutory system of inequity within domestic relations be reformed to ensure that the bundle of rights afforded to married couples, including the unique meanings and traditions associated with it, are not denied by the State (in its capacity as a licensing authority) to any couple solely on the basis of gender.

Accordingly, the purpose of this Act is to harmonize the right to equal protection under the law for same-sex couples, as guaranteed by the Fourteenth and Fifth amendments of the United States Constitution and article I, section 3 of the Constitution of the State of Hawaii, with the equally important right to the free exercise of religion, as guaranteed by the First Amendment of the United States Constitution and article I, section 4 of the Constitution of the State of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

RELIGIOUS FREEDOM RESTORATION ACT

§ -1 Findings. (a) The legislature finds that:

- (1) The authors of the Bill of Rights secured the free exercise of religion as an unalienable right under the First Amendment of the United States Constitution;
- (2) The free exercise of religion is also guaranteed under article I, section 4 of the Constitution of the State of Hawaii;
- (3) Laws neutral toward religion may substantially burden religious exercise as surely as laws intended to interfere with religious exercise;
- (4) Government should not substantially burden religious exercise without compelling justification;
- (5) The United States Supreme Court in a recent decision virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
- (6) The compelling interest test in the free exercise of religion established by the United States Supreme Court is a workable test for striking sensible balances between religious liberty and competing government interests.

(b) The legislature declares its intent that:

- (1) It shall be the policy of the State that the compelling interest test in the free exercise of religion, as established by the United States Supreme Court under *Sherbert v. Verner*, 374 U.S. 398 (1963), shall be the standard applicable by the courts of this State in all cases where religious exercise is substantially burdened; and
- (2) This chapter shall provide a claim or defense to persons whose religious exercise is substantially burdened by government.

§ -2 Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter."

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . LICENSING AND CERTIFICATION
OF DOMESTIC RELATIONS CONTRACTS**

§321-A Rights and obligations. (a) Upon the issuance of a marriage license, the parties named in the license shall be entitled to those rights and obligations provided by law to married persons. The rights and obligations of marriage shall be granted to the licensees upon the solemnization of the marriage ceremony; provided that the marriage shall be solemnized within the thirty-day period in which the marriage license is valid in accordance with this part.

(b) Upon the issuance of a certificate of reciprocal beneficiary relationship, the parties named in the certificate shall be granted those rights and obligations provided by law to reciprocal beneficiaries. Unless otherwise expressly provided by law, reciprocal beneficiaries shall not have the same rights and obligations under the law that are conferred through marriage under this part.

§321-B Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law, including but not limited to the Internal Revenue Code, as amended, shall apply to all marriage licenses recognized under the laws of this State as if federal law recognized the marriage licenses in the same manner as the laws of this State, so that all marriage licensees receive equal treatment.

§321-C Requisites of marriage license. (a) The department of health shall issue a marriage license if the department determines that all of the following requisites are met:

- (1) The applicants do not stand in relation to each other of ancestor and descendant of any degree whatsoever, siblings of the half as well as the whole blood, uncle and niece, uncle and nephew, aunt and nephew, aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other;
- (2) Both applicants at the time of applying for the license are at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, a marriage license may be issued to applicants under the age of sixteen years, but in no event under the age of fifteen years, in accordance with this section;
- (3) Neither applicant at the time of applying for the marriage license has any lawful living spouse;
- (4) Both applicants consent to marriage with neither applicant consenting under force, duress, or fraud;
- (5) Neither applicant is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The applicants are applying for the marriage license with an agent duly appointed and authorized to grant marriage licenses; and
- (7) The marriage ceremony is performed in the State by a person or society with a valid license to solemnize marriages, and the applicants and the person performing the marriage ceremony are all physically present at the same place and time for the marriage ceremony.

(b) A marriage license shall not be denied to any couple solely because both applicants are of the same gender.

(c) Whenever any person who is under the age of eighteen applies for a marriage license, the written consent of the applicant's parents or guardian or other person in whose care and custody the applicant may be, shall accompany the application for a marriage license. No license shall be issued to any minor who is under the jurisdiction of the family court without the written consent of a judge of the court.

(d) Whenever any person under the age of eighteen and whose parents are deceased, or who is a ward of a family court, applies for a marriage license, the applicant shall set forth in the statement accompanying the application, the name of the applicant's guardian or of any other person in whose care and custody the applicant may be.

(e) If any applicant for a marriage license appears to any agent to be under the age of eighteen years, the agent shall, before granting a marriage license, require the production of a certificate of birth or other satisfactory proof showing the age of the applicant.

§321-D Requisites of reciprocal beneficiary certificate. The department of health shall issue a reciprocal beneficiary certificate if the department determines that all of the following requisites are met:

- (1) Each of the applicants is at least eighteen years old;
- (2) Neither of the applicants is married, a party to another reciprocal beneficiary relationship, or a partner in a civil union;
- (3) The applicants are legally prohibited from obtaining a marriage license under this part;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) The applicants have signed a declaration of reciprocal beneficiary relationship in accordance with this part.

§321-E Registration as reciprocal beneficiaries; filing fees; records. (a) Two persons, who meet the criteria set forth in section 321-D, may enter into a reciprocal beneficiary relationship and register their relationship as reciprocal beneficiaries by filing a signed notarized declaration of reciprocal beneficiary relationship with the director of health. For the filing of the declaration, the director shall collect a fee of

\$8, which shall be remitted to the director of finance for deposit into the general fund.

(b) Upon the payment of the fee prescribed under subsection (a), the director of health shall register the declaration and provide a certificate of reciprocal beneficiary relationship to each party named on the declaration. The director shall maintain a record of each declaration of reciprocal beneficiary relationship filed with or issued by the director.

§321-F Termination of reciprocal beneficiary relationship; filing fees and records; termination upon marriage. (a) Either party to a reciprocal beneficiary relationship may terminate the relationship by filing a signed notarized declaration of termination of reciprocal beneficiary relationship by either of the reciprocal beneficiaries with the director of health. For the filing of the declaration, the director shall collect a fee of \$8, which shall be remitted to the director of finance for deposit into the general fund.

(b) Upon the payment of the fee prescribed under subsection (a), the director of health shall file the declaration and issue a certificate of termination of reciprocal beneficiary relationship to each party of the former relationship. The director shall maintain a record of each declaration and certificate of termination of reciprocal beneficiary relationship filed with or issued by the director.

(c) A reciprocal beneficiary relationship shall automatically terminate when:

- (1) Either party to the reciprocal beneficiary relationship obtains the rights and obligations of marriage in accordance with this part; or
- (2) Either party to the reciprocal beneficiary relationship obtains the rights and obligations of marriage outside the State in accordance with laws outside the State.

(d) If either party to a reciprocal beneficiary relationship enters into a legal marriage, the parties shall no longer have a reciprocal beneficiary relationship and shall no longer be entitled to the rights and benefits of reciprocal beneficiaries.

§321-G Non-domestic marriage licenses, right of domicile. (a) Marriage licenses between two individuals, regardless of gender and legal where issued, shall be held legal in the courts of this State.

(b) The right of an individual to be or to become a resident domiciled in this State shall not be denied or abridged because of the marital status of the individual. The residence of one spouse shall not establish the residence of the other spouse, which shall be determined by the same factors that apply in determining the residence of any other individual capable of having an independent residence.

§321-H Marriage license; agent to grant; fee. (a) The director of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this part in each judicial circuit. The agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license shall collect from the applicant a fee of \$60, of which the agent shall retain \$9 for the agent's benefit and compensation and shall remit \$51 to the director of health, except as otherwise provided under subsection (b). Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$32 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the birth defects special fund established under section 321-426.

In addition, an agent appointed under this subsection shall collect from the applicant a surcharge of \$5, of which the agent shall retain the full amount for the agent's additional benefit and compensation.

(b) The director of health may appoint, as regular employees under the civil service and classification laws, the number of suitable persons as agents authorized to grant marriage licenses for whom provision has been made in the general appropriations act. In the case of agents appointed under this subsection, the full amount of the fee collected from applicants pursuant to subsection (a) shall be remitted to the director of health. Upon the receipt of remittances under this subsection, the director shall deposit:

- (1) \$41 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the birth defects special fund established under section 321-426.

(c) Every agent appointed under this section may administer any oaths that may be required under this part.

(d) The department of health or its authorized agents shall furnish to each female applicant for a marriage license a brochure explaining rubella, the risks of infection with rubella during pregnancy, and how to seek testing and immunization. The department or its authorized agents shall also furnish to each applicant for a marriage license information, to be provided by the department, relating to acquired immune deficiency syndrome (AIDS), including the availability of any anonymous testing for human immunodeficiency virus (HIV) infection at alternate test sites, and information relating to population stabilization, family planning, birth control, and fetal alcohol and drug syndromes.

§321-I Applications; license; limitations. To secure a marriage license, the applicants for the license shall appear personally before an agent authorized to grant marriage licenses under section 321-H and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each applicant, setting forth:

- (1) The applicant's full name, date of birth, social security number, and residence;
- (2) The relationship between the applicants, if any;
- (3) The full names of the applicants' parents; and
- (4) That any prior marriage or civil union other than an existing civil union between the persons applying for a marriage license has been dissolved by death or dissolution.

If all prior marriages or civil unions, other than an existing civil union between the persons applying for a marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. The license shall authorize the licensees to solemnize the marriage within thirty days commencing from and including the date of issuance. Upon solemnization at a marriage ceremony in accordance with this part, all rights and obligations of marriage authorized under law shall be granted to the licensees. However, if after the thirty-day period the marriage is not solemnized at a marriage ceremony, the license shall become void and no marriage ceremony shall be performed thereafter without the issuance of a new marriage license.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is used, setting forth all facts required to be stated in a manner and on a form as the department may prescribe.

§321-J Marriage ceremony; license to solemnize. (a) It shall be unlawful for any person to perform a marriage ceremony within the State without first obtaining from the department of health a license to solemnize marriages.

(b) Any license to solemnize marriages issued pursuant to this part may be revoked or suspended by the department of health, if the holder of the license has failed to comply with the applicable provisions of this part or of the rules of the department of health.

§321-K By whom solemnized. (a) A license to solemnize marriages may be issued to, and the marriage rite may be performed and solemnized by, any minister, priest, or officer of any religious denomination or society

who has been ordained or is authorized to solemnize marriages according to the usages of the denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of the society, or any justice or judge or magistrate, active or retired, of a state or federal court in the State, upon presentation to the person or society of a license to marry, as prescribed by this part. The person or society may receive the price stipulated by the parties or the gratification tendered.

(b) The authority of any appropriately licensed person to solemnize a marriage, including any minister, priest, or officer of any religious denomination or society licensed to solemnize marriage in accordance with the usages of the denomination or society, shall be absolute. No refusal to solemnize a marriage by any person licensed to solemnize a marriage, including any licensed minister, priest, or officer of any religious denomination or society shall result in a civil claim or cause of action challenging the refusal under law, nor shall any action by any state or county agency to penalize or withhold benefits from any person licensed to solemnize marriage, including a licensed minister, priest, or officer of any religious denomination or society, or the denomination or society itself, under the laws of this State or its political subdivisions including laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status, because of the refusal of a person licensed to solemnize marriage, including any minister, priest, or officer of any religious denomination or society to solemnize a marriage.

§321-L Record of solemnization; marriages, reported by whom; certified copies. (a) Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the licensees married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage and who neglects to keep a record of any marriage solemnized by the person shall be fined \$50.

(b) Each person legally authorized to perform a marriage ceremony shall report within three business days every marriage ceremony performed by the person to the agent of the department of health in the district in which the marriage takes place, setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health.

(c) The department of health shall deliver one certified copy of the certificate of marriage or any part thereof as provided in section 338-13 to the persons married. The certificate shall be prima facie evidence of the fact of marriage in any proceeding in any court.

The department of health shall upon request furnish to any applicant additional certified copies of the certificate of marriage, or any part thereof.

Copies of the contents of any certificate on file in the department, certified by the department, shall be considered for all purposes the same as the original.

The department may prescribe reasonable fees, if any, to be paid for certified copies of certificates.

§321-M Delivery of records to department of health; penalty. Whenever any agent authorized to grant marriage licenses ceases to be an agent, or is directed to do so by the department of health, or leaves the State, the agent shall deliver to the department all the agent's records of marriage licenses. Upon the death of an agent, the records shall be delivered to the department by the agent's personal representative or other legal representative.

Whenever any person holding a license to perform the marriage ceremony is directed to do so by the department of health, or whenever the license is canceled or otherwise terminated or upon the departure from the State of the person, the person shall deliver to the department all the person's records of marriages, or upon the death of the person the records shall be delivered to the department by the person's personal representative, or other legal representative.

Any person violating this section shall be fined not more than \$500.

§321-N Administrative rules. The director of health may adopt rules in accordance with chapter 91 necessary or appropriate to facilitate the provisions of this part.

§321-O Construction. This part shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 4. Chapter 489, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS

§489- Religious freedom in marriage guaranteed. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to marriage shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of lictentiousness or justify practices inconsistent with the peace and safety of the State.

§489- Religious organizations protected. No religious educational, healthcare, or denominational organization; no organization operated for charitable or educational purposes and that is supervised, operated, controlled by, connected with, or publicly identified with a religious organization or group, regardless of whether its activities are deemed wholly or partly religious; and no individual employed or supervised by any of the foregoing organizations, while acting in the scope of that employment or supervision, shall be required to take any of the following actions if doing so would cause the organization or individual to violate their sincerely held religious beliefs:

- (1) Provide services, accommodations, advantages, facilities, goods, benefits, or privileges for a purpose related to the solemnization or celebration of any marriage;
- (2) Solemnize or celebrate any marriage; or
- (3) Treat as valid any marriage;

provided that a religious organization engaged in the provision of health care, or its individual employees, shall treat a state-recognized marriage as valid for purposes of a spouse's rights to visitation or to surrogate health care decision making.

§489- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or
- (3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent.

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

§489- Immunity from civil cause of action and other penalties. Notwithstanding any other law to the contrary, no refusal to provide services, accommodations, facilities, goods, or benefits protected by this part shall result in any of the following:

- (1) A civil claim or cause of action challenging the refusal under law; or
- (2) Any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this State or its political subdivisions, including but not limited to laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status.

§489- Construction. This part shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 5. Chapter 572, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RELIGIOUS FREEDOM IN MARRIAGE

§572- Religious freedom in marriage guaranteed. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to this chapter shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

§572- Religious organizations protected. No religious educational, healthcare, or denominational organization; no organization operated for charitable or educational purposes and that is supervised, operated, controlled by, connected with, or publicly identified with a religious organization or group, regardless of whether its activities are deemed wholly or partly religious; and no individual employed or supervised by any of the foregoing organizations, while acting in the scope of that employment or supervision, shall be required to take any of the following actions if doing so would cause the organization or individual to violate their sincerely held religious beliefs:

- (1) Provide services, accommodations, advantages, facilities, goods, benefits, or privileges for a purpose related to the solemnization or celebration of any marriage;
- (2) Solemnize or celebrate any marriage; or
- (3) Treat as valid any marriage;

provided that a religious organization engaged in the provision of health care, or its individual employees, shall treat a state-recognized marriage as valid for purposes of a spouse's rights to visitation or to surrogate health care decision making.

§572- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or
- (3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent.

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

§572- Immunity from civil cause of action and other penalties. Notwithstanding any other law to the contrary, no refusal to provide services, accommodations, facilities, goods, or benefits protected by this part shall result in any of the following:

- (1) A civil claim or cause of action challenging the refusal under law; or
- (2) Any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this State or its political subdivisions, including but not limited to laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status.

§572- Construction. This part shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 6. Section 321-426, Hawaii Revised Statutes, is amended to read as follows:

"[H]§321-426[H] Birth defects special fund. There is established within the state treasury the birth defects special fund to be administered and expended by the department of health, into which shall be deposited fees remitted pursuant to ~~[section]~~ sections 321-H and 572-5. Moneys in the special fund shall be used for the payment of the operating expenses of the birth defects program."

SECTION 7. Section 346-7.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The account shall consist of fees remitted pursuant to sections 321-H, 338-14.5, and 572-5, income tax remittances allocated under section 235-102.5, interest and investment earnings, grants, donations, and contributions from private or public sources. All realizations of the account shall be subject to the conditions specified in subsection (b)."

SECTION 8. Section 572-21, Hawaii Revised Statutes, is amended to read as follows:

"[H]§572-21[H] Presumption of separate property. There is a rebuttable presumption that all property, both real and personal, acquired in the name of ~~[the husband or of the wife,]~~ either party to the marriage, without regard to the time of acquisition thereof, is the separate property of the spouse in the name of whom the same has been acquired."

SECTION 9. Section 601-3.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The account shall consist of fees remitted pursuant to sections 321-H, 338-14.5, and 572-5, income tax remittances allocated under section 235-102.5, fines collected pursuant to sections ~~[H]586-4(e)[H]~~, 580-10, and 586-11, interest and investment earnings, grants, donations, and contributions from private or public sources. All realizations of the account shall be subject to the conditions specified in subsection (b)."

SECTION 10. Chapter 572, part I, Hawaii Revised Statutes, is repealed.

SECTION 11. Chapter 572B, Hawaii Revised Statutes, is repealed.

SECTION 12. Chapter 572C, Hawaii Revised Statutes, is repealed.

SECTION 13. (a) Upon the repeal of chapter 572B, Hawaii Revised Statutes, pursuant to section 11 of this Act, all rights, obligations, benefits, protections, and responsibilities granted by the State, whether derived from statutes, administrative rules, court decisions, the common law, or any other source of civil law, as are granted to those who contract, obtain a license, and are solemnized in accordance with chapter 572B, Hawaii Revised Statutes, are extinguished.

(b) Two individuals who are civil union partners and seeking to jointly obtain a marriage license shall be permitted to apply for a marriage license without first terminating their civil union; provided that the two

individuals are otherwise eligible to marry under chapter 321, Hawaii Revised Statutes, as amended by this Act.

(c) A civil union relationship under subsection (b) shall continue uninterrupted until the parties to the civil union have solemnized their marriage consistent with chapter 321, Hawaii Revised Statutes, as amended by this Act, and the solemnization of the marriage shall automatically terminate the civil union.

(d) Civil union partners who entered into the civil union in this State may elect to have their civil union legally converted to a marriage by operation of law without appearing personally before an agent and without solemnization as required by this Act by:

- (1) Applying for a marriage license pursuant to chapter 321, Hawaii Revised Statutes, as amended by this Act, by filing their application, in person or by mail with the department of health;
- (2) Providing a signed, notarized declaration that the civil union was entered into in this State and that the civil union partners are seeking to convert their civil union into a marriage;
- (3) Paying the marriage license fee as required by chapter 321, Hawaii Revised Statutes, as amended by this Act; and
- (4) Providing all information required by the marriage license application.

(e) Upon receipt of a marriage license application and notarized declaration requesting conversion, the department of health shall confirm that the applicants are civil union partners who entered into their civil union in Hawaii and shall issue a certificate of marriage, with the effective date of the marriage being the date the department accepts for filing the request for conversion.

(f) All rights, benefits, protections, and responsibilities of marriage shall apply to civil unions that are administratively converted to marriages pursuant to this section.

(g) Certificates of marriage issued pursuant to this section shall be deemed the same as certificates of marriage issued pursuant to chapter 321, Hawaii Revised Statutes, as amended by this Act, and shall be processed in the same manner.

(h) Marriages converted from civil unions pursuant to this section shall be deemed solemnized for all purposes.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 15. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take upon its approval; provided that:

- (1) Section 11 of this Act shall take effect on January 1, 2016; and
- (2) Sections 4 and 5 of this Act shall be repealed on July 1, 2016."

Representative Oshiro moved that Floor Amendment No. 8 be adopted, seconded by Representative Say.

Representative Oshiro rose, stating:

"Mr. Speaker, I'll defer to the author of this measure. This is basically equivalent to House Bill 6, so I'll defer to my esteemed colleague from Waianae."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. Yes, Mr. Speaker, during this short special session I did introduce House Bill Number 6, and if you had listened to any of those 57 hours of testimony, you heard many testifiers referring to House Bill 6 and why wouldn't we have a discussion on that.

"It is known that I did ask leadership to have this measure heard, and that was declined in written form as well as verbal form, and I appreciate

that, Mr. Speaker. But Mr. Speaker, I'd like to thank this being reintroduced as a floor amendment.

"I do know some individuals may have some serious issues with this measure. This measure was actually introduced to throw everything on the table, Mr. Speaker. All the different options we could afford to have a full-blown discussion in a great committee hearing.

"Obviously we didn't have that opportunity. And I don't know if we'll be able to discuss all of them currently on this Floor, Mr. Speaker. This would address the issuance of licenses in regards to the Supreme Court ruling on the Baehr case, and let the Department of Health issue those.

"This would also be discussing our Religious Freedom Restoration Act. This will also be talking about the inseverability clause. This provides much religious protection in here as well. Some may say it erodes those religious protections. This was only referring to marriages and the ceremonial purposes. We were not trying to erode anywhere else, Mr. Speaker. Just like SB 1, they wanted to narrow the focus to marriage solemnization and marriage ceremony. Nothing other, no more, no less.

"This would also, sorry I'm losing my train of thought because we have so many floor amendments today, this would also talk about protection for individuals with personal conscience of objection.

"Now, if you were told to go to war, people are allowed to say, 'I consciously object, and refuse to go to war.' There's no difference when you have somebody that is so deeply rooted in their religious belief, and that may be centuries of their family's history, that may be believing it 24 hours a day, 7 days a week, that is their held conviction. And we must always protect those rights, Mr. Speaker.

"I'm not talking about somebody that just thinks about going to church once a year. These are people that have deep beliefs. And I'm not trying to belittle individuals that go to church once a year, because that's me. And it might be any denomination that I walk in. Because I believe in spirit, I believe in every day that I'm blessed that I wake up.

"I am here, as the person that sits on the opposite side, Mr. Speaker, trying to protect religious freedoms. That's why this measure was introduced to have that full-blown dialogue. We are treading into unseen territory.

"Prior to this special session, there were only 13 states that have treaded in this law, of maybe five to seven years. And we were the first state to kick it all off back in the 90's. I thought we'd be the first state to set the highest set of example for the United States.

"That's why this measure was introduced. Definitely for the dialogue. And I appreciate the individuals being so passionate outside to let us begin to speak, I'll try and lower my voice a little bit. But that's all this was, Mr. Speaker, to have this dialogue. Thank you very much."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise to support the intent of the floor amendment and to discuss, some of the things the good Representative from Waianae just referred to are things that I actually experienced while deployed in combat in the Middle East, Mr. Speaker. We had soldiers that declared their objection to war, while in the middle of the fight, while we were in combat in the Middle East, Mr. Speaker.

"Personally, I had a real hard time dealing with those things because as a soldier, the last thing you do is abandon your fellow comrades on the battle field. And for them to make that assertion that they had suddenly developed an objection to war after we had spent hundreds of thousands of dollars on training them, on making sure that they were ready to defend this nation, deploying them into combat, and then for them to be simply released.

"But I learned a very important lesson there, Mr. Speaker, that even the camaraderie we experience as combat veterans is to protect something that

is even greater and more important, and that is the freedom of conscience, and every individual should be afforded that right. Everybody. Even if it's your combat buddy on your left or combat buddy on your right, everybody has to be afforded the freedom of conscience and be able to live in a country where that is at the very core in foundation, Mr. Speaker.

"This floor amendment at least helps us get along that way. Moves us in that direction. Because, once again, we know that there are a series of flaws with SB 1, given the House draft that we do have, and we are failing to address the issues that are raised by that measure. Thank you, Mr. Speaker."

Representative Belatti rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I stand in strong opposition to this floor amendment. Mr. Speaker, I can respect that we want dialogue. I can respect that we want to put ideas on the table. But sometimes words matter, ideas matter. And sometimes these words and these ideas can be hurtful and eroding at the very core of our values.

"Now I know what I just said could be applied to SB 1, House Draft 1, but let me tell you, I'm putting my stake in the ground on this floor amendment, because what this floor amendment does, Mr. Speaker, is enshrine discrimination for sincerely held religious beliefs, which I can respect.

"But, Mr. Speaker, there are people out in this world who sincerely hold the belief that a Caucasian man and an Asian woman should not marry. There's a sincerely held belief that divorce is wrong. I hold that belief. There is a sincerely held belief that contraception is bad.

"Now, Mr. Speaker, based upon these sincerely held religious beliefs, this bill would allow these same folks to kick a person out of their home. It would allow a landlord to say, 'you're married, you're an interracial couple, I will not rent my house to you, I will not rent my apartment to you.'

"We have fought this battle long and hard, Mr. Speaker. Hawaii has a strong public accommodations law, and I do not believe that this idea is something worth even talking about. Thank you, Mr. Speaker."

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in strong support of Floor Amendment 8. I think I've spoken a lot on the basis of needing to have a standard. So let me just articulate the standard into the record and for the edification of those who might be able to listen or hear.

"What we'll be doing by the Religious Freedom Protection Act is establishing the Sherbert Test, which most progressive civil libertarians believe in. It consists of four criteria that are used to determine if an individual's right to religious free exercise has been violated by the government. That includes government policy such as anti-discrimination laws, environmental laws, housing laws, public accommodations laws, workplace laws, you name it. All that stuff that I as a good Democrat support.

"The test is as follows. For the individual, Mr. Speaker, the court must determine, number one, whether the person has a claim involving a sincere religious belief. Sincere religious belief is defined by case law. So it's not bogus, this is real, authentic religious belief. It's not something I made up this morning, or I made up after having a few beers.

"Number two, whether the government action is substantial burden on a person's ability to act on that belief. It's a substantial burden, not a trivial burden, not a slight burden, but a substantial burden. Again, Mr. Speaker, that is established clearly in case law.

"Mr. Speaker, if these two elements are established, by the proponent, by the plaintiff, by the complainant, then the government must prove the following, the burden shifts to the government, and this is what it is. That the government is acting in furtherance of a compelling state interest.

Compelling state interest. And, which is very important because under the Rehnquist Court this was eliminated, and it is pursued that interest in the manner least restrictive, or least burdensome to religion.

"So there is a standard, there is a mechanism to logically, rationally go through these types of important conflicts, which the authors of this text, Douglas Laycock, Anthony Picarello and Robin Fretwell Wilson, along with Mr. Berg, Professors Destro and Gaffney, have repeatedly told us over the last several months, that will arise once we approve same-sex marriage.

"And again, Mr. Speaker, this bill does allow for same-sex marriage, there's no doubt about it. House Bill 6 gives you all the bells and whistles of same-sex marriage. But it gives you also the tools to protect the religious institutions wall-to-wall within their church or facility or property, the clergy or the clergy's agent, that's true, but it also protects the right of an individual. When they leave their church or their temple or their sanctuary, to carry that deeply held conviction with them into the private sector or the public sector, at work or at play. Which is what I believe our constitutional founders would like to see.

"Just a little bit more, Mr. Speaker. Why the law is important, and why the law is necessary. Without clear guidance from Hawaii's Legislature, judges are likely to reject religious liberty and free speech defenses in executive and administrative enforcement actions, and private lawsuits claiming violation of non-discrimination laws. Generally speaking, judges have been unsympathetic to religious liberty claims that challenge the majority view concerning the nature of moral or religious obligation.

"Although most of the commentary since the 1990s focus on the United States Supreme Court's decision in *Employment Division v. Smith*, which held that, quote, 'neutral laws of general applicability,' end quote, do not violate First Amendment, no matter how substantially they burden an individual's or organization's ability to exercise their religious faith tradition. History teaches that judges are not inclined to respect the bewildering variety of American religious experiences unless the law is clear and they must do so.

"Although there are many examples, here are some. In Catholic Charities of Springfield, the state trial court judge granted a motion of summary judgment, rejecting the religious liberty argument. Because the judge expressly declined to address Catholic Charities argument that the state violated its rights under Illinois Human Rights Act, which is similar to our..."

Representative Har rose to yield her time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you, Mr. Speaker. What occurred here is that once the trial court decided on summary judgment, that the religious institution had no claim of having its religious rights infringed upon, it never went any further. Had the state denied renewal of the contract in this case, on the basis of race or sexual orientation, I doubt the trial court judge would have felt constrained to hold that no violation of the law had been committed. Equal protection of the law is supposed to work both ways.

"The other case, Mr. Speaker, is the New Mexico case. The photography case right now is being litigated and may finally make its way up to the United States Supreme Court. It's more than just a photography case, Mr. Speaker. A small mom and pop, a couple runs a photography studio. They'll take pictures of anybody, but their deeply held religious beliefs forbade them from taking pictures of a marriage ceremony for a same-sex couple. Let's respect that. They'll do all other photographs. What's troubling about this case, Mr. Speaker, and should give everyone pause to shudder, that then government will tell you what you can speak, and when you must speak in order to support anti-discrimination laws.

"The construct behind this idea, Mr. Speaker, is that you need a system to balance out equally important, compelling rights under our constitution. And that's why we have to have this discussion, Mr. Speaker, and I wish we had more time. But I don't fault you, I don't fault my colleagues, Mr. Speaker. I fault the Governor, who in 20 years is the first governor to

unilaterally call us into a special session. Unilaterally, using his constitutional powers, but not allow the House and Senate leadership to develop a consensus on what we should and should not do in a special session.

"Mr. Speaker, you have indulged me a lot. Thank you very much. Permission to insert written comments."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I rise in support of Floor Amendment No. 8.

"This floor amendment would delete the substance of Senate Bill No. 1, House Draft 1, and insert the provisions of House Bill No. 6. The major components of the floor amendment are as follows:

"I. Scope of Legalized Marriage Narrowed to State's Licensing Authority

"The Hawaii Supreme Court's ruling in Baehr v. Miike, 74 Haw. 530, 852 P.2d 44 (Haw. 1993) pertained to the state's authority to issue marriage licenses – that the Department of Health could not deny a same-sex couple a marriage license solely on the basis of gender. But efforts to fix the problem offered by the Governor and Senator Hee may exceed the scope of what is required under equal protection. This creates conflicts with religious freedoms guaranteed by the First Amendment.

"This floor amendment would separate the licensing aspects of marriage, which clearly may be governed under civil law, from the contractual aspects of marriage between the individuals being married and the religious organization solemnizing the marriage. That way the state would make very clear that it is not dictating how any particular religious organization should practice its faith.

"Thus, this floor amendment would merely prohibit the Department of Health from denying the issuance of a marriage license solely because the applicants are of the same gender.

"It should be noted that all of the procedures applicable to the Department of Health that are currently set in the Hawaii Marriage Law, are transferred to the Department of Health statutes under this floor amendment. References to 'contracts' were changed to 'licenses' to clarify that this floor amendment applies to the state's licensing authority and not on the manner in which marriage contracts are entered into by the applicable parties.

"II. Elimination of Civil Unions as Discriminatory 'State Action'

"In Garden State Equity v. Dow, Docket No. L01729-11 (New Jersey, September 27, 2013), the New Jersey Appellate Court held that by creating two distinct labels – marriage for opposite couples and civil unions for same-sex couples, New Jersey civil union partners are excluded from certain federal benefits that legally married same-sex couples are able to enjoy.

"The New Jersey Court also ruled that the mere existence of the Civil Union Law constituted 'state action' that furthered discrimination in violation of equal protection.

"This floor amendment asserts that like New Jersey, Hawaii's Civil Union Law constitutes 'state action' in violation of equal protection and thus, this bill repeals the Civil Union Law. On January 1, 2016, all rights, benefits and obligations provided under the Civil Union Law would be extinguished. The delayed effective date would allow persons in civil unions to administratively obtain marriage licenses so that any accrued benefits will continue after the Civil Union Law becomes inoperative.

"III. 'Little' Religious Freedom Restoration Act

"This floor amendment would also create a new right by codifying the federal Religious Freedom Restoration Act in Hawaii State Law to:

- (1) Establish the compelling interest test as the standard applicable by the courts of the State of Hawaii in all cases where free exercise of religion is substantially burdened; and
- (2) Establish a claim or defense to persons whose religious exercise is substantially burdened by government.

"Prior to 1990, the First Amendment was interpreted by the U.S. Supreme Court to give protection to religious belief and conduct in all cases where such belief or conduct was not outweighed by some compelling government interest in protecting life, liberty, property, or some other similarly weighty community concern. See, Sherbert v. Verner, 374 U.S. 398 (1962) (Sabbath-keeper's convictions protected); Wisconsin v. Yoder, 406 U.S. 205 (1972) (Amish protected in conviction re need to educate children at home after age of 14); McDaniel v. Paty, 435 U.S. 618 (1978) (State cannot inquire into religious belief as condition of employment); Thomas v. Review Bd., 450 U.S. 707 (1972) (1981) (Jehovah's witness protected in conviction against making war materials); Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136 (1987) (employee protected in observing holy days even when conversion occurred after hiring). But in the 1990 case of Employment Division v. Smith, 494 U.S. 872 (1990), the U.S. Supreme Court decided that, in many cases, the First Amendment should only protect religious exercise from laws or regulations that were targeted at religion. Under the Court's reasoning, a law that forbade Orthodox Jews from wearing yarmulkes on government property would be unconstitutional, as it would be targeting religion. However, if the law were to forbid all people from wearing hats on state property, it would be constitutional – even though the law would require Orthodox Jews to violate either their consciences or the law in order to walk on government property. Because the law is 'neutral' toward religion and 'generally applicable' to all persons, the First Amendment would no longer apply, despite the very real burden the law placed on a religious minority.

"Because many difficulties faced by minority religions are caused by legislative ignorance or insensitivity and not by open malice, religious groups were dealt a severe blow by the Smith decision. Most legislatures are clever enough to couch even anti-religious legislation in neutral and generally applicable terms, thereby evading the First Amendment. Thus, as the Harvard Law Review put it, the Smith Decision as a practical matter 'eviscerated' and 'gutted' much of the protection previously enjoyed under the Free Exercise Clause of the First Amendment.

"For a brief period from 1993 to 1997, there was a federal law that protected religious freedom generally. Known as the federal Religious Freedom Restoration Act (RFRA), it no longer applies to state actions.

"The federal RFRA resulted largely from the efforts of the Coalition for the Free Exercise of Religion, which was formed in response to the Smith decision. With the support of unlikely allies such as the Catholic Church, the ACLU, the Christian Legal Society, the National Council of Churches, major Jewish organizations, the National Association of Evangelicals, the Southern Baptists' Ethics Religious Liberty Commission, the Mormons, and People for the American Way, the federal RFRA was passed by a virtual unanimous Congress in 1993. It restored the compelling interest standard to claims of religious freedom.

"Legislatively, the federal RFRA was originally introduced by Rep. Charles Shumer (New York) in the House and Senator Edward Kennedy (Massachusetts) and it was approved unanimously by the House of Representatives (voice vote). In the Senate, only three members voted no – Byrd (D – WV), Helms (R – NC) and Mathews (D – TN).

"Hawaii's entire congressional delegation supported this legislation – Congress Members Neil S. Abercrombie and Patsy Mink, and Senators Daniel Akaka and Daniel Inouye.

"In 1997, the United States Supreme Court held in City of Boerne v. Flores, 521 U.S. 507 (1997), that Congress exceeded its legislative authority in applying the federal RFRA to state law. Because of this, unless the state enacts the RFRA into its own laws, the compelling interest test would not necessarily apply. It must be reemphasized that after this decision, the ACLU worked with a broad coalition of religious groups and

civil rights groups to enact the Religious Land Use and Institutionalized Persons Act which among other important protections, gives religious groups added protections against local land use policies and restrictions.

"And why is this important within the context of same-sex marriage? The RFRA provision would require Hawaii's courts to balance a person's right to freely exercise religious beliefs with the just as important right of another to be treated equally under the law. Without this vital component, the rights to equal protection of a same-sex couple would supersede the rights of the religious believer or conscientious objector – an outcome that is abhorrent to our American way of life.

"Justice necessitates balance. As such, in my view, the enactment of RFRA into the same-sex marriage bill is not only relevant, but essential for there to be any balance in this legislation, or justice for that matter.

"Earlier, concerns were raised that such a provision would allow anyone to discriminate so long as it was done so because of a 'sincerely held religious belief'. However, the courts have long dealt with these issues.

"By establishing an affirmative defense, the burden of showing beyond a reasonable doubt that the 'sincerely held religious belief' was unconstitutionally infringed upon by the statute is placed upon the person asserting the defense. See, *State of Hawaii v. Jonathan H. Adler*, Slip Op. 25224, 118 P.3d. 652 (2005). Only after that was found would the state then have to justify the statute by compelling government interest, and show that the statute was narrowly tailored to minimize the effect on the person's religious exercise. Thus, it only arises where there is a 'violation' of 'sincere' beliefs that are 'religious' and not to situations that merely make religious people uncomfortable, nor to insincere beliefs asserted as a pretext for discrimination, nor to non-religious moral beliefs.

"Without the inclusion of specific protections for conscientious objections such as the religious freedom restoration act, the enactment of House Draft 1 will force religious organizations, businesses and individuals to compromise their deeply held beliefs to comply with the law. Again, these are constituents who have no objection to providing services to same-sex couples, but object to facilitating the marriage of a same-sex couple.

"Moreover, this concern is not a mere hypothetical or without any merit when one examines the language found on page 6, of the 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', which states in relevant part:

"The State of Hawaii has a compelling state interest in eliminating discrimination in public accommodations. Out public accommodation law is a law of general applicability that serves a compelling state interest and does not target any religion." [Emphasis Added.]

"Thus, if this is the standard by which the Hawaii Civil Rights Commission will conduct its analysis and application of Chapter 489, HRS, in the situation where there is a conflict between an individuals' liberty right under Section 489-3, HRS (Discriminatory practice prohibition), and another individual's First Amendment religious freedom right, without the balanced approach of the *Sherbert* Test, as would be established in the RFRA, the outcome will be a substantial and certain abridgment of one's First Amendment religious freedom right.

"As the preeminent and distinguished Professor of Constitutional Law, Erwin Chemerinsky, suggests:

"[Third] [S]tate government can enact their own religious freedom restoration act in order to have state courts apply strict scrutiny to state government actions or laws that burden religion. States, of course, pursuant to police power, may adopt any law not prohibited by the Constitution. Nothing in the Court's decision in Flores precludes a state from deciding that it will tolerate state actions and laws that burden religion only if they meet strict scrutiny."

"There is no doubt that people have less protection for their religious practices after Flores than they did before. Hopefully, though, this will be only temporary as legislatures find other ways to protect individuals from neutral laws of general applicability that burden religion. Hopefully, too, the Supreme Court will uphold these laws and recognize that more is not less; legislatures may protect rights greater than those found in the Constitution by the Supreme Court." [Emphasis Added.] (See, Erwin Chemerinsky, The Religious Freedom Restoration Act Is a Constitutional Expansion of Rights, 39 Wm. & Mary L. Rev 601 (1998) pg. 636.)

IV. Religious Protections for Clergy

"This bill would reaffirm First Amendment protections to the free exercise of religion by making the authority of persons licensed to solemnize a marriage absolute. However, nothing in this bill would stop a couple that was refused solemnization from one licensed solemnizer to have their marriage solemnized by another person licensed to solemnize a marriage, such as a judge or official from another religious denomination. Still, my remarks herein is not and should not be taken to mean or be construed that I find the provision a necessary and essential component of a well-crafted same-sex marriage bill. As the Law Professors have stated in their Statement to all members of the Hawaii Legislature and is appropriate for restatement again here, '[Thus], with or without this statutory language, [no] one seriously believes that clergy will be forced to, or even asked, to perform marriages that are anathema to them. Focusing on the issue of 'forced officiating' is a straw-man argument distracting the uninformed from real situations where religious conscience is actually at risk.

"As a side note, I take some umbrage to statements made by some of my colleagues following up the testimony offered by the minister of Honpa Hongwanji – that the Marriage Law, as it presently stands, impairs clergy in exercising First Amendment religious liberties by preventing them from marrying a same-sex couple.

"This statement is totally and blatantly incorrect. There is nothing in the law that prevents any church from conducting a service to marry a same-sex couple in accordance with First Amendment rights. The question posed to us is whether after that marriage ceremony, the State of Hawaii and the federal government would recognize that marriage and provide that couple with all of the rights, benefits, and obligations that are allowed to married couples. From where I stand, that is a totally separate question that has nothing to do with the First Amendment.

"The only way the First Amendment is affected in the context of same-sex marriage is if a religious organization or official refuses to conduct a religious ceremony. And that is where this floor amendment seeks to protect the clergy.

"To ensure that the authority of a licensed solemnizer is absolute, this bill would need to bar civil claims or causes of actions against the solemnizer and the religious denomination or society because of the refusal to solemnize a marriage. The civil immunity would need to also cover any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this state or its political subdivisions, including but not limited to laws regarding employment discrimination, housing, public accommodations, education institutions, licensing, government contracts or grants, or tax-exempt status.

"But one should not take this to mean or interpret the aforementioned to sanction wholesale violation of our civil rights and anti-discrimination laws. To the contrary, these specific religious exemptions are established to reconcile nondiscrimination status and policies enacted years ago by Congress and previous Hawaii Legislatures with an equal need to recognize the interests and civil rights of religious objectors. Otherwise, there may be no protection for religious organizations and individuals and make them vulnerable to lawsuits whether framed as sexual orientation, discrimination, sex discrimination, or, where applicable, marital-status discrimination. And, this accommodation of religious rights is consistent with present civil rights policy where we recognize and allow in certain instances a religious institution to give preference to members of the same

religion in real property transactions, and allow even religious beliefs to be taken into account in hiring and employment practices of the religious organization. (See, Sections 515-8, and 378 (5), Hawaii Revised Statutes.) Additionally, it cannot be understated that none of the aforementioned will apply should a 'substantial hardship' arise and the same-sex partner or couple is unable to obtain any similar goods or services, employment benefit, or housing, elsewhere.

"It should be noted that the religious exemption in the House Draft 1, is very limited and only deals with the marriage or solemnization service itself. None of the other services provided by most clergy or religious officials would be covered. For example, the religious exemption would not immunize the clergy, minister, priest, or rabbi, from civil liability for not performing the following services for the same-sex couple:

Weekly Services
Worship Services
Baptism Services
Communion Services
Funeral Services
Addiction Counseling Services
Baby Dedication Services
Ground Breaking Services
Building Dedication Services
Spiritual Counseling Services
Premarital Counseling
Marriage Counseling

"And, where these services are provided to non-members, it will probably be found to be a public accommodation under the Hawaii Civil Rights Commission, Section 489-2, HRS. (See, definition of 'Place of public accommodation' - means 'accommodation, . . . goods, services, facilities, privileges, advantages, or accommodations, are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. . . . ' [Emphasis Added.] See also, 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', page 4, paragraph 4, which reads:

"Thus, in any particular case, the inquiry will be two-fold: Is this a place of public accommodation? And, is there prohibited discrimination based on race, sex (including gender identity or expression), sexual orientation, color, religion, ancestry, or disability? This is the inquiry under the existing public accommodations law. The proposed marriage equality law does not change the analysis." [Emphasis Added.]

"As such, it appears more likely than not that even on a case-by-case basis, the services not explicitly provided an exemption will fall under the inquiry and analysis of the Hawaii Civil Rights Commission, unless such religious organization operates as a private membership club and does not provide goods, services, facilities, to the general public. (e.g. the Pacific Club, Elks, Outrigger Canoe Club). Of course, most religious organizations are not members only and we know of none that limit access of the general public to their religious services. See, 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', page 3, last paragraph, through page 4, first paragraph.

"House Draft 1 leaves many religious organizations exposed and vulnerable to charges of discrimination and will most likely chill the present day practice of welcoming in the general public and providing useful and important services with and without government subsidization to the community at large.

"Some of the services or facilities that are made available to the general public that may be curtailed or eliminated include:

Non-Government Organization (NGO) Meetings
Sports Clubs Meetings
Corporate Training

Fundraising and Non-profit Benefit Events
Civil Defense Training
DOE Regional and Department Meetings
Alcoholics Anonymous
Domestic Abuse Support Group
Teen Drug and Alcohol Support Group

"Are we willing to accept this likely scenario of chilling the religious freedoms in our communities? Do we understand the concern they have raised? Are we sure that we will not inadvertently cause our community service partners to pull back on their community services or resources to the general public in order to protect their religious beliefs and practices? Is this a risk worth taking?

"It is because of these concerns that this floor amendment is offered for your consideration.

"V. Religious Protections for Individuals and Businesses

"A much more suitable alternative would be found in House Bill No. 6. In preparing House Bill No. 6, noted and renowned legal scholars from across our Nation were contacted to assist in the drafting of religious protections for businesses and individuals. These included:

- Douglas Laycock, the Robert E. Scott Distinguished Professor of Law and Professor of Religious Studies, University of Virginia. Considered the 'Dean' of Religious Freedom Issues, Professor Laycock successfully argued before the United States Supreme Court in Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, Slip No. 10-553 (2012), in which a unanimous Court held that the Establishment and Free Exercise Clauses of the First Amendment bars suits brought on behalf of ministers against their churches, claiming termination in violation of employment discrimination laws. He most recently argued before the U.S. Supreme Court this week in Town of Greece v. Galloway, which seeks to clarify the legal limits on public prayers in government meetings across the country.
- Thomas C. Berg, James Oberstar Professor of Law and Public Policy, University of St. Thomas, Minnesota. He has written more than 30 briefs on issues of religious liberty and free speech in cases in the U.S. Supreme Court and lower courts and has often testified to Congress in support of legislation protecting religious freedom. For his work, he received the Religious Liberty Defender of the Year Award from the Christian Legal Society in 1996, the Alpha Sigma Nu Book Award from the Association of Jesuit Colleges and Universities in 2004, and the John Courtney Murray Award from DePaul University College of Law for scholarly and other contributions to church-state studies.
- Bruce S. Ledewitz, Professor of Law, Duquesne University. He is a recognized expert in the fields of criminal law and constitutional law. His most recent book, Church, State, and the Crisis in American Secularism was published in 2011. He has served as Secretary to the National Coalition Against the Death Penalty from 1985-1990. His Platform for Reforms of the Pennsylvania Supreme Court was recently the subject of a statewide series of debates sponsored by the Pennsylvania League of Women Voters. He has written widely in both specialized legal journals and national media such as the New York Times, Wall Street Journal and the Chicago Tribune.
- Christopher C. Lund, Associate Professor of Law, Wayne State University Law School. He has represented a wide variety of groups and causes. He has, for example, worked for the American Civil Liberties Union defending the rights of Christian parents to home school their children, and for a diverse coalition of religious groups supporting the freedom of Muslim detainees at Guantanamo Bay. He regularly advises church-state groups regarding litigated cases and pending legislation. He is a past chair of the Law and Religion Section of the Association of American Law Schools, and the current chair of the Section on New Law Professors.
- Michael Perry, Robert W. Woodruff Professor of Law, Emory University. Since 2003, Professor Perry has held the Robert W. Woodruff University Chair at Emory University. A Woodruff Chair is the highest honor Emory University bestows on a member of its

faculty. He is also a Senior Fellow at Emory University's Center for the Study of Law and Religion. He is the author of twelve books and over seventy-five articles and essays. His books include: Religion in Politics: Constitutional and Moral Perspectives (Oxford, 1991); We the People: The Fourteenth Amendment and the Supreme Court (Oxford, 1999); Under God? Religious Faith and Liberal Democracy (Cambridge, 2003); Toward a Theory of Human Rights: Religion, Law, Courts (Cambridge, 2007); and Human Rights in the Constitutional Law of the United States (Cambridge, 2013).

- Robin Fretwell Wilson, Class of 1958 Law Alumni Professor of Law, Washington and Lee University School of Law.
- Richard W. Garnett, Professor of Law, University of Notre Dame Law School.
- Edward McGlynn Gaffney, Jr., Professor of Law, Valparaiso University School of Law.
- William Wood Bassett, Professor of Law Emeritus, University of San Francisco.
- Robert A. Destro, Profess of Law and Director of the Marriage Project, The Catholic University of America.
- Michael W. McConnell, Richard & Frances Mallery Professor of Law, Director, Constitutional Law Center, Stanford Law School.
- Carl H. Esbeck, Isbell Wade & Paul C. Lyda Professor of Law, University of Missouri School of Law.
- Marie A. Failinger, Professor of Law, Hamline University School of Law.

"Their recommendations were incorporated into the floor amendment presently before you specifically to provide religious protections for individuals and small businesses.

"In their testimony on Senate Bill No. 1 to the Senate Committee on Judiciary and Labor, Professors Laycock, Berg, Ledewitz, Lund, and Perry wrote:

"We support same-sex marriage. We think that Senate Bill 1 can be a great advance for human liberty. But careless or overly aggressive drafting could create a whole new set of problems for the religious liberty of those religious believers who cannot conscientiously participate in implementing the new regime. The gain for human liberty will be severely compromised if same-sex couples now force religious dissenters, when they had the power to do so, used to force same-sex couples to hide their sexuality. Conservative religious believers should not be allowed to veto same-sex marriage for those who want it, but neither should they be forced to directly facilitate it in violation of their understanding of God's will." (emphasis provided).

"Accordingly, this floor amendment would provide additional religious protections to balance these competing interests.

"These include protections for:

- (1) Religious educational, healthcare or denominational organizations, organizations operated for charitable or educational purposes that are identified with a religious organization or group, and individuals employed or supervised by any of these organizations;
- (2) Small businesses having five or fewer employees or owning five or fewer units of housing in providing goods, services, benefits or housing;
- (3) Judicial officers and government agency clerks with sincerely held religious beliefs to not solemnize a marriage; and
- (4) Individuals, in certain circumstances.

"However, it must be understood that these exemptions shall **NOT** apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or similar good or service,

employment benefits, or housing elsewhere without substantial hardship; or

- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay.

"This is both a practical and realistic means to address the most common instances where conflict may arise and narrow the exposure for disputes and litigation among our community members.

"These provisions would sunset in three (3) years to allow the Legislature to reevaluate the need for these protections based on the experience gained. But, it is realistically expected that as same-sex marriage becomes more and more frequent, the entrepreneurial engines of small business will establish and promote niches of both services and goods to address the needs of the same-sex marriage industry. As such, as we transition into this natural economic dynamic of business enterprise seeking to fill a unmet need, the initial limited and constricted protections afforded to conscientious religious objectors will not be necessary and allowed to fall away as mere vestiges of a transitional period in local politics and policy as we enter into a post-same-sex marriage world in Hawaii.

"VI. Religious Protections for Employers and Employees

"As mentioned previously, House Draft 1 does not provide any religious protection for the 'Individual', but only the clergy, minister, priest, rabbi, and officer of any religious organization. As such, it does not protect any of the thousands of constituents with sincerely held religious beliefs when they leave the privacy of their homes and enter the public space of commerce or business as employer or employee. But, I don't know of anyone who has a genuine and authentic religious belief that can flip it on or off as any GLBT can turn his or her sexual orientation off or on, in public and private spaces. No one can expect a person to do this and it should not be the policy of Hawaii.

"But, under the House Draft 1, that is the effect it will have upon many of our constituents. And, it may force them to choose between their sincerely held belief or face demotion or termination for being a conscientious objector. This has occurred in other states and it is a foreseeable consequence of legalizing same-sex marriage without protections of individual religious freedom rights. We do not need to have a win or lose policy choice between two essential constitutional values – religious freedoms and equal protection or personal liberty rights.

"For a practical solution to many of our Government workers (HSTA, HGEA, UPW, HFFA, SHOPO, UHPA, etc.) I draw your attention to SECTION 4 of the floor amendment, pages 26-29, with particular attention to page 27, line 21: 'No Individual . . .', and page 28, lines 11-19, and page 28, lines 11-19: '(b) This section shall not apply if either: . . . In the case of an individual, another government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay . . . '.

"In other words, only in the instance where another co-worker is available and willing to provide the service will a person's sincerely held belief allow for this exemption to provide service to all. This may also help ameliorate the foreseeable tension of the conscientious objector who as a teacher would not be able to teach certain topics regarding same-sex relationships, finding that it substantially burdens her sincerely held religious beliefs, and a cohort or colleague is readily available to provide such teaching service without interruption or inconvenience. This 'hardship exemption' is premised upon the belief that the accommodation is a two-way street and only available when there is no other less restrictive alternative to provision of the service. It is consistent with the legal underpinnings of balancing interest as found in Sherbert.

"House Draft 1 does not provide for this practical accommodation of our public workers who will face hard choices whether they serve the public as a counselor, teacher, psychologist, or social worker, among those

occupations involving personalized skills and talents. Simply deeming public servants with sincerely held religious beliefs as unqualified or ineligible to serve will take us back to a dark time in our Nation's history where Catholics and Jews were deemed unfit for public service based upon their religious beliefs. Certainly, no one would condone such a policy today but that will be the foreseeable de facto policy of the State of Hawaii should we not approve such limited and practical protections for our public workers.

"VII. The Demise of Religious Freedom in Hawaii"

"Finally, it is well established that once same-sex marriage is approved, those opposed to any exemptions for religious conscientious objectors will give the narrowest possible interpretation to all exemptions until it is meaningless and void of any regard for the religious freedom under the First Amendment. The Governor and his Administration has already shown their true colors as demonstrated in their public statements regarding the Governor's initial draft bills: Marriage Equity Bill, AG 8.22.13, based upon Senate Bill 1329, and attached to Governor's Memorandum, dated August 28, 2013, and Governor's Memorandum, dated September 11, 2013, with revised draft of Marriage Equity Bill, AG 9.9.13. As legal scholars have warned us, similar unsympathetic application of non-discrimination policies against religious freedoms and conscience from our courts and administrative agencies is also foreseeable without clear guidelines.

"Again, without the clear guidance to apply the Religious Freedom and Restoration Act, and the Sherbert standard, both the Civil Rights Commission and Hawaii's courts may apply the less protective standard of the Smith Decision in religious freedom cases.

"Mr. Speaker, the New Mexico photography case, Elane Photography v. Willock, 2013-NMSC-040, 309 P.3d 53 (2013), should give every advocate of freedom of expression and free exercise of religion and association pause. When government begins to tell us 'how we must speak', or 'what we must photograph', the practitioners of the express or creative arts, including journalism, poetry, music, design and art cease to be masters of their own subject matter, and freedom of expression ceases to exist.

"How can we tolerate our government telling us what to speak? How can we tolerate our government telling us what we can think? Is there anyone else in this august Body that appreciates that slippery slope we may be entering? I hope so. I really do. Mr. Speaker, we can do better for ourselves and for our constituents and their religious and First Amendment freedoms.

"VIII. Inseverability"

"To ensure that the equal protection and religious freedom provisions are applied in tandem, the bill is specifically designed to become invalid in its entirety if any portion of the bill is stricken by the courts.

"This approach is the same taken in New York State where an inseverability provision was included in the bill that legalized same-sex marriage to obtain support from both liberal and conservative members of the Legislature.

"IX. Hawaii State Legislature as Peacemaker"

"In closing, leading experts in this developing area of public policy and law have repeatedly stressed the importance of ensuring that individual religious liberties and freedom of conscience found in our National and State Constitutions should not be sacrificed in order to establish same-sex marriage in the 'Aloha' State. Indeed, they had repeatedly admonished us, saying:

"Conflicts between same-sex marriage and religious conscience are reasonably foreseeable and thus avoidable. But, dubious battles of this sort can be avoided only when a prudent Legislature acts decisively to protect complimentary human values – liberty and equality – by adopting language that enables both interest to be protected realistically. Without such legislative safeguards, man

religious individuals will be forced to engage in conduct that violates their deepest religious beliefs, and religious organizations will be constrained in crucial aspects of their religious exercise."

"Indeed, the Statement of Professors Bassett, Berg, Destro, Esbeck, Falinger, Gaffney, Garnett, McConnel, and Robin Wilson, on Religious Freedom Implications of Proposed Hawaii Marriage Equality Act of 2013, compels us to submit the extraordinary request for your deep and thoughtful consideration.

"In the wise and esteemed words of our friends:

"Without adequate safeguards for religious liberty of the sort proposed above, the recognition of same-sex marriage will lead to socially divisive and entirely unnecessary conflicts between the exercise of rights pursuant to the same-sex marriage law and religious liberty. That is a destructive path leading to needless loss by both sides. A balanced "middle way" leads to a win-win solution for both sides. The Hawaii State Legislature should avoid both extremes and be the wise peacemaker."

"For the foregoing reasons, I humbly ask that we take pause to seriously reflect upon this floor amendment before approving it on House Draft 1."

Representative Say rose in support of the proposed floor amendment and asked that the remarks of Representative Oshiro be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Nakashima rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Nakashima's written remarks are as follows:

"Mr. Speaker, I rise in support of Floor Amendment 8. Mr. Speaker, this amendment would provide for expansion of an individual's religious freedoms creating what is in fact a 'conscientious objector' provision in the enforcement of the civil rights law.

"Last session, as Chair of the House Committee on Labor and Public Employment, as we deliberated on the domestic worker bill, I learned of a case in which the owner of a B&B was approached by a same-sex couple who sought to rent out a room in their home. The owners did not want to rent to a same-sex couple and found them another place to stay. The owners of the B&B were found to be in violation of the public accommodations law and forced to pay restitution.

"Mr. Speaker, given the heated debate and high tensions created by this process, I believe that it would be prudent to create a temporary buffer between the factions by instituting this 'conscientious objector' provision and eliminate the possibility of court challenges for a period of three years."

Representative Awana rose in support of the proposed floor amendment and asked that the remarks of Representative Oshiro be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Carroll rose in support of the proposed floor amendment and asked that the remarks of Representative Oshiro be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Saiki rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to this floor amendment. I'd like to make two comments. First, as was already mentioned by a prior speaker, this floor amendment will legalize same-sex marriage in Hawaii.

"Second point, is that this is one of the most punitive measures that I've seen in a while in the House. And that is because of the provision that would allow for what amounts to a conscientious objection provision. This provision is couched as one that would allow small businesses to discriminate against virtually anyone in the world for any purpose.

"But it actually goes far beyond just small businesses, and that is because this provision would allow an individual to discriminate against another. So you could have, for example, a front desk clerk at the Hilton Hawaiian Village, who decides that he or she wants to exclude a couple from registering at the hotel. This does not just apply to small businesses, it applies to every single person in the State of Hawaii. Thank you very much, and I call for the question."

At this time, Representative Saiki called for the previous question.

At 1:56 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:57 o'clock p.m.

Representative Saiki rose, stating:

"Mr. Speaker, before calling for the question, could you please permit members to insert written comments? Thank you."

Representative Lee rose and asked that the Clerk record a no vote for him, and the Chair "so ordered."

The motion that Floor Amendment No. 8, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Belatti, Lee and Saiki voting no, and with Representatives Cachola, Choy, Ito, McKelvey and Nishimoto being excused.

At 1:58 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 2:02 o'clock p.m.

At this time, Representative Oshiro offered Floor Amendment No. 9, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

The legislature further finds that, while same sex marriage would be a great advancement for human liberty, this change, could have serious implications if steps are not taken to protect the liberties and equal rights of those religious organizations and believers who cannot conscientiously recognize or facilitate same-sex civil marriages. There will be no net gain for human liberty and equal rights if same-sex couples are permitted to oppress religious dissenters in the same way that those dissenters, when they had the power to do so, oppressed same-sex couples. There is no reason to let either side oppress the other. Same-sex couples should not be denied the right to marriage, and the State should not force dissenting religious believers or organizations to recognize or facilitate same-sex marriage.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State; and

- (2) Protect religious freedom and liberty by:

- (A) Ensuring that no clergy or other officer of any religious organization will be required to solemnize any marriage, in accordance with the Hawaii State Constitution and the United States Constitution; and

- (B) Clarifying that unless a religious organization allows use of its facilities or grounds by the general public for weddings for a profit, such organization shall not be required to make its facilities or grounds available for solemnization of any marriage celebration; and

- (3) Harmonize the right to equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

RELIGIOUS FREEDOM RESTORATION ACT

§ -1 Findings. (a) The legislature finds that:

- (1) The authors of the Bill of Rights secured the free exercise of religion as an unalienable right under the First Amendment of the United States Constitution;
- (2) The free exercise of religion is also guaranteed under article I, section 4 of the Constitution of the State of Hawaii;
- (3) Laws neutral toward religion may substantially burden religious exercise as surely as laws intended to interfere with religious exercise;
- (4) Government should not substantially burden religious exercise without compelling justification;
- (5) The United States Supreme Court in a recent decision virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
- (6) The compelling interest test in the free exercise of religion established by the United States Supreme Court is a workable test for striking sensible balances between religious liberty and competing government interests.

(b) The legislature declares its intent that:

- (1) It shall be the policy of the State that the compelling interest test in the free exercise of religion, as established by the United States Supreme Court under *Shubert v. Verner*, 374 U.S. 398 (1963), shall be the standard applicable by the courts of this State in all cases where religious exercise is substantially burdened; and
- (2) This chapter shall provide a claim or defense to persons whose religious exercise is substantially burdened by government.

§ -2 Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through solemnization of the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. Nothing in this chapter shall be construed to require any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter to solemnize any marriage. No such person who fails or refuses to solemnize any marriage under this section for any reason shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil liability for the failure or refusal.

§572-E Religious organizations and facilities; liability exemption under certain circumstances. Notwithstanding any other law to the contrary, no religious organization shall be subject to any fine, penalty, injunction, administrative proceeding, or civil liability for refusing to make its facilities or grounds available for solemnization of any marriage celebration under this chapter; provided that the religious organization does not make its facilities or grounds available to the general public for solemnization of any marriage celebration for a profit.

For purposes of this section, a religious organization accepting donations from the public, providing religious services to the public, or otherwise permitting the public to enter the religious organization's premises shall not constitute "for a profit".

SECTION 4. Chapter 489, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS

§489- Religious freedom in marriage guaranteed. Absolute freedom of conscience in all matters of religious sentiment, belief, and

worship pertaining to marriage shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

§489- Religious organizations protected. No religious educational, healthcare, or denominational organization; no organization operated for charitable or educational purposes and that is supervised, operated, controlled by, connected with, or publicly identified with a religious organization or group, regardless of whether its activities are deemed wholly or partly religious; and no individual employed or supervised by any of the foregoing organizations, while acting in the scope of that employment or supervision, shall be required to take any of the following actions if doing so would cause the organization or individual to violate their sincerely held religious beliefs:

- (1) Provide services, accommodations, advantages, facilities, goods, benefits, or privileges for a purpose related to the solemnization or celebration of any marriage;
- (2) Solemnize or celebrate any marriage; or
- (3) Treat as valid any marriage;

provided that a religious organization engaged in the provision of health care, or its individual employees, shall treat a state-recognized marriage as valid for purposes of a spouse's rights to visitation or to surrogate health care decision making.

§489- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or
- (3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent.

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

§489- Immunity from civil cause of action and other penalties. Notwithstanding any other law to the contrary, no refusal to provide services, accommodations, facilities, goods, or benefits protected by this part shall result in any of the following:

- (1) A civil claim or cause of action challenging the refusal under law; or
- (2) Any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this State or its political subdivisions, including but not limited to laws regarding employment discrimination, housing, public

accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status.

§489- Construction. This part shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 5. Chapter 572, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RELIGIOUS FREEDOM IN MARRIAGE

§572- Religious freedom in marriage guaranteed. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to this chapter shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

§572- Religious organizations protected. No religious educational, healthcare, or denominational organization; no organization operated for charitable or educational purposes and that is supervised, operated, controlled by, connected with, or publicly identified with a religious organization or group, regardless of whether its activities are deemed wholly or partly religious; and no individual employed or supervised by any of the foregoing organizations, while acting in the scope of that employment or supervision, shall be required to take any of the following actions if doing so would cause the organization or individual to violate their sincerely held religious beliefs:

- (1) Provide services, accommodations, advantages, facilities, goods, benefits, or privileges for a purpose related to the solemnization or celebration of any marriage;
- (2) Solemnize or celebrate any marriage; or
- (3) Treat as valid any marriage;

provided that a religious organization engaged in the provision of health care, or its individual employees, shall treat a state-recognized marriage as valid for purposes of a spouse's rights to visitation or to surrogate health care decision making.

§572- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or
- (3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent.

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

§572- Immunity from civil cause of action and other penalties. Notwithstanding any other law to the contrary, no refusal to provide services, accommodations, facilities, goods, or benefits protected by this part shall result in any of the following:

- (1) A civil claim or cause of action challenging the refusal under law; or
- (2) Any action by any state or county agency to penalize or withhold benefits from any protected entity or individual under any laws of this State or its political subdivisions, including but not limited to laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status.

§572- Construction. This part shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the Constitution of the State of Hawaii and the United States Constitution."

SECTION 6. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be ~~[only between a man and a woman,]~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 7. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal ~~[in the country]~~ where contracted shall be held legal in the courts of this State."

SECTION 8. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~;~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction

in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 9. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~[man and woman]~~ parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health~~[-]; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met.~~"

SECTION 10. Section 572B-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Nothing in this section shall be construed to require any person authorized to perform solemnizations ~~[pursuant to chapter 572-06]~~ of civil unions pursuant to this chapter to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal."

SECTION 11. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§572C-2[H] Findings. [The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

~~However, the legislature concurrently]~~ The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by ~~[such]~~ legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son~~[-, or two individuals who are of the same gender]~~. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."

SECTION 12. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such

civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 13. The department of health may, in its discretion, make any changes that it deems necessary to internal procedures or forms, to aid in the implementation of this Act.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on November 18, 2013."

Representative Oshiro moved that Floor Amendment No. 9 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. I'm rising in support of Floor Amendment Number 9. Just for the edification of the members and to assist them in the discussion here. Mr. Speaker, what this floor amendment before us does, is have a hybrid of Senate Bill Number 1 and House Bill Number 6 with the following components. Of course, I delete the language on paragraph 2, lines 4 to 10 in the Senate bill. Insert Section 2 from House Bill Religious Freedom Restoration Act, which is just a standard in the Sherbert line of cases.

"We inserted an inseverability provision along the lines of what New York and Maryland has done. We also delete the rights of parents that many find objectionable, especially in the Hawaiian community, regarding maybe the creation of or the destruction of any bloodline for Native Hawaiians, or native peoples.

"It also would repeal or delete the portion that allows same-sex couples to have special rights to access the family courts, so for divorce, alimony, or support orders. Again, it focuses upon Section 4 of House Bill 6, the religious freedom and public accommodations, and Section 5 from House Bill 6, religious freedom and marriage.

"Now all of this is premised upon these thoughts, Mr. Speaker, and let me read some of these thoughts for you. Marriage is both a legal relationship and a religious relationship. The profound religious significance of marriage means that many religious organizations, the individuals, believers, experience marriage equity equally, reaching deep into a fundamentally religious institution.

"The challenge for any bill is to equalize civil marriage while preserving religious control over religious marriage. The current draft bill has not accomplished this task.

"The proposed sections protect the refusal to solemnize a marriage and refusal to provide physical facilities for the solemnization of marriage and the marriage-related services. The issue of solemnization is important, but it is only the most obvious part of the issue for religious organizations.

"A bill that addresses only solemnization will do less to protect religious liberty, than any other state that has enacted same-sex marriage by legislation. Equally important, and far more likely to be litigated, is the issue of recognition of same-sex marriages by religious organizations. It's the recognition of same-sex marriage by religious organizations for the purpose of carrying out their religious missions, which would be possibly litigated, or foreseeably litigated.

"A religious organization in the course of carrying out its religious mission cannot in good conscience treat as married two persons whose relationship fundamentally violates the religious organization's understanding of marriage. Must a pastor provide pastoral counseling for a same-sex marriage couple? Must a church employ spouses in same-sex marriages to run its religious functions?

"A religious liberty provision addressed only to solemnization, neglects these and many similar situations. The best solution is what's in House Bill 6. It anticipates the range of issues likely to arise, and addresses them with care, balance, and attention to the essential rights of both same-sex couples and religious conscientious objectors.

"The Governor's draft and the current Senate draft provide services to help celebrate weddings or professional services to help same-sex marriages. This omission, while protecting these, but really does not confer any new benefits on same-sex couples.

"See, same-sex couples are really, if ever actually want some personalized services from providers who fundamentally disapprove of their relationship. And they will nearly always be able to obtain these services from others who are happy to serve them. That's been the argument from our legal experts, and contained in same-sex marriage and religious liberties.

"House Bill 6 offers carefully crafted language that will address this problem in a way that has failed both sides. It'll protect only individuals and very small businesses, five or less, that are essentially personal extensions of the individuals, owners, and others, when some other business is reasonably available to provide the same service. That's in the bill, Mr. Speaker.

"And get this, Mr. Speaker, it is not in the interest of the gay and lesbian community to create religious martyrs when enforcing the right of same-sex marriage. To impose legal penalties of civil liabilities on a wedding planner, or a cake baker, or a florist, or a videographer, or a musician, or a scheduler, who refuses to do a same-sex marriage, or on an individual marriage counselor who refuses to provide marriage counseling to same-sex couples, will simply ensure the conservative, religious opinions on the issue, can repeatedly be aroused to fever pitch."

Representative Har rose to yield her time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you. Mr. Speaker, every such case will be in the news repeatedly. And every such story will further inflame the opponents of same-sex marriage. Refusing exemptions to such religious dissenters will publicly empower the most demagogic opponents of same-sex marriage. It will ensure that the issue remains alive, bitter, and deeply divisive in our community.

"It is far better to respect the liberty of both sides, Mr. Speaker, and let same-sex marriage be implemented with a minimum of confrontation. Let the people of Hawaii see happy, loving, committed same-sex marriages in their midst. Let them see that some of those marriages fail, just as many opposite-sex marriages fail. Let them see that these same-sex marriages, good and bad, have no effect on opposite-sex marriages.

"And let the market respond to the obvious economic incentives. Same-sex couples will pay good money, just like opposite-sex couples. Let same-sex marriages become familiar to the people, and do things without oppressing religious dissenters in the process.

"Same-sex marriage will be backed by law, backed by the state, and backed by the large and growing number of public institutions. The number of dissenters will continue to decline. As minds continue to change and others acquiesce to the new circumstances in the live and let live tradition of the American people, and especially here in *Hawaii nei*.

"The number of individuals in business or professional settings which assert their right to conscientious objections will be small in the beginning and it will plunge still further over time, if deprived of the chance to rally around a series of martyrs. Exemptions for religious conscientious objectors will really burden same-sex couples, Mr. Speaker.

"Few same-sex couples in Hawaii will have to go far to find merchants, professional counseling agencies, or any other desired services provided, who would cheerfully meet their needs and wants. And same-sex couples, Mr. Speaker, will generally be far happier working with a provider who

contently desires to serve them, than with one who believes them to be engaged in mortal sin, who begrudgingly serves them only because of the coercive power of the law.

"The proposed exemptions in House Bill 6 are drafted to exclude the rare cases where these suppositions are not true, such as a same-sex couple in a rural area, that does not have reasonably convenient access to the one and only provider of such services.

"Enacting the right to same-sex marriage with generous exemptions for religious dissenters is the right thing to do. It respects the rights of conscience on all sides. It protects the sexual liberty of same-sex couples and religious liberty of religious dissenters.

"It is obviously better for traditional religious believers, on a few moments reflection, it is also better for same-sex couples. Because it is better on both sides, it is better for Hawaii. Thank you, Mr. Speaker."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I stand in support of the amendment. Of course, I'm going to vote against the bill, but I think the comments of the previous speaker are to protect the minority, to protect the newest minority we have, and that is people who still go to church and still hold fundamental religious beliefs, which this country was founded on.

"He spoke about the marriage counselor. Imagine, if you will, a marriage counselor who has deeply held religious convictions, a same-sex couple comes in, he says, 'I don't know where to begin, I can't offer you what you need. And if I do I may fail. And I really don't feel comfortable doing this.' Well, if we don't have some sort of protection, he's going to get sued. And if they find out after the fact he did some counseling and they fail, oh he had religious beliefs, they're going to sue him for malpractice.

"So as he said, the courts, at every opportunity, at the lower level particularly, narrowly construe the religious freedom issue. And they have to spend all their money until they make it up to the Supreme Court which has had a rather expansive view on it. But the lower courts are very narrow and hostile to faith and hostile to religion. So I think this is a good amendment, I think he did a good job. I'll support the amendment, but not the underlying bill. Thank you."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I'd like to thank the good Representative from Ewa over there because during our testimonies, Mr. Speaker, we had a testifier come before us who was a counselor, and he did marriage counseling. And he spoke in opposition to SB 1. He says if we pass SB 1, it will violate his religious beliefs, and he will probably have to stop working or he will be sued.

"I had a private conversation with him outside in essence of time for the committee, and he felt very convicted. He is a Catholic, a staunch Catholic, of 400 years in his family tradition. And he felt that passionate about it, and he spoke about conscientious objection for his belief.

"I stand in support of this measure, Mr. Speaker, and that's what we're trying to point out here. How do we protect those individuals deeply rooted in their personal conviction, whatever it may be?

"Now, correct me if I'm wrong because I'm not a practicing Catholic, but I've been told that the Catholic Church will not marry you unless you go through counseling of some sort, and if the priest allows you to do it. And he performs the services. Is that not already in violation? Maybe not, because they're a member of the church.

"So we're already trampling into these public accommodation issues and personal beliefs and rights. When are we going to have the discussion to really vet this out? That's why we're talking so deeply about these different amendments today, Mr. Speaker. We're speaking for those 5,000 voices that we heard over the last five days. And many of those individuals I

thought were way over on the outskirts proved me wrong. I was so honored so see they have come to the center and say, 'please just protect our rights, we have no ill to the GLTB community, they're our family members, we want to see them happy. How can we still live our convictions and provide them rights?' I heard that, Mr. Speaker.

"And that's why I'm proud. I'm proud of how I voted the other day. I must stand for that. I'm so grateful that our faith-based community has come to this point after 20 years. But I think SB 1, HD 1, as currently drafted, doesn't protect them enough. And that's why we're trying every effort here.

"Each one of these measures supports same-gender marriage. That's what we want here. The Governor, all the way down to the House and the Senate, as well as the minority voice out there. We were just asking for the dialogue. Thank you very much, Mr. Speaker."

Representative Say rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, just a yes vote. Thank you."

Representative Oshiro rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I rise in support of Floor Amendment No. 9.

"This floor amendment would amend the House Draft 1 by:

- (1) Deleting certain language from the purpose clause;
- (2) Inserting SECTION 2 from House Bill No. 6, the 'little' Religious Freedom Restoration Act;
- (3) Inserting SECTION 14 from House Bill No. 6, the inseverability clause;
- (4) Deleting SECTION 9 of House Draft 1, which would allow a party to a same-sex marriage access to Hawaii courts for divorce, annulment, or separation proceedings; and
- (5) Inserting SECTIONS 4 and 5 from House Bill No. 6, which would provide additional protections for religious freedom for clergy, small businesses, and individuals.

"The rationale for each change is as follows:

"I. Deleting Certain Language from the Purpose Clause

"This floor amendment deletes language found on page 2, lines 4 through 10 of House Draft 1, which states:

"Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and. . . " [Emphasis Added.]

"Because this language is in the purpose clause, the courts will use this language to construe the Legislature's intent should there be any conflicts that arise in the application of this Act. A black-letter reading of this language appears to assert that the Legislature intends that all provisions of law regarding marriage should be applied equally to same-sex couples and opposite-sex couples regardless of whether the language in statute provides the case. Moreover, this legislative intention – that no legal distinction be made between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State – is to be construed and manifested even without any direct action to amend or not amend any provision of law.

"Frankly, I have never seen any such provision before and the breadth and scope of its reach leaves me breathless. Mr. Speaker, does this language truly mean what it says? Wouldn't this supersede any and all amendments we are approving in the remaining sections of the bill that treat same-sex couples and opposite-sex couples differently?

"There are countless instances where marriage status impacts how the law will be applied and as such, it is unclear whether an equal treatment would conflict with the manner the statute is supposed to operate. As previously discussed in the debates on this measure, there are numerous statutes that treat parties differently because of gender. This is especially the case in family law statutes. Currently, the law treats the birth mother differently from the biological father primarily because the mother carries the child before birth – a near self-evident fact.

"As previously discussed regarding the parenting provisions, a blanket statement to treat all of the laws equally regardless of gender, while noble in its goal, is patently negligent because such a broad application of public policy will undoubtedly conflict with the practical implementation of law.

"Finally, it cannot be repeated enough that this purpose clause provision does not rest squarely with the rest of this measure. It should not be construed to provide the overarching legislative intent that 'there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State'. I fear that such a broad, blanket policy statement could make all subsequent provisions and exemptions therein both meaningless and void.

"II. 'Little' Religious Freedom Restoration Act

"This floor amendment would also codify the federal Religious Freedom Restoration Act in Hawaii State Law to:

- (1) Establish the compelling interest test as the standard applicable by the courts of the State of Hawaii in all cases where free exercise of religion is substantially burdened; and
- (2) Establish a claim or defense to persons whose religious exercise is substantially burdened by government.

"Prior to 1990, the First Amendment was interpreted by the U.S. Supreme Court to give protection to religious belief and conduct in all cases where such belief or conduct was not outweighed by some compelling government interest in protecting life, liberty, property, or some other similarly weighty community concern. See, Sherbert v. Verner, 374 U.S. 398 (1962) (Sabbath-keeper's convictions protected); Wisconsin v. Yoder, 406 U.S. 205 (1972) (Amish protected in conviction re need to educate children at home after age of 14); McDaniel v. Paty, 435 U.S. 618 (1978) (State cannot inquire into religious belief as condition of employment); Thomas v. Review Bd., 450 U.S. 707 (1972) (1981) (Jehovah's witness protected in conviction against making war materials); Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136 (1987) (employee protected in observing holy days even when conversion occurred after hiring). But in the 1990 case of Employment Division v. Smith, 494 U.S. 872 (1990), the U.S. Supreme Court decided that, in many cases, the First Amendment should only protect religious exercise from laws or regulations that were targeted at religion. Under the Court's reasoning, a law that forbade Orthodox Jews from wearing yarmulkes on government property would be unconstitutional, as it would be targeting religion. However, if the law were to forbid all people from wearing hats on state property, it would be constitutional – even though the law would require Orthodox Jews to violate either their consciences or the law in order to walk on government property. Because the law is 'neutral' toward religion and 'generally applicable' to all persons, the First Amendment would no longer apply, despite the very real burden the law placed on a religious minority.

"Because many difficulties faced by minority religions are caused by legislative ignorance or insensitivity and not by open malice, religious groups were dealt a severe blow by the Smith decision. Most legislatures are clever enough to couch even anti-religious legislation in neutral and generally applicable terms, thereby evading the First Amendment. Thus, as the Harvard Law Review put it, the Smith Decision as a practical matter

'eviscerated' and 'gutted' much of the protection previously enjoyed under the Free Exercise Clause of the First Amendment.

"For a brief period from 1993 to 1997, there was a federal law that protected religious freedom generally. Known as the federal Religious Freedom Restoration Act (RFRA), it no longer applies to state actions.

"The federal RFRA resulted largely from the efforts of the Coalition for the Free Exercise of Religion, which was formed in response to the Smith decision. With the support of unlikely allies such as the Catholic Church, the ACLU, the Christian Legal Society, the National Council of Churches, major Jewish organizations, the National Association of Evangelicals, the Southern Baptists' Ethics Religious Liberty Commission, the Mormons, and People for the American Way, the federal RFRA was passed by a virtual unanimous Congress in 1993. It restored the compelling interest standard to claims of religious freedom.

"Legislatively, the federal RFRA was originally introduced by Rep. Charles Shumer (New York) in the House and Senator Edward Kennedy (Massachusetts) and it was approved unanimously by the House of Representatives (voice vote). In the Senate, only three members voted no – Byrd (D – WV), Helms (R – NC) and Mathews (D – TN).

"Hawaii's entire congressional delegation supported this legislation – Congress Members Neil S. Abercrombie and Patsy Mink, and Senators Daniel Akaka and Daniel Inouye.

"In 1997, the United States Supreme Court held in City of Boerne v. Flores, 521 U.S. 507 (1997), that Congress exceeded its legislative authority in applying the federal RFRA to state law. Because of this, unless the state enacts the RFRA into its own laws, the compelling interest test would not necessarily apply. It must be reemphasized that after this decision, the ACLU worked with a broad coalition of religious groups and civil rights groups to enact the Religious Land Use and Institutionalized Persons Act which among other important protections, gives religious groups added protections against local land use policies and restrictions.

"And why is this important within the context of same-sex marriage? The RFRA provision would require Hawaii's courts to balance a person's right to freely exercise religious beliefs with the just as important right of another to be treated equally under the law. Without this vital component, the rights to equal protection of a same-sex couple would supersede the rights of the religious believer or conscientious objector – an outcome that is abhorrent to our American way of life.

"Justice necessitates balance. As such, in my view, the enactment of RFRA into the same-sex marriage bill is not only relevant, but essential for there to be any balance in this legislation, or justice for that matter.

"Earlier, concerns were raised that such a provision would allow anyone to discriminate so long as it was done so because of a 'sincerely held religious belief'. However, the courts have long dealt with these issues.

"By establishing an affirmative defense, the burden of showing beyond a reasonable doubt that the 'sincerely held religious belief' was unconstitutionally infringed upon by the statute is placed upon the person asserting the defense. See, State of Hawaii v. Jonathan H. Adler, Slip Op. 25224, 118 P.3d. 652 (2005). Only after that was found would the state then have to justify the statute by compelling government interest, and show that the statute was narrowly tailored to minimize the effect on the person's religious exercise. Thus, it only arises where there is a 'violation' of 'sincere' beliefs that are 'religious' and not to situations that merely make religious people uncomfortable, nor to insincere beliefs asserted as a pretext for discrimination, nor to non-religious moral beliefs.

"Without the inclusion of specific protections for conscientious objections such as the religious freedom restoration act, the enactment of House Draft 1 will force religious organizations, businesses and individuals to compromise their deeply held beliefs to comply with the law. Again, these are constituents who have no objection to providing services to same-sex couples, but object to facilitating the marriage of a same-sex couple.

"Moreover, this concern is not without any merit when one examines the language found on page 6, of the 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', which states in relevant part:

"The State of Hawaii has a compelling state interest in eliminating discrimination in public accommodations. Out public accommodation law is a law of general applicability that serves a compelling state interest and does not target any religion." [Emphasis Added.]

"Thus, if this is the standard by which the Hawaii Civil Rights Commission will conduct its analysis and application of Chapter 489, HRS, in the situation where there is a conflict between an individuals' liberty right under Section 489-3, HRS (Discriminatory practice prohibition), and another individual's First Amendment religious freedom right, without the balanced approach of the Sherbert Test, as would be established in the RFRA, the outcome will be a substantial and certain abridgment of one's First Amendment religious freedom right.

"As the preeminent and distinguished Professor of Constitutional Law, Erwin Chemerinsky, suggests:

"[Third] [S]tate government can enact their own religious freedom restoration act in order to have state courts apply strict scrutiny to state government actions or laws that burden religion. States, of course, pursuant to police power, may adopt any law not prohibited by the Constitution. Nothing in the Court's decision in Flores precludes a state from deciding that it will tolerate state actions and laws that burden religion only if they meet strict scrutiny."

"There is no doubt that people have less protection for their religious practices after Flores than they did before. Hopefully, though, this will be only temporary as legislatures find other ways to protect individuals from neutral laws of general applicability that burden religion. Hopefully, too, the Supreme Court will uphold these laws and recognize that more is not less; legislatures may protect rights greater than those found in the Constitution by the Supreme Court." [Emphasis Added.] (See, Erwin Chemerinsky, The Religious Freedom Restoration Act Is a Constitutional Expansion of Rights, 39 Wm. & Mary L. Rev 601 (1998) pg. 636.)

"III. Inseverability

"To ensure that the equal protection and religious freedom provisions are applied in tandem, the bill is specifically designed to become invalid in its entirety if any portion of the bill is stricken by the courts.

"This approach is the same taken in Maryland and New York State where an inseverability provision was included in the bill that legalized same-sex marriage to obtain support from both liberal and conservative members of the Legislature. It has the effect of curbing the fringe members of the various stakeholders from seeking to strike down any portion of the law it finds disagreement with and promotes a mutual level of interdependence to the effectiveness of the whole policy as each has a similar political veto power over the other.

"This provision has been in effect in Maryland and New York, since 2012 and 2011, respectively and no published legal action has been issued in either state. We should consider this provision if we are serious and sincere about promoting a policy on same-sex marriage that allows all to 'live and let live' in our island home and community in the middle of the sea.

"IV. Domiciliary Requirements Necessary for Recognition of Divorce Decrees Issued in the State of Hawaii

"SECTION 10 of House Draft 1, page 17, line 9, through page 19, line 13, would allow any party to a marriage solemnized in the State of Hawaii to access Hawaii courts for the purpose of obtaining an annulment, divorce or separation if neither party is able to pursue an action for annulment, divorce, or separation where the parties are domiciled because both parties are domiciled in a jurisdiction or jurisdictions that do not recognize the

marriage. This provision would exempt these parties from the three-month domiciliary requirement to use the courts in the State of Hawaii for purposes of divorce, annulment, or separation. Be certain that this provision would affect both out-of-state and out-of-country marriages and may have serious consequences upon child custody, support, visitation, and parental rights, without the current due process protections.

"Professor Lynn D. Wardle, a recent panelist at the House of Representatives Informational Briefing, October 23, 2013, former President of the International Society of Family Law, current President of the International Academy of the Study of the Jurisprudence of the Family, and author and co-author of six books about family law, and over 100 law review articles, mostly about family law, is a full-time law professor, having taught family law for 35 years. He strongly condemns the amendments to Section 580-1, Hawaii Revised Statutes (HRS), which allows the Hawaii courts to have jurisdiction to grant a divorce to any couple even living outside of Hawaii, regardless of where else they are domiciled, where else they live, where else they have their home, own property, or have children or custody of children, if they got married in Hawaii and now live in a state or country that does not recognize their marriage. Professor Wardle has shared with me that there is NO state that allows this radical extension of divorce jurisdiction and it is almost certainly unconstitutional under long-established precedents and standards set by the U.S. Supreme Court.

"In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the state. Mere residence will not do but domicile is necessary. The reason for such a high standard is the constitutional requirement of due process of law.

"In other words, courts of the state in which a party to a marriage is domiciled, just like the state in which land is situated, have the only constitutional authority to issue a court order regarding the res or matter that is the subject of litigation – the marriage in one case, the land in another case.

"Furthermore, we should be questioning the necessity for this special privilege to a same-sex couple that is not granted to a heterosexual couple. Why are we creating this special privilege? What affects will it have upon the operations and policies of our family courts?

"By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce, annulment, or separation, it is arguable that the bill, as presently drafted, would jeopardize the validity of any divorce, annulment, or separation decree issued in the State of Hawaii as they are recognized by other states. SECTION 10 of House Draft 1, page 17, line 9, through page 19, line 13, is certain to run afoul of constitutional requirements of due process of law and place a cloud of uncertainty over Hawaii's Family Court decrees and orders.

"In conclusion, the amendments proposed in this floor amendment are necessary to correct fatal flaws in the House Draft 1. Should these flaws not be corrected, the potential for harm that this bill will have on our people is enormous, and in most cases irreversible and permanent.

"How can we forget the children who may or may not be Hawaii residents or even U.S. citizens or who are domiciled on the U.S. Mainland.

"Does this extraordinary change comport with all federal and state laws regarding the transfer of children across state and country borders?

"What occurs if the parties to the marriage do not consent to the family court's jurisdiction?

"What happens to the adjudication of child custody, spousal support, child support, property division, or other important matters such as educational opportunities, visitation rights, medical treatment, and other matters commonly disposed of under the present marriage laws and family court procedures?

"Do we understand how this change in our marriage laws and related family court rules and policies could, for all practical purposes, terminate and end a child's relationship with his or her own biological parent?

"Are we so sure that we may not be playing a part in an incremental pursuit to cut-off a child's link to his or her unique cultural legacy or ancestral heritage?

"The public record is lacking on any discussion of this provision and how it may affect children. The Attorney General's written testimony, dated October 31, 2013, page 4, does not even mention 'child' or 'children' or 'minor' or 'minors', which in my humble opinion only suggest a mere cursory review of the provision or a gross misunderstanding of how this provision could do great and irreparable harm to the child and children of a same-sex marriage couple.

"Mr. Speaker, this kind of substantive change deserved much more discussion and review as it deals with children. That this body did not examine and consider these foreseeable challenges underscores the great and grave danger in rushing this measure through.

"V. Additional Protections for Religious Freedom

"The House Draft 1 would provide the Hawaii Civil Rights Commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment or subject to the Hawaii Public Accommodations Law, Chapter 489, HRS. Not only will this create a chilling effect that will interfere with religious exercise, but the bill, as presently drafted, would not provide any protections whatsoever for individual religious and conscientious beliefs.

"The religious exemptions in House Draft 1 is broader than the version received from the Senate by inserting language modeled after the State of Connecticut's Public Accommodations Law. However, this language does not take into account the constitutional, statutory, and common law protections embedded in Connecticut State Law that was not included with the borrowed language.

"First, Connecticut's Constitution specifically protects religious and conscientious beliefs. Article Seven states:

"It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the State. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship."

"Second, the State of Connecticut has enacted the Religious Freedom Restoration Act of 1993, Section 52-571b, General Statutes of Connecticut, which establishes the compelling interest test as the standard applicable by the courts in all cases where free exercise of religion is substantially burdened, and establishes a claim or defense to persons whose religious exercise is substantially burdened by government.

"For these reasons, in my opinion, the language from the Connecticut Public Accommodations Law is not appropriate and would not adequately protect the religious liberties of clergy, small businesses nor individuals.

"A much more suitable alternative would be found in House Bill No. 6. In preparing House Bill No. 6, noted and renowned legal scholars from across our Nation were contacted to assist in the drafting of religious protections for businesses and individuals. These included:

- Douglas Laycock, the Robert E. Scott Distinguished Professor of Law and Professor of Religious Studies, University of Virginia. Considered the 'Dean' of Religious Freedom Issues, Professor Laycock successfully argued before the United States Supreme Court in Hosanna-Tabor Evangelical Lutheran Church and School v. Equal

Employment Opportunity Commission, Slip No. 10-553 (2012), in which a unanimous Court held that the Establishment and Free Exercise Clauses of the First Amendment bars suits brought on behalf of ministers against their churches, claiming termination in violation of employment discrimination laws. He most recently argued before the U.S. Supreme Court this week in Town of Greece v. Galloway, which seeks to clarify the legal limits on public prayers in government meetings across the country.

- Thomas C. Berg, James Oberstar Professor of Law and Public Policy, University of St. Thomas, Minnesota. He has written more than 30 briefs on issues of religious liberty and free speech in cases in the U.S. Supreme Court and lower courts and has often testified to Congress in support of legislation protecting religious freedom. For his work, he received the Religious Liberty Defender of the Year Award from the Christian Legal Society in 1996, the Alpha Sigma Nu Book Award from the Association of Jesuit Colleges and Universities in 2004, and the John Courtney Murray Award from DePaul University College of Law for scholarly and other contributions to church-state studies.
- Bruce S. Ledewitz, Professor of Law, Duquesne University. He is a recognized expert in the fields of criminal law and constitutional law. His most recent book, Church, State, and the Crisis in American Secularism was published in 2011. He has served as Secretary to the National Coalition Against the Death Penalty from 1985-1990. His Platform for Reforms of the Pennsylvania Supreme Court was recently the subject of a statewide series of debates sponsored by the Pennsylvania League of Women Voters. He has written widely in both specialized legal journals and national media such as the New York Times, Wall Street Journal and the Chicago Tribune.
- Christopher C. Lund, Associate Professor of Law, Wayne State University Law School. He has represented a wide variety of groups and causes. He has, for example, worked for the American Civil Liberties Union defending the rights of Christian parents to home school their children, and for a diverse coalition of religious groups supporting the freedom of Muslim detainees at Guantanamo Bay. He regularly advises church-state groups regarding litigated cases and pending legislation. He is a past chair of the Law and Religion Section of the Association of American Law Schools, and the current chair of the Section on New Law Professors.
- Michael Perry, Robert W. Woodruff Professor of Law, Emory University. Since 2003, Professor Perry has held the Robert W. Woodruff University Chair at Emory University. A Woodruff Chair is the highest honor Emory University bestows on a member of its faculty. He is also a Senior Fellow at Emory University's Center for the Study of Law and Religion. He is the author of twelve books and over seventy-five articles and essays. His books include: Religion in Politics: Constitutional and Moral Perspectives (Oxford, 1991); We the People: The Fourteenth Amendment and the Supreme Court (Oxford, 1999); Under God? Religious Faith and Liberal Democracy (Cambridge, 2003); Toward a Theory of Human Rights: Religion, Law, Courts (Cambridge, 2007); and Human Rights in the Constitutional Law of the United States (Cambridge, 2013).
- Robin Fretwell Wilson, Class of 1958 Law Alumni Professor of Law, Washington and Lee University School of Law.
- Richard W. Garnett, Professor of Law, University of Notre Dame Law School.
- Edward McGlynn Gaffney, Jr., Professor of Law, Valparaiso University School of Law.
- William Wood Bassett, Professor of Law Emeritus, University of San Francisco.
- Robert A. Destro, Profess of Law and Director of the Marriage Project, The Catholic University of America.
- Michael W. McConnell, Richard & Frances Mallery Professor of Law, Director, Constitutional Law Center, Stanford Law School.
- Carl H. Esbeck, Isbell Wade & Paul C. Lyda Professor of Law, University of Missouri School of Law.
- Marie A. Failing, Professor of Law, Hamline University School of Law.

"Their recommendations were incorporated into the floor amendment presently before you specifically to provide religious protections for individuals and small businesses.

"In their testimony on Senate Bill No. 1 to the Senate Committee on Judiciary and Labor, Professors Laycock, Berg, Ledewitz, Lund, and Perry wrote:

"We support same-sex marriage. We think that Senate Bill 1 can be a great advance for human liberty. But careless or overly aggressive drafting could create a whole new set of problems for the religious liberty of those religious believers who cannot conscientiously participate in implementing the new regime. The gain for human liberty will be severely compromised if same-sex couples now force religious dissenters, when they had the power to do so, used to force same-sex couples to hide their sexuality. Conservative religious believers should not be allowed to veto same-sex marriage for those who want it, but neither should they be forced to directly facilitate it in violation of their understanding of God's will." (emphasis provided).

"Accordingly, this floor amendment would provide additional religious protections to balance these competing interests.

"These include protections for:

- (1) Religious educational, healthcare or denominational organizations, organizations operated for charitable or educational purposes that are identified with a religious organization or group, and individuals employed or supervised by any of these organizations;
- (2) Small businesses having five or fewer employees or owning five or fewer units of housing in providing goods, services, benefits or housing;
- (3) Judicial officers and government agency clerks with sincerely held religious beliefs to not solemnize a marriage; and
- (4) Individuals, in certain circumstances.

"However, it must be understood that these exemptions shall NOT apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay.

"This is both a practical and realistic means to address the most common instances where conflict may arise and narrow the exposure for disputes and litigation among our community members.

"These provisions would sunset in three (3) years to allow the Legislature to reevaluate the need for these protections based on the experience gained. But, it is realistically expected that as same-sex marriage becomes more and more frequent, the entrepreneurial engines of small business will establish and promote niches of both services and goods to address the needs of the same-sex marriage industry. As such, as we transition into this natural economic dynamic of business enterprise seeking to fill a unmet need, the initial limited and constricted protections afforded to conscientious religious objectors will not be necessary and allowed to fall away as mere vestiges of a transitional period in local politics and policy as we enter into a post-same-sex marriage world in Hawaii.

"VI. Religious Protections for Employers and Employees

"As mentioned previously, House Draft 1 does not provide any religious protection for the 'Individual', but only the clergy, minister, priest, rabbi, and officer of any religious organization. As such, it does not protect any

of the thousands of constituents with sincerely held religious beliefs when they leave the privacy of their homes and enter the public space of commerce or business as employer or employee. But, I don't know of anyone who has a genuine and authentic religious belief that can flip it on or off as any GLBT can turn his or her sexual orientation off or on, in public and private spaces. No one can expect a person to do this and it should not be the policy of Hawaii.

"But, under the House Draft 1, that is the effect it will have upon many of our constituents. And, it may force them to choose between their sincerely held belief or face demotion or termination for being a conscientious objector. This has occurred in other states and it is a foreseeable consequence of legalizing same-sex marriage without protections of individual religious freedom rights. We do not need to have a win or lose policy choice between two essential constitutional values – religious freedoms and equal protection or personal liberty rights.

"For a practical solution to many of our Government workers (HSTA, HGEA, UPW, HFFA, SHOPO, UHPA, etc.) I draw your attention to SECTION 4 of the floor amendment, Pages 26-29, with particular attention to Page 27, Line 21: 'No Individual . . .', and Page 28, Line 11-19, and Page 28, Line 11-19: '(b) This section shall not apply if either: . . . In the case of an individual, another government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay. . . '.

"In other words, only in the instance where another co-worker is available and willing to provide the service will a person's sincerely held belief allow for this exemption to provide service to all. This may also help ameliorate the foreseeable tension of the conscientious objector who as a teacher would not be able to teach certain topics regarding same-sex relationships, finding that it substantially burdens her sincerely held religious beliefs and a cohort or colleague is readily available to provide such teaching service without interruption or inconvenience. This 'hardship exemption' is premised upon the belief that the accommodation is a two-way street and only available when there is no other less restrictive alternative to provision of the service. It is consistent with the legal underpinnings of balancing interest as found in Sherbert.

"House Draft 1 does not provide for this practical accommodation of our public workers who will face hard choices whether they serve the public as a counselor, teacher, psychologist, or social worker, among those occupations involving personalized skills and talents. Simply deeming public servants with sincerely held religious beliefs as unqualified or ineligible to serve will take us back to a dark time in our Nation's history where Catholics and Jews were deemed unfit for public service based upon their religious beliefs. Certainly, no one would condone such a policy today but that will be the foreseeable de facto policy of the State of Hawaii should we not approve such limited and practical protections for our public workers.

"VII. The Demise of Religious Freedom in Hawaii"

"Finally, it is well established that once same-sex marriage is approved, those opposed to any exemptions for religious conscientious objectors will give the narrowest possible interpretation to all exemptions until it is meaningless and void of any regard for the religious freedom under the First Amendment. The Governor and his Administration has already shown their true colors as demonstrated in their public statements regarding the Governor's initial draft bills: Marriage Equity Bill, AG 8.22.13, based upon Senate Bill 1329, and attached to Governor's Memorandum, dated August 28, 2013, and Governor's Memorandum, dated September 11, 2013, with revised draft of Marriage Equity Bill, AG 9.9.13. As legal scholars have warned us, similar unsympathetic application of non-discrimination policies against religious freedoms and conscience from our courts and administrative agencies is also foreseeable without clear guidelines.

"Again, without the clear guidance to apply the Religious Freedom and Restoration Act, and the Sherbert standard, both the Civil Rights Commission and Hawaii's courts may apply the less protective standard of the Smith Decision in religious freedom cases.

"Mr. Speaker, the New Mexico photography case, Elane Photography v. Willock, 2013-NMSC-040, 309 P.3d 53 (2013), should give every advocate of freedom of expression and free exercise of religion and association pause. When government begins to tell us 'how we must speak', or 'what we must photograph', the practitioners of the express or creative arts, including journalism, poetry, music, design, and art cease to be masters of their own subject matter, and freedom of expression ceases to exist.

"How can we tolerate our government telling us what to speak? How can we tolerate our government telling us what we can think? Is there anyone else in this august Body that appreciates that slippery slope we may be entering? I hope so. I really do. Mr. Speaker, we can do better for ourselves and for our constituents and their religious and First Amendment freedoms.

"In conclusion, the amendments proposed in this floor amendment are necessary to correct fatal flaws in the House Draft 1. Should these flaws not be corrected, the potential for harm that this bill will have on our people is enormous.

"For this reason, I strongly urge your favorable consideration of this floor amendment."

Representative Tokioka rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. A yes vote."

Representative Saiki rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to this floor amendment. I'd like to make two points. First, this floor amendment legalizes same-sex marriage in Hawaii.

"The second point is, I'm not really sure, to be somewhat blunt about it, I'm not really sure how much value there is in further discussing this proposal in public hearings. In particular I want to point to one provision that I find very troubling. It's on page 6.

"It basically allows any individual and any small business to discriminate, if there is a religious belief that justifies that discrimination. I want to give an example of how broad this is. The language would allow the discrimination to include the provision of any benefit to a spouse of an employee, whether or not that is a same-sex marriage couple. It would also allow for discrimination in housing, lodging, and similar accommodations to any couple, regardless of whether it is a same-sex couple. The discrimination is not limited to same-gender couples. It could be on the basis of race, age, gender.

"I view this as a very vindictive proposal. For that reason I oppose it, and I call for the question, but please allow members to insert written comments, thank you."

At this time, Representative Saiki called for the previous question.

The motion that Floor Amendment No. 9, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Saiki voting no, and with Representatives Cachola, Choy and Nishimoto being excused.

At this time, the Chair stated:

"Members, we are going to have a recess, and you're all invited for lunch in the Democratic Caucus Room."

At 2:20 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:57 o'clock p.m., with Vice Speaker Mizuno presiding.

At this time, the Chair stated:

"Announcement to the gallery. Members of the audience, in order to maintain decorum in this Chamber, I'll ask the audience to refrain from any outbursts or demonstrations which may disrupt the deliberations and proceedings on the Floor. Thank you, members."

At this time, Representative Oshiro offered Floor Amendment No. 4, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. The purpose of this Act is to propose an amendment to article I, section 23, of the Constitution of the State of Hawaii to provide that marriage shall be reserved to opposite-sex couples.

SECTION 2. Article 1, section 23, of the Constitution of the State of Hawaii is amended to read as follows:

"MARRIAGE

Section 23. ~~[The legislature shall have the power to reserve marriage]~~ Marriage shall be reserved to opposite-sex couples."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the constitution of the State of Hawaii be amended to reserve marriage to opposite-sex couples?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii."

Representative Oshiro moved that Floor Amendment No. 4 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"I'm in support of Floor Amendment Number 4. Just in a nutshell, it's the same contents as House Bill Number 5, I believe, that was introduced by the Representative from Ewa Beach, on about October 28, 2013. Mr. Speaker, let me explain to the public and to the members what we're trying to do here, giving you some background.

"This is a constitutional amendment. First we need to understand that according to Article I, Bill of Rights, Political Power, Section 1, 'all political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority.'

"Number two, Rights of Individuals, according to Section 2 of the same article, 'all persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities.'

"So what this would do here, if it was approved by this Body, it would then go through the Senate for consideration. And then if approved by the Senate, in their infinite wisdom, it would then go before the voters, if we were able to achieve and have the same approval in the Regular Session 2014, by both the House and Senate.

"It requires either a simple majority in a single session like this, or in two consecutive sessions, a majority of the votes. What this would do would have the effect of amending our State Constitution, primarily Article I, Section 23, which states as follows: 'The legislature shall have the power to reserve marriage to opposite-sex couples.' Thank you very much, Mr. Speaker."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, my name was said in, not vain, but said not exactly that I introduced the bill, and I did. I'm in support, Mr. Speaker, with unbridled enthusiasm, like our protestors outside. You've heard them all morning, 'let the people vote, let the people vote.'

"Mr. Speaker, why, why are they upset? Because in 1998 this was sent out to every registered voter, from the Office of Elections. A ballot information sheet telling them what the amendment meant. And here's the language verbatim, 'a "yes" vote would add a new provision to the constitution that would give the legislature the power to reserve marriage to opposite-sex couples only.' Only. Mr. Speaker, I'm not a lawyer, but I know what the word 'only' means.

"Now unfortunately, that word wasn't on the ballot. We misled them, Mr. Speaker. Like a used car salesman, bait and switch. We said, get a brand new Ram Quad Cab for 19.99, then they go down, well that doesn't have air conditioning, and it doesn't have wheels, but you can have this one over here for \$40,000.

"Mr. Speaker, these people, I don't know if I'm the only one who's noticed, Mr. Speaker, but those folks out there, they're not Republicans, they're the majority party folks. And you've turned your back on them."

At this time, the Chair stated:

"May I remind our guests in the gallery, this is a very passionate issue to both sides, so out of respect to everyone here and the membership here, allow us to do our job. Representative McDermott, sorry, please continue."

Representative McDermott continued, stating:

"No, thank you, Mr. Speaker. A recent poll was done, we paid \$10,000 for it. 70 percent of the people think this question should be decided by them. When a major societal change is going to come, the people who own the government, the people who we work for, the people who pay our salaries, have been telling us very loudly and clearly what they want.

"Now as Judge Levinson said under questioning, it's not a constitutional right, it's not a fundamental right. So what are we doing? We're turning our backs on our people. Mr. Speaker, your people, who we're turning our backs on. That's who we're turning our backs on. The downtrodden, the disenfranchised, the truck driver, the clerk at Longs. These are your people, Mr. Speaker. These are the people who the Democratic Party came together to rise up and lift up, and we're turning our backs on them. Because we think they're stupid, they don't know, they go to church, it's foolish, it's a magic show, it's not real. Here's our new world, come join us in our world. They're saying, 'no, please.'

"So, Mr. Speaker, they showed up in droves. Over 5,000 people to testify. Minority research kept track of the folks who supported and opposed same-sex marriage. First day of testimony, 18 percent in support, 82 percent opposed.

"Now this is walk-in testimony. These are people who took off of work to come down here and said 'no'. They repeatedly said, let the people decide, give us a vote. Let us choose the world in which we want to live in.

"Friday, 20 percent support, 80 percent opposed. Saturday, 10 percent support, 90 percent opposed. Monday, 9 percent support, 91 percent opposed. Mr. Speaker, it's clear. My colleagues, I beg you, don't turn your back on your people. You're all they've got, why are you not listening to them? They want a constitutional amendment, you're going to turn your back on them. This is a constitutional amendment.

"Now, some may say it's flawed. The title is flawed, or this, they can nitpick it to death. Well you know what, Mr. Speaker? We have time, we can pull HB 5 to the Floor, a clean constitutional amendment, and vote it. Doesn't matter what the Senate does, we don't work for the Senate, we work for the folks outside, in the hallways, who slept over the weekends, that's who we work for.

"Now I don't think I'm the only one who understands that, Mr. Speaker. Please, I beg you, majority party, listen to the 70, 80 percent of the people who want a constitutional amendment. Please."

Representative Evans rose to speak in opposition to the proposed floor amendment, stating:

"I stand against the floor amendment. I'm offended by someone saying that I don't listen to the people. And I want you to know that I think everybody in this Chamber, every single Representative has been listening. But it's not just about people that show up at the Capitol. It's not just about the people sitting in the gallery, or people standing out in the rotunda.

"I took surveys, I get phone calls, I get emails, and guess what? I'm from the Big Island and so most of the people that I represent, they can't get here, because they can't afford to fly, they can't afford to take off work and fly and actually get hotel rooms, not knowing if they were going to testify on the second, third or fourth day. But to say that we don't listen is so false. And I want you to know that people have overwhelmingly, from my district, contacted me.

"Now we're talking about two things. One, I think he was out of order because he's implying what my intent is. But I'll tell you, we do listen to the people. And there's another group of people that people haven't even brought up, and that is, I represent 27,000 plus people in my district. They happen to be from one-day-old to I think over 100 plus, in my district.

"There's a lot of people out there that don't know how to express themselves to their legislator. So it's our job to figure out how to reach out, how to represent all the different people that we represent. And I'm telling you, I will not make my decision based on 5,000 people showing up and, oh, of the 5,000, X amount said 'yes', X amount said 'no', and then I've got to place my vote on that. Wrong, I will not do that, and I do not support this amendment. Thank you."

Representative Yamane rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, standing in support. Thank you, Mr. Speaker. I respect those in my community. I respect the voices and the families that I'm charged and took the oath of office to represent. That is why I support a constitutional amendment, to let those voices be heard. Mr. Speaker, this measure not only brings it and allows every person allowed to vote to make that decision for them, but this was for discussion.

"I'm confident, Mr. Speaker, that people in my community will read, will talk, get educated and they'll make the best decision that they feel represents them and their family. And this is the reason why I support a constitutional amendment, so that the people who cannot fly here, who cannot take off and be here today, could not testify in front of the committee, will have a voice. Thank you."

Representative Awana rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support. Earlier we heard many concerns surrounding this bill, Senate Bill 1, House Draft 1, in as so much that we received numerous floor amendments to change the bill, gut the bill, and clarify the bill. For whatever reason, the amendments were not adopted. Floor Amendment Number 4 will greatly improve the language by allowing the people to vote through a constitutional amendment.

"Mr. Speaker, as you may have heard, from 10 a.m. this morning, there has been a persistent group chanting 'let me vote, let the people vote.' Mr. Speaker, as I look to you, to your left and to your right, I see two flags. One is the United States flag and the other is the Hawaii State flag. We are in America, Mr. Speaker, in a country where one of the most unique rights is the right to vote.

"These people want to vote, Mr. Speaker, and I will support them and the rest of the tens of thousands who requested to exercise this right via their emails, letters, phone calls, testimony, and personal visits to our offices.

"Although there are many claims that the title may be flawed, Mr. Speaker, I beg to differ. A vote is a great equalizer. A vote does not discriminate. And the bill's name is entitled, 'Equal Rights.' For these reasons, Mr. Speaker, I rise in strong support. Thank you."

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support. I think you've been in my office, and a number of my colleagues have been in my office, and they see a bust of Jefferson as soon as they come in, a live bust of Thomas Jefferson. Jefferson shouts at me every day, 'listen to the common sense of the common people for the common good.' This the common people shouting common sense for our common good as a people.

"I say this because we're behaving like the banana republics, that I used to be a democracy officer in. That the U.S. would send me out through the State Department and USAID to show newly elected officials that because someone's not educated, someone does not have a cosmopolitan sit-down white-jacket and white-tie job, that they don't have any wisdom.

"Mr. Speaker, the core, the soul of the earth is in the people. That's why our constitution says, all power in this state is vested in the people. The people want to have a process, they want to have a method by which they can be heard.

"They were duped in 1998. I don't care how much inside baseball all the lawyers are going to tell us, they were duped in 1998 to think that they were voting against same-sex marriage. They weren't, we botched that one, and that's what part of the anger is here.

"But my point is to listen to the people, what they can do. And if we're so confident, all those who voted in the Finance and Judiciary Committee, if you guys got the votes, you got the confidence, let the people reify it, let the people reexamine it, and let them have their say. If we're so confident that we're going to pass this, let's get them to stamp it and say, yes, we're all part of having same-sex marriage brought here, not just some of us.

"We're not a banana republic. We listen to the people, they have common sense, and it's for our common good, Mr. Speaker. For those reasons I ask everyone to vote yes."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker, I am in support of this amendment. Thank you very much, Mr. Speaker."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support. We had over 15,000 pieces of testimony come in over two weeks. We went through five days of testimony, over 55 hours plus of listening to people. We never gave the neighbor islands the opportunity to weigh in, which was obviously a mistake."

The Chair addressed Representative Fale, stating:

"Wait, Representative, you can't infer motive on any of the chairs. It's your opinion."

Representative Fale continued, stating:

"My opinion, Mr. Speaker, that was my opinion. I don't understand what the problem is with letting people decide. This is something that they have to live with. I don't understand why we're going to make such a huge societal change in the State of Hawaii and then say, you have to live with it, without allowing them the opportunity to say something.

"It blows me away. I'm one of the youngest members here and I get it. The way that constitutional amendment was written 1998, apparently you have to be an attorney for 30 years to understand what it meant.

"When we ask the common person, what did this constitutional amendment do? Apparently we have a problem with clarifying legislative intent. That's a problem with leadership that comes from this building, Mr. Speaker.

"Here's an opportunity, here's an opportunity with this floor amendment, to lay something out that is clear and simple, for the people who will have to live with this major societal change, that this Body is on the verge of imposing on them. That doesn't sound like democracy to me, Mr. Speaker.

"Whether it's right, whether it's wrong, whatever your feelings are about it, the people of this state will have to live with it. How can we oppose something that they're supposed to live with, and not give them a chance to weigh in?

"They're opposed. You see it, Mr. Speaker, say that 55 percent of the State of Hawaii support same-sex marriage. If that is the will of the people of Hawaii, I am completely fine to live with that. But I am not about to make a decision to impose something this big, on this magnitude, that was dictated to this Body from the 5th floor of this building against the wishes of the State House and the State Senate, and here we are, here we are.

"And the people who are afraid of microphones, who live day-to-day, got the courage to come here and voice their opinions and let us know how they feel. I was told, every day in this building I'm told, go get the people to come speak on the legislation here because their voice matters, and what they have to say will influence what goes on here. I have no confidence to ever do that again.

"If we have what we have, we made history, we made history in this building. Never before have we received the degree of public input, public testimony. People are tired. They have put their hearts, they have put days, they have sacrificed money, some have gotten their cars towed, Mr. Speaker, because they did not wish to have their voice not heard.

"And for those people to say, it does not matter what you say, it does not matter how you feel, Mr. Speaker, this is no longer the People's House. How can we say, we should call this just the Governor's House. Because we're here to do the Governor's will. Not the people's will, the Governor's will.

"Mr. Speaker, my job is to represent the people of my community. I am a people's representative, Mr. Speaker. The key word being people. And apparently we have problems with understanding simple English language when it's presented, as it was in the 1998 constitution.

"Mr. Speaker, that's not what I wrote to say, sometimes emotion kind of grabs you. But I don't understand, Mr. Speaker, the people out there don't understand. Why can't we do something, when the people ask us to do it? And if it's something as simple as just let us vote. How can we say no?"

Representative Tokioka rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I stand in strong support. Just real briefly, I know it's been a long day already. I know the people outside can't hear us, but I really want them to know that we heard them. For the thousands of people who came to this Capitol, Mr. Speaker, we want them to know that their voices were heard. Thank you very much, Mr. Speaker."

Representative Fukumoto rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In support of the amendment. In 1998 I wasn't old enough to vote yet so I didn't get to vote on the 1998 amendment. But I do remember how confusing it was to people, and I think from the volume of calls that we've received in our offices, at least I've realized that people didn't understand what happened in that amendment, and people were confused because they didn't even realize that we could do what we're doing here now in a special session, even discussing same-sex marriage. Because they thought this was a done deal, they thought it was over.

"I think it's an arrogant thing, for this Body to continue to say that they should have known better. They didn't know better, and clearly they didn't. We need to give them a chance, I think this is what they've asked and demanded for. Clearly they're demanding for this.

"And I think, even though we haven't had a roll call or anything else, in the interest of full transparency, these people deserve to know how we're going to vote. They deserve to know how we feel about this, because this is what they're asking for. So, Mr. Speaker, in the interest of full transparency, at the end of discussion I would like to call for a roll call vote. Thank you."

At this time, Representative Fukumoto requested a roll call vote.

At this time, the Chair stated:

"Before we continue, members, I'd like to remind all of you that pursuant to the House Rules of proper decorum, we are not going to allow personal attacks. Motives of a member will not be discussed in this Chamber. The speeches can be very passionate. If you are supportive or in opposition of the bill or the amendments, feel free to argue the merits of it, why it's good or bad. But let's have respect and proper decorum in this Chamber. Thank you."

Representative Cullen rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support. We've been listening all this morning, let the people vote. We've listened for five days, testimony overwhelmingly opposed to this Senate bill. But for this floor amendment, we hear the people. We need to move forward and say we listened to them, and move this amendment through. So, we not just need to hear them, we need to listen. Mr. Speaker, we need to listen."

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in strong support of the floor amendment. Mr. Speaker, I'm very angry right now. I think my anger is very representative of many of the people who are sitting outside right now, who are standing and chanting, as well as many of the people in the gallery today.

"I'm angry, Mr. Speaker, for several reasons. First and foremost, we don't need this floor amendment. Mr. Speaker, as you and all the members of this Body know, we have a bill, House Bill 5, that is sitting in committee right now, that can be heard, and will give the people the ability to vote. And yet we are not allowing that bill to be heard. So I'm angry about that, Mr. Speaker.

"Mr. Speaker, a recent poll was done by QMark. 54 percent of the people of the State of Hawaii who were polled think that same-sex marriage should be legalized. And, Mr. Speaker, you know what? I agree with that poll. So if I agree with that poll, why can't we allow the people to vote? If that's, in fact, the majority of this people, why can't we let the people vote?

"Mr. Speaker, over the past five days we have heard testimony from numerous individuals. I speak on behalf of Kuponu Kuwamura, number 5016 was his registration number. 21 years old and he said, 'I've never done this before, I've never come to testify. Yet I represent a generation that was not heard. We all want to be heard, please allow us to vote on this issue.'

"We had Mr. Brandon Ahu, registration number 5063, a graduate of Kamehameha Schools and USC, and he said, 'is our government listening? I'm going to ask you to allow me to vote on this issue. Our state is divided. How can this be falling on deaf ears? If you vote 'yes' to this bill, you are further disillusioning us in government, in this process.'

"We also heard from Ms. Danielle Surface, number 3542. She said, 'over and over again you continue to hear the same message. But I think that's important that you keep hearing the same thing. People feel deceived, they

feel that you folks were dishonest, and now you're rushing this. If you continue to move on this course, you will continue to cause more strife and problems. Take your responsibility seriously, and please let the people vote.'

"We heard from Ms. Patricia Langi, registration number 3613. She said, 'in 1998 I was too young to vote. And now, I feel like I'm 8 years old again, I have no voice, no one is listening. Please, let me vote.'

"Finally, Mr. Speaker, Robyn Gomes, from Nanakuli, registration 4127, said, 'this process is a joke. The shenanigans that are going on right now is wrong, and you shouldn't be doing this to the people. This process is flawed. I am a Native Hawaiian, and to us, this is not the way, this is not the way to do this to me and my family. To me and my family, this is a slap in the face.'

"So, Mr. Speaker, I think my anger is very representative of many of the people who have participated in this journey with us. So, Mr. Speaker, on behalf of Kupono Kuwamura, 5016, Brandon Ahu, 5063, Danielle Surface, 3542, Patricia Langi, 3613, Robyn Gomes, 4127, and the thousands of people who came and testified and asked to let the people vote, for them, I stand in strong support of this floor amendment, and I also ask this Body to hear House Bill 5, allow the amendment, and let the people vote. Thank you, Mr. Speaker."

Representative Aquino rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. Strong support."

Representative Ito rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ito's written remarks are as follows:

"Mr. Speaker, I rise in support of Special Session SB1, HD1, FA4.

"Mr. Speaker, do we not hear the cries of our constituents? Not just mine, but the constituents of all of us in this chamber. They cry out, 'Let the people decide.' Their cry is loud and clear and I agree with them. On such a delicate and controversial measure, we the members of this Chamber should not be making the decision for our constituents. This decision should be left to the residents of the State of Hawaii through a Constitutional Amendment. There are some in this Chamber who say that the courts will overturn such a decision. To this I say 'Let the courts make the final decision and we the residents of the State of Hawaii abide by the courts decision.' Additionally, who is to say whether Hawaii's residents will decide for or against same-sex marriage. Now we will never know.

"Mr. Speaker, it is my understanding that when the US Supreme Court overturned DOMA, 'Defense Of Marriage Act', they collectively agreed that 'The issue of same-sex marriage should be up to the people of each state to decide what they want for their state.'

"Mr. Speaker, for this reason I am in support of Special Session SB1, HD1, FA4, and ask my colleagues to support this measure."

Representative Onishi rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to this amendment. Mr. Speaker, in talking to the people from the Big Island from my district, I'm from Hilo. I talked to a lot of people about this issue. And one of the things in my discussions with them, I told them that I support equality. This amendment, although it says that it would reserve marriage to opposite-sex couples, does not provide equality.

"The other thing is that, I also promised people that I would do my best to ensure that there would be religious protection for organizations, and people who work for organizations, that they would not have to perform same-sex marriages if it was against their religious belief. This amendment does not provide that. So I stand in opposition, Mr. Speaker."

Representative Har rose to respond, stating:

"Mr. Speaker, brief rebuttal. Just very quickly. For the members of this Body who don't trust the people to do the right thing, I would ask you to look at Washington D.C. Washington D.C., the people did, in fact, vote, and they did legalize same-sex marriage, Mr. Speaker. So what we're saying is, we do not trust people to do the right thing.

"Again, the QMark poll recently taken said 54 percent of the people of the State of Hawaii have agreed that same-sex marriage should be legalized. So what's the harm? Again, we should be allowing the people to vote. Thank you, Mr. Speaker."

Representative Ward rose to respond, stating:

"Just to footnote that fact. The \$10,000 poll was scientific, it was a stratified poll that said, regardless of age, ethnicity, it was all representative, it was a very random stratified sample. The point is, in that sampling, it didn't make any difference if you were a Democrat or a Republican, rich or poor, it was actually a representative sample even if you were for or against same-sex marriage, that you wanted the people to decide it. So even those who are for the equality issue, they are polled, and at this rate, scientifically saying, we don't care what side you're on the issue, we think it's not the purview of this Body, we think it's the purview of those people.

"Again I would repeat, these people are not stupid. They know what's going on. They know this is their state as much as anybody else. And this poll indicates that regardless of the position, the people are saying, let them have a say. It's as simple as that, Mr. Speaker. Very, very simple. Thank you."

At 4:29 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:38 o'clock p.m.

Representative Saiki rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to the floor amendment. Just some brief comments. The bottom line is that this floor amendment is unconstitutional and it is defective, and I'd like to explain why.

"In 2004, the Senate amended a bill. The title of the bill was, 'A Bill for an Act Relating to Sexual Assault.' The Senate Judiciary Committee amended this House bill by adding a constitutional question. The bill eventually became law, and plaintiffs filed a lawsuit questioning the validity of that constitutional amendment. The Hawaii Supreme Court decided that case and held that the amendment violated the constitution for two reasons.

"The first requirement that was violated was the constitutional provision that requires that constitutional amendments be proposed in bills that contain bill titles relating to constitutional amendments. And this is what the Supreme Court explained. 'The failure to designate House Bill 2789, as a constitutional amendment in its title was a plain, clear, manifest, and unmistakable violation of the constitution beyond a reasonable doubt.'

"The second reason that the bill was unconstitutional was because it did not meet the three-reading requirement, and this is what the Supreme Court stated. 'We also conclude that the failure to give the proposed constitutional amendment three readings in each house on separate days was a plain, clear, manifest, and unmistakable violation of the constitution beyond a reasonable doubt.'

"Mr. Speaker, both of these requirements have not been met and will not be met if this bill is amended, it will be deemed invalid and unconstitutional. Accordingly, I oppose this floor amendment, call for the question, but please allow members to submit written comments prior to the vote. Thank you."

At this time, Representative Saiki called for the previous question.

Representative Tsuji rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. In support, brief comments. May I say a few comments, please? Thank you very much, Mr. Speaker. I'm in strong support. During the course of the event relating to marriage equality, I've received thousands of communications, including emails, voicemails, letters, no different from the rest of the legislators here.

"But one short comment that I'd like to say. I received about 250 of these post cards. It comes to my office stamped with the person sending it out with a printed name. And it's very simple, Mr. Speaker, and if I may say, 'I vote, I live in your district, I say no to same-sex marriage. Let the people decide, if you will.' And this saying, 'let the people decide,' represents about 80 percent of the correspondence I received. Thank you very much."

Representative Oshiro rose, stating:

"Mr. Speaker, prior to the recess, I believe I had the Floor when I called for the recess. So I believe that all previous speakers are out of order and the Floor should be yielded to myself. Can we have a short recess, please?"

At 4:42 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:47 o'clock p.m.

Representative Oshiro rose to respond, stating:

"Thank you very much, Mr. Speaker, and I apologize for the temporary inconvenience of disrupting. I just thought that I was duly recognized as having the Floor before the recess. But I just wanted to add to the debate and discussion, Mr. Speaker, that it is well within the authority of both the House and the Senate leadership in the respective Chambers to go and amend or set aside any and all rules pertaining to the special session.

"We can create a bill, in fact, we can go and file it, we can go and have a public hearing. There's nothing that stops us or makes it a prohibition to consider any and all measures before us. On a more practical matter, Mr. Speaker, is that House Bill 5 has been available for public consumption by both the members and the public at large for consideration. So that might be the proper vehicle to address this issue before us.

"I just wanted to make the record very clear for both the public listening in, in the gallery and elsewhere, and the members on the Floor. But let me also say this, Mr. Speaker. I find it very troubling, and somewhat disconcerting, that the fact that we're probably debating one of the most important public policy issues of the State of Hawaii, over the last, at least 20 years since I've been here, and not have these proceedings broadcast statewide, does a great disservice for those who cannot be at the Capitol grounds outside or in their respective offices.

"I find it quite disturbing, Mr. Speaker, that even the rural areas of Oahu are not having the chance to witness and participate in this great debate. And I find it very disconcerting, and of deep concern, that the neighbor islanders are not also having the chance to witness this great debate.

"So insofar as you might be able to do anything, Mr. Speaker, even at this late time, I would ask you and beseech of you, to allow the public to witness this grand debate in the spirit of democracy that we are having this morning and this afternoon. Thank you."

Representative Say rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Say's written remarks are as follows:

"Mr. Speaker, I do support the people having the chance to vote. Thank you, Mr. Speaker."

Representative Fale rose to respond, stating:

"Mr. Speaker, once again in support. My thought just slipped my mind, but it was just in brief rebuttal, Mr. Speaker. It's just essentially to the point that if we can't trust the people of Hawaii to make this decision, then we have failed as leaders. And that leads exactly to the point, Mr. Speaker, that this bill was only six days presented to the State of Hawaii before it got introduced into the Legislature. And in between that time and now, we have had no opportunity to properly take SB 1, I can tell you this, Mr. Speaker, I have not had the opportunity to take SB 1 back to my community. I have not had the opportunity to take the amendments back to the community, or to talk about any of the possibilities that do exist there.

"I believe, Mr. Speaker, that this Body, with the minds that we have here, any of the flaws or any of the issues that we have in regards to getting this, any of the technicalities that we need to fix or address, to make sure that we are in concurrence with the Constitution of the State of Hawaii to make sure that the people can vote on this issue. We are not limited to the number of days that we have been here, we have up to 30 days with the possible extension of 15 days.

"If that's what it takes to get this right, Mr. Speaker, this Body should do what is right. The people of Hawaii deserve whatever is done to make sure that it is right and properly vetted, Mr. Speaker. And to deny the people of Hawaii the opportunity to weigh in on this, even just denying us the opportunity to take this back. When we had that long debate over the weekend, I know that our neighbor island Representatives didn't have the opportunity to go back to their home districts and talk about this issue extensively, Mr. Speaker. Since we haven't been afforded that opportunity, we should not deny the people of Hawaii the opportunity to weigh in on this. Thank you, Mr. Speaker."

Representative Ward rose, stating:

"Mr. Speaker, point of information. Following the comments of the Representative from Wahiawa, the question that arises is, after five days of 'Ōlelo and the people of Hawaii seeing everything that's being done, why at this pinnacle of debate would we not be on 'Ōlelo?"

Representative Takai rose, stating:

"Mr. Speaker, the speaker is out of order."

Representative Ward continued, stating:

"It was a point that he made. I want to verify, are we on 'Ōlelo or are we not on 'Ōlelo?"

At 4:51 o'clock p.m., Representative Takai requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:53 o'clock p.m.

At this time, Representative Fukumoto requested a roll call vote.

The request for roll call was put to vote by the Chair and upon a show of hands, the request was granted.

The Chair then stated:

"Members, let me clarify this for you. A roll call vote will be taken. If you vote 'aye' you are in favor of the floor amendment. If you vote 'no' or 'nay' you are in opposition of the floor amendment. Is that clear?"

Representative Fale rose, stating:

"Mr. Speaker, just a point of information. So, a 'yes' vote means we are in support of allowing the constitutional amendment to let the people decide on marriage? I just want to be clear, Mr. Speaker."

The Chair then stated:

"Yes, you're supporting Floor Amendment Number 4. A 'yes' vote means you support Floor Amendment Number 4."

Representative Fale: "And opposition means you are not supporting?"

The Chair then stated:

"Opposition, 'no' means you oppose the floor amendment.

"Members, respectfully because of the people that are lawfully demonstrating, the Chair requests that you say in a loud voice, either an 'aye' or a 'nay' for the purpose of the count."

Roll call having been approved, the motion that Floor Amendment No. 4, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair, and on the following show of ayes and noes, failed to carry:

Ayes, 19: Aquino, Awana, Carroll, Cullen, Fale, Fukumoto, Har, Ito, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Say, Tokioka, Tsuji, Ward, Woodson and Yamane.

Noes, 28: Belatti, Brower, Coffman, Evans, Hanohano, Hashem, Ichiyama, Ing, Kawakami, Kobayashi, Lee, Lowen, Luke, Mizuno, Morikawa, Nakashima, Nishimoto, Ohno, Onishi, Rhoads, Saiki, Souki, Takai, Takayama, Takumi, Thielen, Wooley and Yamashita.

Excused, 4: Cabanilla, Cachola, Choy and McKelvey.

At 5:00 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:05 o'clock p.m.

At this time, the Chair stated:

"Members in the audience, I respectfully ask that in order to maintain decorum in this Chamber, I respectfully ask that you refrain from any outbursts or demonstrations which may disrupt the deliberations and proceedings on the Floor. Disruption of the proceedings is in violation of not only House Rules, but of the Hawaii State law. Under HRS 21-17, the Sergeant-at-Arms does have the power and authority to remove anyone who is disrespectful, also pursuant to Hawaii Revised Statutes 710-1078 if there is any disrespect of a house of the legislature, which means both the House and the Senate. We've got four or five more amendments to go. Respectfully I ask all of you to allow us to continue our business here and follow proper decorum."

Representative McDermott rose, stating:

"Mr. Speaker, with all the racket and noise, can I make a motion to revote that? I couldn't hear what was going on."

The Chair addressed Representative McDermott, stating:

"No, we voted on the other one. Now we are going to your amendment, I think we've got Floor Amendment No. 11? I think that's yours, constitutional amendment, right?"

Representative McDermott: "I suppose. Was the vote reported out? I didn't hear."

The Chair then stated:

"Representative, we voted on Floor Amendment Number 4. The vote was 28 to 19, in opposition, so that floor amendment died. Your floor amendment is number 11, that's the amendment we're going to take up right now."

Representative Awana rose to a point of order, stating:

"Mr. Speaker, point of order. I believe we need to go through amendment 10 before we hit amendment 11."

The Chair then stated:

"Representative, I will address your question. Other members may have the same question. Members, we're taking out of order Floor Amendment Number 11, this is Representative McDermott's floor amendment, because it is very similar to Floor Amendment Number 4. It makes sense. I did talk to the introducer of the floor amendment, and he does agree that his amendment would be next."

At this time, Representative McDermott offered Floor Amendment No. 11, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by replacing its contents with the following:

SECTION 1. The purpose of this Act is to propose an amendment to article I, section 23, of the Constitution of the State of Hawaii to provide that marriage shall be reserved to opposite-sex couples.

SECTION 2. Article 1, section 23, of the Constitution of the State of Hawaii is amended to read as follows:

"MARRIAGE

Section 23. ~~[The legislature shall have the power to reserve marriage]~~ Marriage shall be reserved to opposite-sex couples."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the constitution of the State of Hawaii be amended to reserve marriage to opposite-sex couples?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii."

Representative McDermott moved that Floor Amendment No. 11 be adopted, seconded by Representative Ward.

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I understand this amendment might have some technical and legal difficulties, and if that's the case, I'd like to remind the Majority Leader that House Bill 5 still sits in the hopper, and we can waive the rules, or from the way I've seen it we've been making them up as we go along anyway, so it doesn't much matter."

The Chair addressed Representative McDermott, stating:

"Representative McDermott, that's just your opinion, but it is not a reflection of the Judiciary or Finance Chairs."

Representative McDermott continued, stating:

"Oh no, they've done a great job. But House Bill 5 sits there. And it sits there as a sound vehicle, in case we can't pass this amendment out."

The Chair then stated:

"Representative McDermott, I apologize respectfully. I'm seeing that you're bringing up House Bill 5 as a nexus to your Floor Amendment No. 11."

Representative McDermott: "Well, because it will be rebutted that it's unconstitutional and has a fatal flaw, so I'm saving the Majority Leader time as a courtesy to him, save him some energy, let him know that it's sitting there."

Vice Speaker Mizuno: "But you're making a nexus to this floor amendment, that's all I'm asking."

Representative McDermott continued, stating:

"Yes, sir. But I'm moving on now. Mr. Speaker, we sat through testimony from the folks who could get here. I did put a written request in to the Speaker for neighbor island hearings, so we could get out and get all the input. We, for whatever reason, didn't do that.

"But I sat there and listened. I didn't just hear, I listened. Like my wife tells me, when she's yelling at me. I say, I hear ya, I hear ya. She says no, you're not listening. Oh, okay honey, I got it. But I was listening to the old, elderly Filipino woman in, god bless her, in broken English, who took so much courage to get up there and speak. Tears running down her face, because this is the first time she's ever done anything like this, asking us for the vote.

"The elderly Samoan lady named Ruta, who was there every day, and one night needed a ride home, and I had to give her a ride home. Didn't get home until 2:30, and my wife said, what took so long? I said, I gave an elderly lady name Ruta a ride home. She didn't believe me. But nevertheless.

"The welder and his family, who was there for three days, sleeping during the day with his little children, took off of work. The truck driver, the homemaker, the teacher, the teacher after teacher after teacher, asked us to empower them, enfranchise them with the vote, Mr. Speaker. You see, they believe that they own this government. Yes, it's a representative republic, and the normal day-to-day mechanics of government, such as a beach set-back or the size of a building, we can take care of.

"But when it comes to a major societal change, just as Justice Moon said in this Chamber, 20 years ago, because I was here. He said, the Legislature can give the people the ultimate trump card. Because it's in the constitution for us to do it. Which is this amendment.

"Now, if there are flaws in the amendment, and there very well may be, I'm not a lawyer, there might be some flaws, we have House Bill 5 sitting out there, as an alternative. But Mr. Speaker, the people feel so upset because they feel they were deceived. They want their vote because we advertised to them, through the Office of Elections, I have it in my hand, I've got the real newspaper ads in my office, four weeks straight, and we mailed them a copy.

"Let me read what we told them, the people. The meaning of a yes vote. This is what the Office of Elections, which the Legislature funds, told the people, explaining the amendment to them. 'A yes vote would add a new provision to the constitution that would give the Legislature the power to reserve marriage to opposite-sex couples only.'

"Only. What's the welder supposed to think when he reads that, in plain language? What's a first generation American supposed to think when they read that in plain language? Do they say, oh, wait honey, let's get the committee report from the web. Well you couldn't get it from the web in those days, at least not very easily. What are they supposed to think?"

Representative Matsumoto rose to yield her time, and the Chair "so ordered."

Representative McDermott continued, stating:

"Thank you, Representative. So they feel deceived. I mean, how many times did we hear that in the testimony. They feel deceived, feel we weren't straight with them. They just don't think we told them the truth. And that is the truth, we weren't straight with them, Mr. Speaker. Now we can make it right, we can go back to the people, we have a second chance here. We have a vehicle, we have an opportunity to say, okay, we'll do that, we'll enfranchise you.

"It is a major societal change, it will change everything, from our marriage laws, to the way things are conducted in schools. You don't have to take my word for it, look at the other states that have done it. They've all had an impact in their school system. Shouldn't the people who pay the bill have an opportunity to weigh in on such a major societal change, shouldn't they have a say? This is my seventh year, I've never seen anything like

this, ever. And what are they saying. Listen. Let the people vote, let the people vote.

"Mr. Speaker, I'll close by saying, having the right to do something doesn't mean it's the right thing to do. And although some in this Body think we have the right to force people to live under our new societal constraint that we deem appropriate for them, it's not the right thing to do. So I implore my colleagues, listen to our constituents. As Justice Moon said, the people have the ultimate trump card in a constitutional amendment. All power is derived from them. They own the government. Thank you, sir."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support. Mr. Speaker, I know nobody in this building has ever seen anything like this. I've talked to those who have been here longest, they have never seen anything like this. So if nothing, if this does not communicate to this Body what the people want, what the people desire, what we should do, then nothing will. I've talked to people who have been in this building for over 20 years, Mr. Speaker. In two decades, in two decades of serving in this Legislature, they have never seen anything like this. And yet we blow it off. We blow it off and say, that means nothing.

"This amendment, Mr. Speaker, allows us to let the people know that we do have eyes, and yes, we see. We do have ears, and yes, we hear. We do have hearts, and yes, we feel. Those of us who have been in and around politics for years now, know how this goes. This is a dog and pony show, and almost, we know which bills are going to pass this special session, Mr. Speaker. We know. We try and make it look otherwise, but we know. That's how the special session went. Mandated by the Governor onto a less than willing Legislature. Arms were twisted, deals were made, things happened behind closed doors, to get us to where we are on SB 1 here on Second Reading."

The Chair addressed Representative Fale, stating:

"Representative Fale, I'm going to have to say that you're going to have to refrain from saying backroom deals or inferring that something happened. Be respectful to your colleagues, that's all I'm asking. You can be passionate, but to infer that some backroom deal happened, it's being disrespectful to your members, and it's clear in the House Rules that we can't do that."

Representative Fale continued, stating:

"Thank you, Mr. Speaker. Thank you for the latitude. I'm used to that. I know how this works, but I'm embarrassed. I'm ashamed. That this is how our Legislature does business. Because the people we have heard, in over 50 hours of testimony, the people who are gathered here today in this gallery, Mr. Speaker, thousands of individuals and families came out to testify. People all the way from Waiialua and Haleiwa, from Kahuku to Laie, Hauula, Kaaawa, Waiahole, they all came to tell me how they felt. Your constituents came out. From Waianae, Kapolei, Mililani, Aiea, Kalihi, Hawaii Kai. From Maui, Molokai, Kauai and Hawaii.

"Your constituents, your neighbors, they all saw the sausage-making process that is Hawaii government. They came out for more than 50 hours over five days, giving sincere testimony, for or against this bill. Wanting to have a say, wanting their government to honestly listen and debate and discuss, based on their testimony. And for them to see what they saw, they feel embarrassed, they feel ashamed. This House is supposed to be the People's House. Not the Governor's House. Not the rich-and-powerful's House. Not outside influencers and special interest House. But the People's House.

"I'm embarrassed. Our constituents deserve better. Mr. Speaker, the State and people of Hawaii deserve better. Nobody can say that this is the best that we could do. We were expected to do this in five days. Even today, Mr. Speaker, we know this is not the best we can do. For either side, we know we could do better. I am embarrassed and ashamed because history was made by the voice of the people. Never before has this State

Legislature heard an outcry that led to five days of testimony. And after all the testimony and concerns, Mr. Speaker, I do not believe that the bill that is before us reflects the people.

"This is not the way the people of Hawaii do business. This is not the way the State Legislature should do business. The pressure and the money and the power being pushed on this Body to hurry through a landmark piece of legislation has more impact on some of us than thousands of phone calls and emails and hours of testimony from the very people we represent."

Representative Johanson rose to yield his time, and the Chair "so ordered."

Representative Fale continued, stating:

"Mr. Speaker, we have an amendment before us to help. My confidence in this Body is shaken. The people's confidence in this Body is shaken. Mr. Speaker, we need to do something to restore that confidence and give people hope, so that they can see the light at the end of the tunnel, so that they know we represent them.

"And we know that this is not the best that we can do, and we need to go back to work, Mr. Speaker. We are all paid here, to be here today. The people who are sitting out there are not paid to be there. They have sacrificed and given so much because they expect us. Why do they have to, I feel like we're little children, where the parents have to come in, look in on their kids, to see if they're doing the right thing. Why can't we. Why can't we just go back, into the workshop, and work something out that will make sure that everybody's interests are taken care of when it comes to the people of this great state. So that we can sort out benefits, so that we can sort out religious protections.

"It is with certainty, Mr. Speaker, that we know that this isn't the best we can do. It's hard for me to go back and explain to my own family. What's going on in that building? Is that really the best you guys can do? I remember looking into the eyes of my parents, and the shame that I felt whenever it was. Whether I was on the rugby field, whether I was in the boxing ring, whether I was in the classroom, I had to come home and look my mom and dad in the eye and say, mom and dad..."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, this speaker is out of order, he's at 6:45."

The Chair addressed Representative Fale, stating:

"It's okay, Representative Fale, continue, but continue to make sure there's a nexus to the floor amendment."

Representative Fale continued, stating:

"Yes, Mr. Speaker. This floor amendment allows us to do some more work, Mr. Speaker, to reach out to the people of Hawaii. We have problems getting things right, Mr. Speaker. The people know that, and they have said, you know what, you guys need a little help, help us, let the people decide on this issue, Mr. Speaker. That's simply what we've got to do. Thank you, Mr. Speaker."

Representative Fukumoto rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support, and since this is the same thing as we just talked about, if I could have those words adopted again, as I said last time. As well as the speaker from Laie's words adopted as my own, thank you," and the Chair "so ordered." (By reference only.)

Representative Awana rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support. Thank you. I will repeat a part of my prior speech on Floor Amendment Number 4, which contents are identical

to the existing Floor Amendment Number 11, because there may be some part of my previous speech that was not heard.

"So earlier we heard many concerns surrounding Senate Bill 1, House Draft 1. In as so much that we received numerous floor amendments to change the language of the bill, gut the bill, and clarify the bill. For whatever reason, the amendments were not adopted.

"Floor Amendment Number 11 will greatly improve the language by allowing the people to vote through a constitutional amendment.

"Mr. Speaker, as you may have heard from 10 a.m. this morning, and it is now 5:24 in the afternoon, there has been a persistent group chanting 'let me vote, let the people vote.'

"Mr. Speaker, as I look to your left and to your right, I see two flags. One, a United States flag, and another, a Hawaii State flag. We are in America, Mr. Speaker, in a country where one of the most unique rights is the right to vote. These people want to vote, Mr. Speaker, and I will support them and the rest of the tens of thousands who requested to exercise this right via emails, letters, phone calls, testimony, and personal visits to our offices.

"Although there may be claims that the title may be flawed, Mr. Speaker, I beg to differ. A vote is a great equalizer, a vote does not discriminate. The bill's name is entitled, 'Equal Rights'. For these reasons, Mr. Speaker, I rise in strong support, and I am pleading with the members to please accept Floor Amendment Number 11.

"In our Floor speeches, we speak about having transparency, open government, doing what is in the best interest for the people of Hawaii, and this building being 'the People's House'. Our constituents are standing outside asking to vote, our constituents are in the galley asking to vote. Are we going to deny them this opportunity? Let's not prove to them that talk is cheap. Let's show them that we represent the people, and we will put our talk into action.

"I am pleading with you, Mr. Speaker, and the other members of this Chamber, to open your minds and open your hearts. We are trying their patience, Mr. Speaker. By way of the last vote, we were not respecting their wishes, Mr. Speaker. Again, I ask that you support this amendment, support our people.

"Members, if you were sitting in the gallery, what would you want your legislator to do? Thank you, Mr. Speaker."

Representative Kobayashi rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition. If we pass this floor amendment, we will be duping the people, tricking the people, such as was done with the 1998 constitutional amendment. It has already been explained by the Majority Leader that the construction of this floor amendment will not pass constitutional muster. The wording of the title, and the procedure of having three readings are defective.

"Now I will admit that after hearing long and numerous arguments, I believe that the 1998 constitutional amendment was bad language, terrible language. But that was in the past, and because of a specific reason, the language in 1998 was written for that time and purpose. Not today's time and purpose.

"In 1998, as you will recall, there had already been a decision by the Hawaii State Supreme Court saying that it was unconstitutional to limit marriage only to opposite-sex couples. Hence the term 'opposite-sex' and hence the term of the rest of the constitutional amendment was written to get around that particular Hawaii State Supreme Court decision.

"The 1998 constitutional amendment had a purpose and was rooted in its time. I believe, in overall evaluation, it was very bad, very tricky language. But two wrongs do not make a right. You want to dupe people again with this language? Only to find out that if we pass this language, whoops, it's defective.

"So I submit that as much as people would like to pass this language, we have to look at the facts. Don't trick the people again. Thank you."

At 5:29 o'clock p.m., Representative Fukumoto requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:32 o'clock p.m.

Representative Fukumoto rose to respond, stating:

"Thank you, Mr. Speaker. I just wanted to, for the record, state that I do not believe that anybody here is trying to dupe the public. Just if that could go into the record, thank you."

At this time, the Chair stated:

"Thank you. To that point, to all members, I want to read House Rule 27.7, it states, 'It is not the person but the measure that is the subject of debate, and it is not allowable to arraign the motives of a member, but the nature or consequences of a measure may be condemned in strong terms.'

"So I wanted to thank the Minority Floor Leader. Members, stay focused on the measure or amendments, let's not focus on the motives, but on the measure or the amendment itself, why it's good or bad for the state. Thank you very much."

Representative Kobayashi rose, stating:

"Mr. Speaker, I will retract whatever I said that may have unfairly characterized someone's motive, thank you."

Representative Thielen rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. We also represent the minority. I'm in opposition to the amendment. I wanted to just say, we also represent the minority. People want to marry the partners of their choice. I support that equal right, and I call for the question, please."

At this time, Representative Thielen called for the previous question.

At this time, Representative Fale requested a roll call vote.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker, I just want to note that I am in support of the floor amendment, and just one brief rebuttal. The Majority Leader as well as the Representative from Kaimuki are talking about procedural defects. I agree. So we can resolve that very easily, let's hear House Bill 5 and let's give the people the opportunity to vote. Thank you very much, Mr. Speaker."

Representative Oshiro rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I rise in support of Floor Amendment No. 11. This floor amendment would delete the substance of House Draft 1, and insert the provisions of House Bill No. 5, which would propose an amendment to Article I, Section 23, of the Constitution of the State of Hawaii to reserve marriage to opposite-sex couples. I understand that this is an amendment proposed by the Representative from Ewa, Ewa Beach, Ewa Gentry, and Iroquois Point.

"At the outset, I cite *Taomae v. Lingle*, Slip No. 26962 (September 1, 2005), in which the Hawaii Supreme Court held that Articles III and XVII of the Hawaii Constitution require that:

- (1) A proposal to amend the constitution must be reflected in the title of the bill; and
- (2) A proposed constitutional amendment must be read three times in each house to be validly adopted.

"Should Senate Bill No. 1 be amended by approving this floor amendment and if this bill is enacted, the *Taomae* Decision would effectively render this Act invalid upon challenge. As such, it would have the desired effect of terminating Senate Bill No. 1.

"As previously stated, I believe the current version of this bill would pose grave consequences and cause mischief to the application of countless other statutes. It's potential to do grave harm to our people is immense. In my view, it would be better for this bill to be invalidated than to allow it to continue through the process. Moreover, through this amendment we have provided ourselves an opportunity to consider a duly scheduled and noticed public hearing on a constitutional amendment through House Bill No. 5.

"For the record, I insert excerpts from my remarks on Floor Amendment No. 5, which summarizes the problems identified with House Draft 1:

"During the more than fifty hours of hearings on Senate Bill No. 1, and the receipt of over twenty-eight thousand pages of documents, your Joint Committee on Judiciary and Finance spent little more than two hours deliberating on it before reporting the measure to this Floor for Second Reading. As you know, that decision was not well received by many testifiers and observers and only added to the perception that this whole affair was a grand 'dog and pony' show – that those five days and nights of receiving public comment and testimony was a farce or big shibai. Certainly, why one would not even take a day or two to review the vast record and consult with the members of the Joint Committee suggest the fix was already in.

"And, if to add insult to injury, despite hearing experts from various fields identify major substantive and technical problems with the bill, your Committee recommended passage of a draft that seemingly does not address any of these concerns.

"Given the monumental shift in public policy that this bill will have, and the apparent lack of any meaningful analysis and discussion at the Committee level, the good Representative from Waianae, Makaha, Makua, and Maili offered an amendment for the Committee's consideration. Despite its good intentions, the amendment was summarily dismissed by the Co-Chairs without any discussion.

"Floor Amendment No. 5, which is presently before us, is the draft that was offered by the Representative from Waianae. It models the approach taken by this House during the Regular Session of 2012 when it approved on Third Reading Senate Bill No. 2429, RELATING TO FORECLOSURES. For Senate Bill No. 2429, this House took the extraordinary step of approving a 'short-form' bill on Third Reading to facilitate continued discussions among various stakeholders on a comprehensive codification of statutory foreclosure procedures to ensure the thorough legal and technical review of the statutory amendments offered to the Legislature. This step was taken to provide both the House of Representatives and the Senate with maximum flexibility during the remainder of the 2012 Regular Session to facilitate a meaningful resolution to the issue.

"During the public hearing on Senate Bill No. 1, this House learned that numerous problems existed with the bill. These problems would lead to serious complications to other laws and pose grave danger to the welfare of our People. From my perspective, to do nothing to address them while it is still within our power to fix them is nothing less than gross negligence on our part. As enumerated in the floor amendment:

*"**Number 1.** The basic premise of this bill is faulty. The majority of federal benefits that are available to same-sex couples may already be obtained by Hawaii citizens who get married in a state that authorizes same-sex marriage and return to Hawaii to reside. Admittedly, this is*

not a perfect solution nor one that any may find feasible or financially viable, but it is a less-intrusive approach given the equities of the circumstance and irreversible general interests at stake. It is not irrational nor without merit and it is certainly not suggestive of any ill-will or animus. For a remedy, even temporary in scope and affect, is better than none. Moreover, the present known and readily available remedy does not preclude a more satisfying resolution in the near future and does not curtail future benefits due to retroactive application of federal laws and services.

"Insofar as same-sex marriage is distinguishable from civil unions, so too must we approach legalizing same-sex marriage with the same careful and dispassionate analysis and reflection needed for such a weighty decision. For instance, the approval of House Bill No. 444, House Draft 1, Senate Draft 1, RELATING TO CIVIL UNIONS, began with the pre-filing of the bill on January 23, 2009. The bill did not pass Final Reading in the House until April 29, 2010, or about 400 days and two Regular Legislative Sessions later.

"Compare what we have before us in this Special Session and how much time has elapsed since we convened on October 28, 2013, and one can appreciate how quickly and expediently we are proceeding. Indeed, it is as if we are hell-bent on racing through this Special Session to fulfill the Governor's request regardless of any harm to our people it may cause and without any sign of legislative independence and restraint.

"Doesn't prudence scream out for a temporary delay in making any wholesale change to the definition of marriage that will have such far-reaching and irreversible effects on all people, both gay and straight?

"**Number 2.** We don't know what the total impacts of this policy change will be. Because many federal agencies are still trying to determine how the United State Supreme Court's decision in United States v. Windsor, 133 S. Ct. 2675 (2013), would affect their operations, the total number of benefits and services, as well as the obligations that would apply to married same-sex couples have not yet been determined. Have we considered the fiscal ramifications of additional federal benefits to same-sex couples and whether the federal government could shift some of these costs to the states through federal mandates? Has anyone considered that not all same-sex couples will choose to be married, as marriage may not be the most financially advantageous classification for their particular needs? And, how many of the approximate 2,000 civil union partners will be seeking to change their status to married couple?

"**Number 3.** There are other similarly situated couples that currently are denied federal benefits. In Parke v. Park, 25 Haw. 397 (1920), the Hawaii Supreme Court held that a license was prerequisite to a valid marriage, and as such all rights, benefits, and obligations that were previously recognized in common law marriage were extinguished.

"Yet, since 1958, the federal Internal Revenue Service (IRS) has stated that a couple would be treated as married for purposes of federal income tax filing status and personal exemptions if the couple entered into a common-law marriage in a state that recognizes that relationship as a valid marriage. The IRS further concluded that its position with respect to a common-law marriage also applies to a couple who entered into a common-law marriage in a state that recognized such relationships and who later moved to a state in which a ceremony is required to establish the marital relationship. The IRS therefore held that a taxpayer who enters into a common-law marriage in a state that recognizes such marriages shall, for purposes of federal income tax filing status and personal exemptions, be considered married notwithstanding that the taxpayer and the taxpayer's spouse are currently domiciled in a state that requires a ceremony to establish the marital relationship.

"This is especially pertinent since this ruling, Revenue Ruling 58-66, was cited in Revenue Ruling 2013-17, which was promulgated shortly after the Windsor Decision, and held that same-sex couples married in states that legalize same-sex marriage shall be considered

married for purposes of federal income tax filing status and personal exemptions, regardless of whether they are currently domiciled in a state that requires a ceremony to establish the marital relationship.

"So couples who are situated in loving, committed relationships have been denied federal benefits for over seven decades. If as the Governor says, 'benefits delayed are benefits denied', shouldn't this Legislature legalize common-law marriages? After all, same-sex couples have been denied these federal benefits for just a few months.

"**Number 4.** This bill may contravene domiciliary requirements for divorce and may pose questions on the validity of Hawaii State judicial decisions as they are recognized in other states. In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the state. By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce decree, it is arguable that the bill, as presently drafted, will jeopardize the validity of all divorce decrees issued in the State of Hawaii as they are recognized in other states. At a minimum, we should obtain clarification before we proceed.

"**Number 5.** Hawaii might lose its ERISA preemption exemption. Because the legal recognition of same-sex couples will require employers to provide certain benefits to employees and their spouses differently in accordance with a statutory change, it is unclear whether the enactment of this bill would constitute a material change to the application of the Prepaid Health Care Act, Chapter 393, Hawaii Revised Statutes, and result in Hawaii losing its exemption from preemption under the federal Employee Retirement Income Security Act (ERISA) in accordance with 29 U.S.C. §1144(b)(5)(B)(ii). Should that happen, Hawaii may no longer be able to require employers to provide health insurance for its full-time employees by law. At the very least, one should obtain a federal ruling or opinion letter before proceeding further. It is only reasonable.

"Mr. Speaker, ask yourself, If Hawaii was no longer able to require employers to follow this law, don't you think many of Hawaii's citizens and their families will be harmed?

"**Number 6.** This bill will fundamentally alter First Amendment rights. As presently drafted, this bill would ostensibly provide the Hawaii Civil Rights Commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment or subject to the Hawaii Public Accommodations Law, Chapter 489, Hawaii Revised Statutes. Not only will this create a chilling effect that will interfere with religious exercise, the bill might not provide any protections whatsoever for individual religious and conscientious beliefs. Emmanuel Temple v. Abercrombie, Civ. No. 11-00790 JMS-KSC (U.S. District Court, District of Hawaii, 2011) is a case-in-point of how these laws may affect the day-to-day functions of a church and affect the religious practices and actions of its adherents.

"While the Joint Committee on Judiciary and Finance considered broader religious exemptions modeled after the State of Connecticut's Public Accommodations Law, this language might not be suitable because of that state's very different history.

"Connecticut is nicknamed the 'Constitution State' because it has one of the oldest constitutions in North America. It was founded by colonists escaping Massachusetts because of religious persecution. Because of this, the people of Connecticut have long revered religious freedom and provided protections for their beliefs throughout their constitution, statutes, and common law.

"In particular, Article Seven of the Constitution of the State of Connecticut states:

'It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the State. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship.'

"Number 7. It should be noted that another problem identified – that the blanket application of non-gender terms in statutes relating to paternity, maternity, and parentage might cause the rights of a same-sex parent to supersede or even extinguish the parental rights of a biological parent – was eliminated in the House Draft 1. And, that change to Senate Bill No. 1, is appreciated and demonstrates the knowledge that such amendments can be made in spite of or even in opposition to the unequivocal proclamations of the Attorney General who opined on SB 1, on October 31, 2013, that:

'In the Department's view, no amendments are necessary for the bill to accomplish the bills stated intent and purpose.' [Emphasis Added.]

"Yet, clearly, there are many, many problems with this bill that need to be fixed before it should be approved on Third and Final Readings. And, I for one have little confidence in our Attorney General whose consistent legal analysis of every draft, from the Governor's same-sex marriage bill, AG.8.22.13 and AG.9.9.13 and AG 8/15/13 through Senate Bill No. 1, House Draft 1, have been akin to Bobby McFerrin's 'Don't Worry, Be Happy'.

"In our reckless zeal to ensure the equal protection of the laws to same-sex couples, this bill has the potential of doing irreparable harm to all of our people. We must not proceed foolishly any further. And, we should take pause to make sure that we do this in the right way and for the right reason."

"Mr. Speaker, I point out the obvious because recently, this House seems to be oblivious to the discontent of our constituents and the legions of community activists who have sacrificed greatly in unprecedented numbers to be given a mere two minutes to state their personal convictions upon a most public of forums. We have not demonstrated the better angles of ourselves and our collective reputations and the reputation of this great institution have suffered because of it. We have borne the brunt of our own folly and carelessness and capitulated to the unilateral act of the Governor to summon us into this Special Session. Once we gaveled in, the Governor's problem became our problem... our *kuleana*.

"As a long-term member of this House, it has been simply appalling to witness the audacity and unmitigated contempt we have shown our constituents of differing viewpoints and persuasions. Moreover, in viewing the public hearings from the confines of my office television and having studied and reviewed the key legislative testimony submitted by the Administration, the Attorney General, and the Hawaii Civil Rights Commission, I have come to the disturbing conclusion that in this particular instance, and for this constitutional amendment alone, I must separate myself against my own personal convictions and tendencies and accede the full political power to the people and entrust in them all the blessings and curses of the popular vote. And, I do so full well knowing that therein may lie deep bias, bigotry, and prejudice. On the other hand, the people may possess the temperance, fair-mindedness, and authentic belief in justice and equality absent from these Capitol halls. For I am convinced, that given all I have witnessed since we entered this Special Session, that we in our own ways share the same afflictions of bias, bigotry, and prejudice of the people we represent. That is – we are no better or worse. And our votes, like those of the electorate, are no better or worse.

"Consequently, on this question of unprecedented policy change as enormous as redefining marriage under civil law to apply regardless of

gender, I submit that it should be decided by the people through the rejection or ratification of a constitutional amendment. For all the rhetoric that has been espoused by my colleagues on why they think this measure is needed, the fact of the matter is this – the Courts ruled that the Department of Health exceeded its licensing authority when it denied a marriage license to a same-sex couple. To satisfy equal protection concerns, all that may be needed is to prohibit the Department of Health from doing so.

"What the Governor and my colleagues are doing with House Draft 1 goes way beyond what may be necessary to legalize same-sex marriage in Hawaii. And, the imposition it will cause upon our religious freedoms and on men and women of conscience and conviction may be too simplistically seen as a win or lose proposition. The changes suggested in the House Draft 1 effect the most basic principles on which our entire constitutional and statutory construct rests.

"But, what I found most troubling and disturbing was the lack of any meaningful dissection and analysis of the components of the bill's intricacies. Certainly, there was some discussion on the implications of the Windsor decision, the Baehr decision, the Hollingsworth decision, parental rights, foreign divorces, and religious exemptions, but not much else. It was as if all the committee members already understood how the bill worked or did not work, what was in the bill and what was out, and how the bill would affect or not affect other laws or be reconciled with our First Amendment religious freedoms.

"Mr. Speaker, I suggest you go and review the hours of public hearing. You will quickly realize that any authentic discussion or debate on the bill's operational aspects was conspicuously missing, and any attempt to shed light on these components by certain committee members was immediately squelched or dissuaded. Again, this only goes to support the farce and description of the 2013 Special Session as a textbook example of a legislative 'dog and pony' show.

"Should this body decide that from a public policy standpoint, legalized same-sex marriage is needed to facilitate the social evolution that is occurring not only in Hawaii, but across our Nation and throughout the World, then so be it. But ultimately, for the reasons stated previously and for those reasons alone, I find that it is the people who should decide whether we should go this course – not seventy-six legislators whose independence as a co-equal branch of our government is sadly highly suspect.

"As such, let it be known as my position and statement:

'A constitutional amendment is the only way to make this PONO.'

"And when this floor amendment is defeated and House Draft 1 is voted upon, every one should pause and think really hard on whether the passage of House Draft 1 is truly in the people's best interests. Ask yourself, whether we have capitulated our legislative policy-setting authority on each component of the same-sex marriage bill due to a subconscious fear of the Governor's vengeance and budget ledger books? And, ask yourself whether, we as the people's representatives, have not cast our own votes that have arisen from our own deep bias, bigotry, and prejudice?

"I beg my colleagues to support this floor amendment."

The request for roll call was put to vote by the Chair and upon a show of hands, the request was granted.

At 5:36 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:40 o'clock p.m.

Roll call having been approved, the motion that Floor Amendment No. 11, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair, and on the following show of ayes and noes, failed to carry:

Ayes, 18: Aquino, Awana, Carroll, Cullen, Fale, Fukumoto, Har, Ito, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Tokioka, Tsuji, Ward, Woodson and Yamashita.

Noes, 28: Belatti, Brower, Coffman, Evans, Hanohano, Hashem, Ichiyama, Ing, Kawakami, Kobayashi, Lee, Lowen, Luke, Mizuno, Morikawa, Nakashima, Nishimoto, Ohno, Onishi, Rhoads, Saiki, Say, Souki, Takai, Takayama, Takumi, Thielen and Wooley.

Excused, 5: Cabanilla, Cachola, Choy, McKelvey, and Yamane.

Representative Fale rose, stating:

"Mr. Speaker, point of information. Those who weren't here, they'll just be marked absent, and that will be recorded?"

At this time, the Chair stated:

"Yes, they will be marked as excused."

At this time, Representative Ward offered Floor Amendment No. 10, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution; and
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. Within the past three years, several states, including Hawaii, have enacted laws that require school districts that teach sexuality health education to include age appropriate, medically accurate health education. The legislature finds that while sexuality health education in schools is intended to assist students in their growth and development, great care must be taken to uphold religious liberty for individuals of conscience, whether they be teachers, parents, or legal guardians of those students.

The increasing incidence of teaching so-called "alternative lifestyles" in schools, particularly homosexual lifestyles, necessarily implicates the First Amendment right to free exercise of religion under the Constitutions of the United States and the State of Hawaii. Many religious traditions do not condone homosexuality or homosexual relationships and therefore, teachers must be given the right to "opt out" of having to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. Likewise, parents and legal guardians must also be given the right to "opt out" of having their child receive any sexuality health education that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs.

Therefore, the purpose of this Part is to clarify that:

- (1) A teacher shall not be required to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. No teacher who fails or refuses to teach such material under this Act shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal. The school may, in its discretion, arrange for another teacher to teach the material in question;
- (2) A parent or legal guardian shall not be required to ensure the attendance of the parent's or legal guardian's child at sexuality health education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs. No parent or legal guardian who fails or refuses to ensure the attendance of the parent's or legal guardian's child under this Act shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal; and
- (3) A student shall be excused from sexuality health education classes or any portion thereof pursuant to this Act, only upon the written request of the student's parent or legal guardian. A student shall not be subject to any disciplinary action, academic penalty, or other sanction if the student's parent or legal guardian requests that the student not receive instruction under this Act.

SECTION 14. Section 321-11.1, Hawaii Revised Statutes, is amended to read as follows:

"[H]§321-11.1[)] **Medically accurate sexuality health education.** (a) Sexuality health education programs funded by the State shall provide medically accurate and factual information that is age appropriate and includes education on abstinence, contraception, and methods of disease prevention to prevent unintended pregnancy and sexually transmitted disease, including human immunodeficiency virus.

(b) For the purposes of this section:

"Age appropriate" means suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group.

"Factual information" means medical, psychiatric, psychological, empirical, or statistical information that is verified or supported by research conducted by recognized medical, psychiatric, psychological, and public health professionals or organizations.

"Medically accurate" means verified or supported by research conducted in compliance with accepted scientific methods and recognized as accurate and objective by professional organizations and agencies with expertise in

the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

"Sexuality health education" means education in any medium regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases."

(c) A teacher shall not be required to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. No teacher who fails or refuses to teach such material under this section shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal. The school may, in its discretion, arrange for another teacher to teach the material in question.

(d) A parent or legal guardian shall not be required to ensure the attendance of the parent's or legal guardian's child at sexuality health education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs. No parent or legal guardian who fails or refuses to ensure the attendance of the parent's or legal guardian's child under this section shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal.

(e) A student shall be excused from sexuality health education classes or any portion thereof pursuant to this section, only upon the written request of the student's parent or legal guardian. A student shall not be subject to any disciplinary action, academic penalty, or other sanction if the student's parent or legal guardian requests that the student not receive instruction under this section.

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 14 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 15, 16, 17, and 18, as follows:

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on December 2, 2013."

At 5:45 o'clock p.m., Representative Fale requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:48 o'clock p.m.

Representative Ward moved that Floor Amendment No. 10 be adopted, seconded by Representative McDermott.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In support. We all know that our state motto is 'the life of the land is perpetuated in righteousness.' After listening to the people for five days, I think we should add that it's perpetuated by Hawaii's families and the fairness to them.

"This amendment is about the teachers and *keiki* to opt out. If there's anything clear after five days of listening, the first clarion call was protect our churches, protect our pastors. But the second very, very, very, very clear, clarion call was protect our kids. Mother, after mother, after mother said, 'I don't want my kids to have to learn how the homosexuals make love to each other.' That was such a clarion call, Mr. Speaker.

"I know that in my previous remarks I said that when we have a constitution that denies people citizenship because of a race or denies them a vote because of a gender, we have a constitution and the magic of America that's self-correcting. But never, ever did we have to teach the sexual practices of those subcultures or those genders or those ethnicities.

"But the trend is, as first comes same-sex marriage, then comes a curricular revolution. And, Mr. Speaker, this is not imaginary. This is the empirical evidence from Massachusetts, this is the empirical evidence from Canada. The corollary that they have seen, and we will see in Hawaii, unless we pretend, is that after same-sex marriage, comes the sexual revolution in our schools, in our curriculum.

"In caucus yesterday, I brought up similar thoughts to what I've just said about it, an opt out for our *keiki* and opt out for our teachers. They said, 'well look, this bill has got nothing to do with education,' or, 'we'll take that up later.' Mr. Speaker, that was a thumbing of our nose at the people of Hawaii who mother, after mother, after mother, said 'protect our kids.'

"So to say that this is not about education is really, really naïve, and really, really is taking us into a direction is not true. Mr. Speaker, we don't have bears in Hawaii, but we had some mama bears and papa bears speaking very, very, very, very loudly.

"We saw the Japanese mother saying '*kodomo no tame ni*,' for the sake of our kids. Let them opt out of this training. We saw Japanese mothers, in fact, Mr. Speaker, you know my daughter is from Nanjing. I was so touched by immigrant, after immigrant, after immigrant who said, 'our culture says this is not right.' Then we even had a Chinese engineer, economist, who said, you know, if you look at all the highest-spending visitors, the Chinese are the highest at about \$400 a day. And the amount of visitors and children that come from South-East Asia, that may decrease because it's now worth \$755 million per year. Not the La Croix study that is \$254 million over three years.

"So what the Chinese immigrants have said is, watch out. Even if you lose 10 percent of the take of the students and the visitors who come here for weddings, that's \$75 million per year. If you lose 15 percent, 20 percent, 40 percent, same-sex marriage does not become a winning proposition, it becomes a losing proposition.

"So, Mr. Speaker, we heard from the Japanese, we heard from the Chinese, we heard from the Vietnam veterans, those who said, 'we fought to keep these freedoms which you are now taking away from us.' But, Mr. Speaker, the loudest and the deepest, and the most piercing call of all, we heard from the Native Hawaiians. We heard from the soul of the *aina*, we heard the Native Hawaiians crying out, in the voice of one Collette Machado who spoke with such passion and commitment, and Mr. Speaker, I'd hate to say that maybe she spoke so strong that when she fell over in the lobby Friday night, we were all struck. And for those who are here who pray, still pray for Collette Machado, she needs our help. She helped us to voice the words of the Native Hawaiian into the membership.

"Mr. Speaker, we also heard the cries of Hawaiian leader Jonah Kaauwai, that struck a bolt in my heart, Mr. Speaker, because he said, 'what is now upon us is as dangerous as the 1893 overthrow of the Hawaiian Kingdom.'"

Representative Fukumoto rose to yield her time, and the Chair "so ordered."

Representative Ward continued, stating:

"It cannot be five minutes yet, I'm just getting started. Thank you, Representative. Jonah Kaauwai compared what is now being done as a plot of the next overthrow of the Hawaiian Kingdom, comparable to 1893. This time it's cultural, the last time it was political and a total takeover of the Hawaiian people. That was heavy."

Representative Evans rose, stating:

"Mr. Speaker, Floor Amendment 10 is about teaching sexuality health education material in school, and I'm sorry, but I don't understand where the conversation is going. Thank you."

The Chair then stated:

"Point of clarification, thank you. I believe Representative Ward is making a nexus to his floor speech to the floor amendment. If he goes further I will make sure he stays on track."

Representative Ward: "The good Representative from Big Island will get it. Because I'm going to talk about Tenari Maafala."

The Chair addressed Representative Ward, stating:

"Let's stay focused on the amendment, Representative Ward."

Representative Ward continued, stating:

"The most bold and outspoken of all the testifiers of the last day, well probably the historical essence of the ethos and that zeitgeist of what's going on now was Tenari Maafala. I'm not going to repeat what he said, but he's being crucified for what he said and he's now the Chick-fil-A of Hawaii. He's being called one, how can you say such things? But within the heart of the man came this issue, and I'm coming to the one for the good Representative from the Big Island."

The Chair addressed Representative Ward, stating:

"Representative, stay focused on the amendment."

Representative Ward: "Yes, I'm staying focused, I'm just trying to get her attention so she knows when it comes, she gets the whole message."

Vice Speaker Mizuno: "Representative Ward, it's for everybody, it's for all the members. No personal attacks. Let's stay focused on the amendment."

Representative Ward continued, stating:

"I said all of this to say two things. I've said all of those preliminary remarks to say two things. The people of Hawaii are demanding, yes demanding, 'protect our children.' That's the message that these people are shouting about, these people in the audience are talking about, we demand you protect our children. This is a non-negotiable. This is not something that's a maybe. Now I don't want to get all riled up like Tenari did, but you heard him say, 'you're going to take my life before you're take this thing into its next stage.' That's what Tenari said."

"This Body, and I'm glad that the Representative from Diamond Head said that we were duped in 1998. Well, Mr. Speaker, these people are not going to be duped again. You know the old saying, 'Fool me once, shame on you. Fool me twice, shame on me.' These people are not going to be duped, they are not stupid. They are listening, they are watching, they are alive, they are awake to what's going on. And Mr. Speaker, when you've got a mama bear and a papa bear awakened, and they're ashamed and angry to protect their children, you only have the throes of the first awakening of them right now. We've got an embarrassed and ashamed mother bear who's out there because they were duped and now they want to put themselves into action."

"Now the second point. That was the first point of what all the introduction was about. The second point is this. We now have the opportunity to respond to what the people are talking about. Protect our families, we now have the opportunity. This amendment does exactly that by saying, and I read specifically from the amendment, a parent shall not be required to ensure the attendance of their child in sex education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships. And then it says the parents will not be fined or put in jail, or etc. etc."

"The point is, Mr. Speaker, we need to inoculate the children. I mean all of us are adults, no big deal. But when this comes in with graphic

descriptions and practices of masturbation and different positions, we are going overboard, Mr. Speaker. This is not a two-way street, this is a one-way street. We don't have to learn and teach those sexual practices."

"I know some are going to say, 'well we have an opt-out in the DOE', the attorney was asked, 'if we have this as the law of the land, is this controversial policy always going to be something you can opt out of?' Nobody can answer that. And maybe some people will stand up and probably respond to say, 'well that's not the case, we have an opt-out policy.' Well show me where it happened in Massachusetts, show me where it happened in Canada, show me where parents are being told they can't be told when their kids do these things."

"Mr. Speaker, this is all about the *keiki*. This is all about the kids, this is about their future, this is about the way that not only the children can opt out, but you know in my network of people I've got some teachers who dread having to teach this lifestyle."

Representative Johanson rose to yield his time, and the Chair "so ordered."

Representative Ward continued, stating:

"Mr. Speaker, can we have no empathy for those who genuinely believe that God exists, that he is real and he has obligation by which he puts boundaries around behaviors, of which this is not one that a teacher would feel obliged to teach. For the sake of our teachers, Mr. Speaker, this is the half of the amendment, for the sake the *keiki*, this is the other half of the amendment."

"So, Mr. Speaker, this gives us an opportunity to say, yeah we heard you, we want to be *pono*, we want to do the right thing, and we want to protect our families. Hawaii and *aloha* are about our families, it's more about what we are going to do now to protect them either in this session and this amendment, or in the January 2014 session. Because these bears who are now protecting our young, they're not going to be fooled again, Mr. Speaker. So may the right decision be made. Thank you."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support of the amendment. There is no dispute that the BOE has a controversial issues policy in place currently. No dispute. There's no dispute that currently it's not part of the curriculum. No dispute in that at all. What we're looking, as we're going forward, once this is passed and becomes the law of the land, what happens then?"

"Now I asked the BOE Chairman and the DOE Superintendent to testify in a written letter, I asked the Judiciary Chair and the Speaker to have them show up and testify. They were not there as part of the official group with the Governor. Department of Health was there, but they were not there. The preponderance, well many of the questions, were regarding education at the hearings."

"Mr. Speaker, the matter is this. It doesn't matter what the law is, but when the law does change, if we have an activist judge, someone brings their child, says, my child goes to school, the illustrations illuminating the learning objectives, a mom and dad, two parents walking a child. And these are particularly at elementary school level, by the way, to illustrate a lesson. He'll say, 'you know, you don't show two homosexual parents there, you really should. And, matter of fact, by not having it, you're creating an environment of prejudice and my son feels a hostile environment, or my daughter, who, of course, we adopted.' So the judge will say, 'yeah, you're right, it's not equal.'"

"I asked Justice Levinson those questions point blank, and I must say he was honest because he didn't answer directly. He obfuscated. He said, 'well this is a marriage bill.' He didn't answer the questions directly. I respected that, because he didn't want to answer because his judicial thought process, that's the kind of judge who would find discrimination in that."

"And if we have one judge, a low level judge that would find that as a discriminatory practice, if the Governor or the state doesn't want to appeal

it, then it's implemented, just like that. It doesn't matter what the Board of Education's controversial policy is, it doesn't matter if there's a court decision. It doesn't matter. It doesn't matter what their current opt-out clause is, if there's a court decision, it doesn't matter.

"Now the crux of the issue, Mr. Speaker, as I see it, is some people, by the way I wrote the BOE a detailed letter asking for responses, detailed responses. One of them, I'm going to paraphrase, 'can a teacher opt out of teaching material?' And it says 'any personal matters pertaining to a teacher's working conditions will be handled on a case-by-case basis.'

"I asked, 'what if we have transgender students, high school students, who want to shower in the opposite-sex bathroom?' Their response was very telling. 'The Department will work closely with the student's family and the school to appropriately address the needs of the students.' Which students? I mean, this is the kind of non-answers I got. And I do believe that's why they didn't testify.

"So what we're looking at is a lawsuit in the future and a court-order from a judge saying, 'you know what, that's discrimination.' I mean, Mr. Speaker, the challenges that the folks equate this behavior with the benign genetic characteristic like skin color. If someone said, 'hey you don't have any white people or brown people or red people in the Dick and Jane books', well, we change that, that's why we don't have Dick and Jane books anymore, we have more up-to-date books that show all peoples of all colors, shapes, and sizes.

"Well, the proponents of this measure think that this private behavior is the same as a benign genetic characteristic and should be treated as such. And if it is the same benign genetic characteristic, then it must be in the textbooks. Therefore they want to inculcate the youth with this new way of thinking.

"It takes one judge, one activist judge, to override a BOE controversial policy, override any opt-out clauses. One decision. That's all it takes. So we didn't get any answers all week and, again, there is a policy in place now, it's not in the curriculum now, but this bill ain't law yet. And once the bill is passed, I will bet you my house, I will bet you my house that within 10 years if we don't have a protection, this will be in the curriculum as an illustrative tool for a lesson plan, and every state that's passed it has had impacts in the Department of Education and how they operate. So anyone who tells you otherwise isn't being truthful. Thank you very much."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support. I'm very disappointed that during the hearings the Department of Education and the Board of Education were not represented at the hearings. And apparently, Mr. Speaker, that was by design, not by accident, and when the President of the Board of Education arrived to testify, he was told he could not testify, Mr. Speaker. I'm curious, Mr. Speaker, as to why that was the case. Apparently he didn't have a number or something, and that it was unimportant to the matter that we were discussing, Mr. Speaker. But apparently to thousands of mothers and fathers across the State of Hawaii, it is important.

"We've gone through a number of these measures, we've gone through all these amendments, Mr. Speaker. We know there's flaws, we know there's mistakes, yet we insist that the bill is infallible. That there's nothing that needs to be fixed, nothing that may be improved here or there. Mr. Speaker, this amendment is another attempt to try and make sure that we do.

"In this state, Mr. Speaker, in this state, we have probably one of the greatest varieties, one of the most diverse culturally in the entire country. And it's probably very important to mothers and fathers here in the State of Hawaii to pass on cultural values, to pass on legacies and heritage and things like that, Mr. Speaker.

"So I started making some phone calls. I wanted to find out what nations in Asia have passed same-sex marriage. There's none, Mr. Speaker. What nations throughout the Pacific Islands have passed same-sex marriage? There's only two. Former colonies of Western Europe, New Zealand and

Australia. No Polynesian nation, no Micronesian nation, no Melanesian nation, and we have a broad representation of those cultures here, Mr. Speaker. If there's one thing that unites these Pacific Island nations with their Asian cousins, is the importance of a mother and father, and the practices that are held in those countries, Mr. Speaker, that marriage is between one man and one woman.

"If we do not pass this amendment, Mr. Speaker, something of core cultural value and importance to those communities who live in this state, they're told, you are legally inferior, you are morally inferior, and your nation of origin does not believe in equality, you're somehow inferior to what we got here. And what you believe should be taught and passed on to your children cannot be incorporated into our education system. In fact, because you are bigots and haters and homophobic, or whatever it is that has been used to describe those who do support, you can't pass that on to your children. It's incompatible to the education system here in the State of Hawaii. Your beliefs, the cultural beliefs that you have inherited from generations and thousands of years that you have been a recipient of, that you are fortunate enough to be blessed with today, you cannot exempt your children from being taught something else.

"That, Mr. Speaker, is wrong. That, Mr. Speaker, is not *aloha*. If we want to talk about doing something right, talk about doing what's *pono*, is allowing mothers and fathers to continue millennia, decades and generations of family tradition and history, and allow them the opportunity to opt out of things that they believe are inconsistent with their own views.

"This goes beyond religion, Mr. Speaker. So I would certainly hope that myself, I'm the only individual of Tongan ancestry in elected office in the entire United States of America. My background, I come from a nation where marriage is between a man and a woman. And if my children are going to be taught something otherwise, Mr. Speaker, I believe as the parent, my wife is of Hawaiian-Chinese-Portuguese ancestry, I believe that my children should be able to be taught values and principles that are consistent with the culture and the heritage that I am fortunate to be blessed with. Those are also consistent with my Fijian ancestry, with my Samoan ancestry."

Representative Matsumoto rose to yield her time, and the Chair "so ordered."

Representative Fale continued, stating:

"Mr. Speaker, we have thousands, tens of thousands of people, Mr. Speaker, who come from national origins, whose values are consistent with certain things that they believe should be passed on to their children. That includes marriage between a man and a woman, Mr. Speaker. If we can offer parents and children that one small thing, to not say, 'no, you're not bigots. No, you are not legally and morally inferior because you have inherited something different.' I think this is one of the things, this is one of those small things. Let's throw it out there, let's provide that opportunity to these cultures, to these people.

"I think this amendment, Mr. Speaker, is consistent with the values of the State of Hawaii, they're consistent with the values of this Body, they're consistent with who we are as a people, and it is something that should be extended, Mr. Speaker. With that, I conclude my support for this amendment."

Representative Takumi rose to speak in opposition to the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. I stand in opposition to this floor amendment. I'm really glad that a couple of speakers who are in support of this resolution do acknowledge that the department has a policy of opting out. Currently, the Department of Education has a policy of not teaching marriage. Let me repeat that, Mr. Speaker, the Department of Education, in their curriculum, does not teach about marriage. Heterosexual marriage or otherwise. And there's a reason for that, and I don't see why the reason would fundamentally change if this bill should pass.

"The reason is that we have many, many children in our schools. The previous speaker talked about how we come from a unique culture, a

unique community. We're not Canada. By the way, it's a foreign country. We're not Massachusetts. By the way, it looks like a foreign country. That's not the point. The point is that we are Hawaii and many children in our schools come from foster parents, come from a family where one or both parents are in prison, come from single-family households, *hanai* family, grandparents that are raising their grandchildren. There are many, many kinds of family settings that we have in Hawaii, and children are being raised in those family settings as we speak, like it or not. That's point number one.

"Point number two, is that this proposed amendment is a solution looking for a problem. You're going to have a student or a parent going to a school and say, I don't want my child to be exposed to, as the Representative from Hawaii Kai said, this subculture. Very insulting, very derogatory. But in any event, if you opt out, if you go to the school and say, 'I want my child not to be exposed to the homosexual lifestyle.' Mr. Speaker, they don't teach the homosexual lifestyle so there's nothing to opt out from. That's point number two.

"Point number three is this, under the current Department of Education policy, and I urge my members to read 2210.1, Hawaii has one of the most liberal, broad, opt-out policies in the country. A parent doesn't have to wait. Any parent out there doesn't have to wait before they get a note from the school saying, 'next week we are going to teach about sex education, we're going to teach about abstinence, and birth control, and AIDS, and STDs, and all the rest of it, and if you, as a parent, don't want your child to be exposed to that, you opt out.'

"But here's the thing, Mr. Speaker. You can send to the school, today, you can send to the school today a list of things you don't want your child to experience. Many people don't believe in evolution, write that to the school, when that topic comes up in class, I don't want my child to hear that lesson, I believe in creationism. I don't believe in premarital sex, many faiths and religions in our community consider premarital sex a sin. If you're going to talk about that topic, I don't want my child to be exposed to it. So I'm baffled why this floor amendment is here when there are so many mechanisms that are currently available.

"Lastly, Mr. Speaker, I have not heard of a situation where a parent wanted to take their child out of a school because they're going to talk about birth control or anything like that, and that was denied. So I mean, Mr. Speaker, I can empathize with the thousands of parents and their demanding and their urging and their requesting and their pleading and all of that. Their pleadings, their demands have been answered, Mr. Speaker, in the current policy that we have, thank you."

Representative Fale rose to respond, stating:

"Mr. Speaker, just a brief rebuttal. I really hope that what the previous speaker said was true, Mr. Speaker. Except in my own family experience, I had my two twin sisters locked in an auditorium and went through, it was very problematic, Mr. Speaker. Maybe that's true. I know from practice that that's not true, Mr. Speaker. And given the background that I come from, my family, my little siblings were not given the opportunity to opt out of what went on in that school. And there were hundreds of parents that were outraged because of what happened without parental notification.

"So all of these things, 'oh yeah, well we have this and we have this and we have that.' Mr. Speaker, if we do, it didn't work. So if we have problems there, we need to fix that. And I'm not speaking of something that I heard, it's something that I personally went through. Because the subjects that were discussed in there were wrong and were inconsistent with the values of my family.

"And I asked my little sisters, 'why didn't you leave?' They said, 'they closed the doors and they wouldn't let us leave.' So this isn't something that's being made up. The concerns are real, I've lived through them, hundreds of parents in my community have lived through this, and this is something that will at least give them something. If it already exists then what does it hurt to throw them another bone. Why the opposition? If we already have all these outs, shoot, let's throw in another door. That's all I have to say, Mr. Speaker."

Representative Ward rose to respond, stating:

"Mr. Speaker, I believe we don't have to go to the moon to prove it's there. We learn by learning from others. We are limited as an individual, we can't experience everything. But I believe there's a fantasy that somehow we know better here because we know who we are and where we are. Why do we belong to NCSL? We learn from other states. Hey they made a mistake on this tax issue, we can learn from them. They made the mistake on this one.

"If the good gentleman who said he doesn't like Canada and Massachusetts is a foreign country, take up Konawaena, when the parents never were told about a birth control program, where they were taking students off the campus, a Representative from the Big Island would probably know more about that.

"The example of, and I can't break it because it's in the hopper right now, but it's a curriculum issue that's very explosive in one of our communities that I can't say anything yet because it hasn't been cleared. But the point is, Mr. Speaker, this stuff is real, it's now, the chronology is first you get same-sex marriage, and then this comes, it's just like after the wind stops, the cyclone or the tsunami comes. If we know by experience of others, why would we foolishly not prepare ourselves?

"And if we were not listening, and the good gentleman was not a member of the Finance or Judiciary Committee, he did not hear the pleading mothers, he did not hear the voice of those people. He hears them today, and maybe at another time it may open his eyes, but the point is, Mr. Speaker, we don't have to go to the moon to prove it's there. We know that this curriculum revolution is coming, we should prepare for it, because the people are going to demand it. They're now begging for it, but after begging, it's, for example, some of these people had to beg to urinate this afternoon. We wouldn't even let them leave this building without having a license or an identification given out. We were not going to let them urinate. It was a mother may I. May I *shi-shi*.

"But I'm telling you, when they've said this about their children, they are serious and they're meaningful. You can do it now, in this amendment, or you can do it later, but they're not going to give up, Mr. Speaker. That's the issue. Let us not be naïve, none of us are all going to go to the moon, but we know that Aldrin and all the other ones that went to the moon, we should be able to learn from them and not have to make the same mistakes. Thank you, Mr. Speaker."

Representative Rhoads rose in opposition to the proposed floor amendment and asked that the remarks of Representative Takumi be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

At this time, Representative Fale requested a roll call vote.

The request for roll call was put to vote by the Chair and upon a show of hands, the request was denied.

The motion that Floor Amendment No. 10, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Rhoads and Takumi voting no, and with Representatives Awana, Cachola, Carroll, Choy, Ing, Lowen and McKelvey being excused.

At this time, Representative Ward offered Floor Amendment No. 12, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution; and
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. The First Amendment to the U.S. Constitution and Article I, section 4 of the Hawaii Constitution both protect the right to free exercise of religion. The legislature finds that if same-sex marriage becomes legal in Hawaii, it will be imperative to protect our nation's long and rich tradition of religious freedom. In particular, many religious communities and religiously committed persons have a deeply held understanding of marriage as a relationship that can exist only between a man and a woman. Without legislative safeguards, many religious individuals will be forced to engage in conduct that violates their deepest religious beliefs.

Therefore, the purpose of this Part is to amend the law on discrimination in public accommodations by ensuring that private individuals, sole proprietors, and owners of small businesses are protected from any type of civil or criminal liability for refusing to provide goods, services, facilities, privileges, advantages, or accommodations that assist or promote the solemnization or celebration of any marriage or civil union, or that directly facilitate the perpetuation of any marriage or civil union, if providing such goods, services, facilities, privileges, advantages, or accommodations would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

SECTION 14. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

"§489-3 Discriminatory practices prohibition. (a) Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.

(b) Notwithstanding any other law to the contrary, and except as provided in subsection (c), no individual, sole proprietor, or small business shall be required to:

- (1) Provide goods or services that assist or promote the solemnization or celebration of any marriage or civil union, or provide counseling or other services that directly facilitate the perpetuation of any marriage or civil union; or
- (2) Provide housing or lodging to any couple,

if providing such goods, services, housing, or lodging would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

For the purpose of this subsection, "small business" means:

a legal entity other than a natural person that provides services which are primarily performed by an owner of the business; or a legal entity that has five or fewer employees; or in the case of a legal entity that offers housing or lodging for rent, that owns five or fewer units of housing or lodging.

(c) Subsection (b) shall not apply if a party to the marriage or civil union is unable to obtain any similar goods or services, or housing or lodging elsewhere, without substantial hardship.

(d) Notwithstanding any other provision in this chapter, no refusal to provide goods, services, facilities, privileges, advantages, or accommodations pursuant to subsection (b) shall constitute an unfair discriminatory practice and shall not result in any civil or criminal claim or cause of action challenging such refusal, nor result in any action by the State or any of its political subdivisions to penalize or withhold benefits or privileges, including but not limited to tax exemptions or governmental contracts, grants, or licenses, from any protected entity or individual."

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 14 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 15, 16, 17, and 18, as follows:

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on December 2, 2013."

Representative Ward moved that Floor Amendment No. 12 be adopted, seconded by Representative McDermott.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support. The supposed superiority of the SB 1, even in its HD 1 form, leaves a lot to be desired. The religious protections are better than it was, but I think I noted that it was a plastic shield, maybe a plastic to a tin shield. But who it really forgets is the believer, or the one of faith, who is a small businessman. This amendment is all about protecting our small businesses, particularly five employees or less.

"We know there are multiple lawsuits. Again, empirical evidence, I'm an empiricist, if it doesn't have numbers or experience, it's all fantasy. This is not fantasy. From cake-makers to florists, to other reception services, Mr. Speaker, those people have asked for help. First was the protection of the clergy, second was the children, and the third are these individuals. Mr. Speaker, I move for the adoption of this for the sake of the individuals, for the sake of those who are uncertain, and those lawsuits, even now, are being under the civil unions, perpetuated, particularly a bed-and-breakfast in my own district.

"This amendment, in effect, is to amend the law of discrimination in public accommodations by ensuring that private individuals, sole proprietorships, and owners of small businesses, as I said under five employees, are protected from any type of civil or criminal liability.

"Mr. Speaker, this is necessary as the clergy may be 1 percent of the faith community, but 99 percent of the faith community is out there. This doesn't even cover a number of them, but some of the professionals, the small business, the self-employed, this will give them some cover to genuinely continue to practice their faith. The way the bill is now, it's a zero-sum game. What rights are given to one are taken away from another, or people feel like they have not been considered or, 'what about me?' That's some of the small business cry that we've heard in the last few days.

"People say, 'well none of the other 14 states who have same-sex marriage have this in their bill.' Mr. Speaker, we always consider ourselves unique, we're different, we're Hawaii, we're *ohana*, we can do it."

The Chair addressed Representative Ward, stating:

"I think it's 15 states, Illinois just passed it."

Representative Ward continued, stating:

"Sorry, 15 states. And the District of Columbia, and Argentina, and so on. Mr. Speaker, we consider ourselves unique. We can be unique by not having to say, 'well they don't have it in, that doesn't mean we can't have it.' But we need to face the small business reality of what's going on.

"Now for lawyers, this is going to be, I think as one of the testifiers said, Judge Elwin, this is a lawyer's dream. Mr. Speaker, we should be taking his consul. He said, 'bad legislation creates much litigation.' And when all this stuff fills the courts, it's going to reflect back on us. We never really did our job. And right now, this is nowhere protective for those who are in small business or those who are individual proprietors. For that sake and for that group, Mr. Speaker, I move for the adoption of this amendment. Thank you."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I'd like to have the comments of the previous speaker inserted in the Journal as my own. The businessman needs protection. I anticipate we'll hear speeches comparing it to refusing to serve someone, the Selma lunch counter, refusing to serve an African-American based on their benign, genetic skin color. They walk in, 'oh we're not serving you.' As opposed to a private behavior, I'm thinking of someone maybe renting their house, but they don't want that sort of lifestyle and environment and the friends that come along with it, and they have to explain to their kids what's going on. So I stand in strong support, thank you."

Representative Fale rose in support of the proposed floor amendment and asked that the remarks of Representatives Ward and McDermott be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

The motion that Floor Amendment No. 12, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Awana, Brower, Cachola, Carroll, Choy, Ing, Lee, Lowen, McKelvey, Nishimoto, Takayama and Wooley being excused.

At this time, Representative Ward offered Floor Amendment No. 13, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution; and
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. Section 489-2, Hawaii Revised Statutes, is amended by amending the definition of "place of public accommodation" as follows:

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. By way of example, but not of limitation, place of public accommodation includes facilities of the following types:

- (1) A facility providing services relating to travel or transportation;
- (2) An inn, hotel, motel, or other establishment that provides lodging to transient guests;
- (3) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of a retail establishment;
- (4) A shopping center or any establishment that sells goods or services at retail;
- (5) An establishment licensed under chapter 281 doing business under a class 4, 5, 7, 8, 9, 10, 11, or 12 license, as defined in section 281-31;
- (6) A motion picture theater, other theater, auditorium, convention center, lecture hall, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (7) A barber shop, beauty shop, bathhouse, swimming pool, gymnasium, reducing or massage salon, or other establishment

conducted to serve the health, appearance, or physical condition of persons;

- (8) A park, a campsite, or trailer facility, or other recreation facility;
- (9) A comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm;
- (10) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment;
- (11) A mortuary or undertaking establishment; and
- (12) An establishment that is physically located within the premises of an establishment otherwise covered by this definition, or within the premises of which is physically located a covered establishment, and which holds itself out as serving patrons of the covered establishment.

"Public accommodations" do not include the real property, buildings, or other areas owned or leased by a religious organization and regularly used for religious purposes, notwithstanding whether the religious organization permits the community to also use some or all of the real property, buildings or other areas owned or leased by the religious organization.

No place of public accommodation defined in this section shall be requested to reconstruct any facility or part thereof to comply with this chapter.

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 13 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 14, 15, 16, and 17, as follows:

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on December 2, 2013."

Representative Ward moved that Floor Amendment No. 13 be adopted, seconded by Representative McDermott.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker I rise in favor of the measure. I am prompted to introduce this because of the testimony of two individuals. One individual spoke for two hours when the Judiciary and the Finance Committees questioned him, this was the Attorney General David Louie. Two hours he submitted to questions, but unfortunately when it came to the public accommodations law and the protection of churches, he, like I'm swaying back-and-forth, was never a steady, 'this is the way it is and this is the way the courts are going to be kept out of it,' or, 'this is the way the churches are going to be protected.'

"His uncertainty, Mr. Speaker, as to the protection of the churches, told me that unless we carve out, and this is what this amendment does, it carves out the churches and says, 'you are not part of the public accommodations,' it makes it very clear.

"The second is a good friend from East Honolulu, he's the head of the Civil Rights Commission. And Mr. Speaker, you know that that is the one that's going to implement this particular bill, or the HD of the SB 1, HD 1. And basically the Civil Rights Commissioner said that no matter what you do, no matter how you do, don't get the churches outside of the civil rights purview of the public accommodations, and implied, 'otherwise we're going to get you some other way, but we're going to end up getting you.'

"Mr. Speaker that was rather disconcerting in a sense that he didn't say yes or no, but he said, 'stay away from getting the churches exempted from

the public accommodations commission,' which meant it's going to be a field day for the churches if they're under the public accommodations. So to make it unequivocal, it seemed right to bring this out as to what the Attorney General and what the Civil Rights Commission couldn't figure out. This bill, amended as such, will make it very, very clear.

"I know the Senate is not particularly happy about any of these particular amendments, but doing the right thing is the most important thing. Because, Mr. Speaker, we don't want to have every piece of legislation we pass end up in court word-for-word having to be defended. Because that's expensive, and I know some of the churches that, at least were here earlier, they spend a lot of their time just doing disclosures and other kinds of affidavits and other discovery. That takes away from their mission, which is serving the people of Hawaii, and serving their other purposes. So, Mr. Speaker, for those reasons, I would encourage the adoption of this. Thank you."

Representative McDermott rose in support of the proposed floor amendment and asked that the remarks of Representative Ward be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Fale rose in support of the proposed floor amendment and asked that the remarks of Representative Ward be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, thank you very much. In support. I'm looking at this amendment, it's very interesting, and I want to thank the former Minority Leader of the GOP, our Republican Caucus, for this amendment. As I understand it, it seems to support the Hawaii Marriage Equity Act of 2013. So I just proved my point that if you have a vigorous debate and discussion, I think you can turn the hearts and minds of the most ardent opponent of your position. So I'm very curious to see that he does stand in support of equal rights for all people.

"I just want to comment further upon the exemption that he's trying to carve out of the Public Accommodations Law. I think it's in the right direction, Mr. Speaker, certainly not as vibrant and robust and squared with the constitutional rights of due process, equal protection, along with the civil liberties under the current Public Accommodations Law, but it heads in the right direction. It has the value of creating some very clear lines of what's in and what's not in our civil rights code.

"I feel it addresses one of the concerns that's been raised by many people in regarding the submittal of October 17, 2013, what the Hawaii Civil Rights Commission and my good friend, Bill Hoshijo, the Executive Director, who is doing a terrific job as the executive director. And I think the concern that was raised earlier is that, where do you draw the lines as far as what is a public accommodation and what is a not public accommodation? And I turn the people's attention to number three on the jurisdiction and application of the religious exemption on facilities and accommodations.

"Jurisdiction / coverage. The threshold issue is whether the religious facility is a place of public accommodation covered under HRS Chapter 489. The question is: does the religious organization offer the use of the facility to the general public as customers, clients, or visitors? A religious facility that is used only for religious purposes and is not offered to the public is not a place of public accommodation. Welcoming the public to attend religious services does not make the facility a place of public accommodation. But, if a religious organization makes the choice to offer the rental or use of its facility for commercial or public use, it will be a place of public accommodation for that purpose.

"This threshold analysis is similar to the determination of whether a facility is a private club or a place of public accommodation. e.g., the Pacific Club, Elks, and Outrigger Canoe Club are private membership clubs that do not fall under the jurisdiction of HRS Chapter 489, unless they offer their goods, services, facilities, etc. to the general public.

"Now I've had the great fortune of going to some meetings and having some social engagements at the Pacific Club, but that's a members-only club. I'm not a member so I can't, I don't know the intricacies of getting involved in that, I'm not a member of the Elks Club or the Outrigger Canoe Club. But those are private membership clubs. The concern that you have in the current language in the Senate bill, and this one leads in a little better direction, is that churches might have to become members-only organizations to fall outside the public accommodations code, i.e. like the Elks Club, i.e. like the Pacific Club, i.e. like the Outrigger Canoe Club.

"Now I don't think it certainly comports with the reality regarding any religious denomination or institution, that seats have an open-door policy of welcoming any and all visitors. So I think this leads in the right direction, however it is not as robust and squared with the law as House Bill 6. And for those reasons, good attempt, the former Minority Leader of the GOP Caucus, and his support for equity in marriage. Thank you very much."

Representative Ward rose to respond, stating:

"Mr. Speaker, I appreciate my good friend from Wahiawa and his embellishing my testimony, particularly in supporting of the amendment. However, his repeated, let's say my listening to repeated, 'my good friend in support of same-sex marriage,' that is contrary to my stand and I'm not sure how it fits in to what was said on this Floor. Thank you."

The motion that Floor Amendment No. 13, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Awana, Cachola, Carroll, Choy, Ing, Lee, Lowen, McKelvey and Wooley being excused.

At 6:35 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 6:54 o'clock p.m., with Speaker Souki presiding.

At this time, the Chair stated:

"I ask everybody to have some decorum as we move along. Respect everyone as you'd want someone to respect you. Thank you very much."

(Main Motion)

Representative Rhoads rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support. I just wanted to go over quickly the amendments that the Joint Committee on Judiciary and Finance made to SB 1 after it came over. As we're all aware, there was over 55 hours of hearings. We did make three significant amendments in response to concerns that we heard from the testimony. First off, we deleted the language relating to the gender-neutral application of marriage-derived parentage rights, which was an issue of concern to many people, and especially to the Hawaiian community.

"We also amended the religious exemption to expand it, adopting language from Connecticut's law. It expands religious organizations exemptions to apply to religious organizations and to non-profit organizations operated, supervised, or controlled by a religious organization, establishes 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 the religious beliefs or faith. And it expressly provides 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.

"Of the states, including Illinois, which of course just adopted their same-sex marriage law today, I believe, this is one of the broadest

religious exemptions, if not the broadest. We've already compared it to Illinois, and it's at least as broad and doesn't match up exactly so it's a little hard to tell, but it looks like it's a little broader than the Illinois exemption.

"We also applied the same standards as civil unions. You'll still be able to form a civil union after this bill passes. And we applied the religious exemption to the civil unions as well because we didn't want to have two separate standards for civil unions versus marriage.

"We did change the effective date to December 2, to give the Department of Health, because of the delay and the length of the hearings, obviously the session has gone longer than we had originally hoped, but that's the democratic process, so be it. That's it in a nutshell, the amendments that we made in Judiciary/Finance. Thank you, Mr. Speaker."

Representative McDermott rose, stating:

"Mr. Speaker, listening to the people upstairs and listening to the testimony all week, it seems to me that, well I'd like to make a motion to postpone this indefinitely. Thank you."

At this time, Representative McDermott moved that S.B. No. 1 be postponed indefinitely, seconded by Representative Ward.

At 6:59 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 7:00 o'clock p.m.

Representative McDermott rose to speak in support of the motion, stating:

"Mr. Speaker, I stand in strong support of this. I'm sitting in this chair after many hours and I'm tired. I don't have the passion I once brought to the microphone at the beginning of the day. But I hear those people still out there, and they're still telling us, they're begging us to let them have a vote. We are going to make a major societal change in their community and they're saying, just enfranchise us with the opportunity to have a say. The constitution allows us to do that. Justice Moon said that is the ultimate authority, from the people. They're saying, 'stop, don't do this, please.'

"Mr. Speaker, I've heard them all day. They've been here all week. If the legislation doesn't have the support of the community, as best as I can tell, as best as I can tell. I don't know why we're moving forward with it. They are not happy, as best as I can tell. So I would ask that we postpone this indefinitely. Furthermore, when we're done with that, I think we should just shut the whole thing down. Thank you, sir."

Representative Fale rose to speak in support of the motion, stating:

"Mr. Speaker, in support of the motion, and when I'm done speaking, if I can ask for a roll call vote.

"Mr. Speaker, I believe I'm correct when it's been told to me that nothing like this has been seen in the history of Hawaii. With the hearing that we had, with the outpouring of opposition. And every day we as a Body tell people your voice makes a difference, your voice needs to be heard, come to the State Legislature. We've seen numbers that 55 percent or however many people support same-sex marriage in Hawaii, and therefore we should support this, but we don't need to let the people weigh in on this.

"I'm very confused, the people who are here today are confused, Mr. Speaker. Apparently, we have a perfect bill. I mean, this is perfect. We've submitted amendment after amendment. This is a perfect bill. Wow, I'm blown away, and thankfully it was almost perfect when it came from the Senate. Almost perfect. But fortunately they sent it to us, so we just needed to tweak it here, tweak it there, and now it's perfect. All of these issues that hours and hours of thought have been poured into in the short amount of time that it's been presented to us, Mr. Speaker, apparently they're all just misguided. Apparently these guys don't know what they're talking about. There are no flaws, it's perfect.

"My little sister just texted me, asked me a question about some stuff. You know, she asked this Body. We have perfection rolling out of this Body right here, Mr. Speaker. I've got to say, this is the first time I've ever been around something that's been so perfectly put together that there's no need for any other amendment, there's no need to take this to our communities to discuss it with them, and we just need to move it right along.

"So of course I'm asking myself, maybe I'm the one that's wrong, maybe I just need to vote up on this. Is that where I'm at? No? Are the people outside misguided, for those who showed up for five days and set a record for the history of Hawaii, over 55 hours of testimony with 80 to 90 percent in opposition, stating many flaws that are in this? And then we take it and we decision-make within an hour or so. Wow, that's incredible. I mean, the people of Hawaii must be very impressed.

"We can't fix our roads, we have problems with education facilities and schools and stuff and everything. Trying to get the Department of Education to solve a traffic problem in my district."

The Chair addressed Representative Fale, stating:

"Representative, please stick to merits of the motion that's before you."

Representative Fale continued, stating:

"Mr. Speaker, I am not convinced, nor are the people of Hawaii convinced that we cannot do better, or that this is something that needs to be moved out of this Body, Mr. Speaker. Nobody's convinced. But this is a dog and pony show, Mr. Speaker. Why have they come here? Why have they made history, and we're not going to listen.

"It's very problematic, Mr. Speaker. This needs to be delayed indefinitely, we need to do our responsibilities and listen to the voice of the people, Mr. Speaker, and make sure that we're the people's representatives. For those reasons, Mr. Speaker, I support the motion to delay indefinitely. Thank you."

Representative Oshiro rose to speak in support of the motion, stating:

"Mr. Speaker, I rise in support of this motion. I think there is no secret in the building and outside the building, in the community, on the neighbor islands and the rural community that I've never supported coming to a special session. And to this very day, until we leave, I will stand on that objection.

"I've told people that this is the first time in my 20 years of being here, I got elected back in 1994, that the Governor has unilaterally used his authority, which is rightfully given through the constitution, to summon the Legislature into a special session like this. The other was back in 2001, Mr. Speaker, and you were there with us, along with Speaker Emeritus Say and Governor Cayetano, and I think President Mizuguchi.

"Well, we came into a special session to address the effects of the terrorist attacks upon our country. And then six years later, in 2007, we came in to address a Hawaii Supreme Court decision to basically stop the Super Ferry from sailing between the islands.

"What's interesting, Mr. Speaker, you and I were key members of that committee that had a public hearing on that particular issue. But one thing that you and I agreed upon, and will agree upon today, is that even in 2007, although we may have disagreed upon the merits of the bill, we had an agreement between the Governor, who was Linda Lingle at the time, Speaker Emeritus Say, and I believe Senate President, then Colleen Hanabusa, who's now a congresswoman.

"But this is the first time that I can recall in 20 years that a governor has unilaterally used his authority to summon us in. So that's where I start from.

"Mr. Speaker, I find it astounding that we would attempt to do this in such a short period of time, knowing that we've only used about 10 days, given that of 30 days unconditional, we have 45 days per approval by the

Governor. And that there's still some time to go and look at a constitutional amendment, there's still some time to look at other amendments, there's still some time to approve this bill, there's still some time to seek clarification from the Attorney General, Civil Rights Commission, ACLU, just a few members who might have further questions.

"There's still some time to consult with alternatives regarding the ERISA exemption under our Prepaid Health Care Act. There's still some time to seek the input from the Judiciary regarding the family court, and how the rules and procedures might change with the domicile residency waiver for same-sex couples coming in. There's still some time for us to go and consult with other members of our community, especially on the neighbor islands.

"There's still some time, Mr. Speaker, we can go back and call a regular five-day recess, in a regular session we'll call that pursuant to constitution, a five-day recess to consult with our communities, to reflect and to seek their input, there's still some time for that.

"Throughout the last eight weeks, Mr. Speaker, people have been asking me, 'what is the rush? What is the compelling rush?' And that is part of the frustration. Initially I voted for a constitutional amendment, Mr. Speaker, but normally I don't on these kinds of issues. But I felt compelled because of this process that's being rushed. I have grave reservations about the bias and prejudice of the community at large regarding the homosexual and gay community.

"So if it is approved, I'd probably argue against it at the polls. But insofar I've seen the same bias and prejudice among my own colleagues here in the House and Senate. I can ascribe no other recourse to address the constitution as I see it, but again turning to the wisdom of the people, from which all political power is derived.

"So whatever I might do, to stop this special session, even on this procedural motion, for that reason I stand. I mean no umbrage against my colleagues, or the Senators. It lies with the Governor. But again, members, Mr. Speaker, this might be a means for us to take pause and reflect before we make this final decision. Thank you very much."

Representative Jordan rose to speak in support of the motion, stating:

"Thank you, Mr. Speaker. I'd like to speak in support. I too, Mr. Speaker, came kicking, dragging and screaming into this special session. My heart sunk when I heard that news on the TV that we were going to be in special session. I've been pondering every day, coming into this special session, and about a week before I got here, it all settled in me. It is what it is, we are here now. But when I saw the testimony of five days, and I only had one opportunity to talk to our AG in our hearing, one opportunity to talk to Department of Taxation, the Deputy Director, not even the Director who has the experience of the Internal Revenue Service behind her. And we couldn't have another question asked of those administrative individuals with this institutional knowledge. Once we heard from all these constituents coming before us, we had to go and ask them separately.

"It's kind of difficult when we're sitting in hearings, with the community expecting us to be there in those hearings and listen to them when I need to talk to individuals that have expert knowledge on this. I too say we need to slow down. And no disrespect to our leadership, no disrespect to our great Senators, no disrespect to our two chairs that held long hearings for us, I appreciate all that work. But I really would like to go out and talk to my community.

"Yesterday was the first day that I got to drive another block in my community and realize, oh my god, they're going to fix my police station after 10 years. That's how much time I've spent here, Mr. Speaker, that I didn't even remember a block from my house and that they were going to start a construction project.

"So how can I go out and listen to my constituents? I can't speak to them at 10 p.m. at night, Mr. Speaker. That's inappropriate. I like to talk to people face-to-face. I don't want to talk email to them. They want to call me. And I have a difficult time explaining to them what is going on.

"Many of these people up here are from my and the Representative from Nanakuli's districts, Mr. Speaker. They want to see us. And I'm very appreciative they spent the last five days with us. I'm very humbled by that, and I do owe explanations to them before I take a final vote. Many of them expect me to go 'yes' on this. Many of them expect me to go 'no.' But if I can't have that discussion with them, how am I doing my duty, Mr. Speaker?"

"That was my turmoil coming into this. I must uphold the Constitution of the United States as well as the state. My oath of office, to do my best ability. And right now, I'm not so sure if I'm doing my best ability, when I can tell them 'I'm sorry, we can only hear 1 bill, I'm sorry, we can't hear HB 5, I'm sorry, we can't hear HB 6.' Why, Representative? Why can't you hear these other measures?' I'm sorry, I've been told they're not going to hear them.' And this is what happens when we can't explain to the public who brings us here. I just want faith, faith in the government, and I want our people to have faith in our government. Thank you, Mr. Speaker."

Representative Har rose to speak in support of the motion, stating:

"Thank you, Mr. Speaker. In support of the motion. As we began this journey, many of the proponents said that as a result of the Supreme Court of the United States decision in the Windsor case, that's how we ended up here. And respectfully, Mr. Speaker, I would submit this. The Supreme Court of the United States did not, in fact, find Hawaii in violation of any federal laws.

"So as members recall, when we began this journey, we did not have the requisite 34 votes to go back into special session. I repeat, there were not 34 Members of the House of Representatives who were willing to go into special session to deal with this bill. Because our colleagues understood, number one, what the Supreme Court's decision was in DOMA, but secondly, that procedurally, it was not the right thing to do.

"Mr. Speaker, unfortunately a member our Body did, in fact, go behind your back, as the leader of our caucus, and urged the Governor to call us back into special session. As a result, we are here. And Mr. Speaker, again, nobody can deny what's been happening these past five days. This is the single most contentious, divisive issue of our history. We will undo thousands of years of culture, customs, tradition and history, which is why the Native Hawaiian people are so upset and feel so disrespected by this process.

"Mr. Speaker, this motion is being brought because those of us in the minority feel desperate at this point. People keep saying, 'we don't trust government, government doesn't listen to the people, government can't be trusted.' And we heard that in the testimony over the five days. Why are we not being heard?"

"And so now we're stuck with this motion. Does it do justice for both sides? No. It doesn't do justice for the proponents, but we have no choice. We had choices at the beginning of this session, Mr. Speaker, and I would urge you, we still have choices. House Bill 5, House Bill 6, House Bill 7. They can still be heard. We have choices. It's not the end of special session at this point, Mr. Speaker. I don't want to stand in favor of this motion, but I have no choice at this point. But we as a leadership still have choices. We can still allow the people to be heard, give them that choice so they don't believe that their government did not listen to the people.

"For those reasons, Mr. Speaker, I respectfully stand in support of the motion to postpone. Thank you."

Representative Awana rose in support of the motion and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Evans rose to speak in opposition to the motion, stating:

"Thank you, Mr. Speaker. I stand in opposition. I just want to note that, I looked up to see when the Governor announced special session and what it was going to be about, and it was on September 9th that he announced why we were coming back in special session and what the topic was going to be. I know that in my community, the discussions started way back when.

"In terms of hearing what the people feel about this, it was with great honor, I'm proud of the House, that we had over 5,000 people sign up to testify. That even in my emails, I started getting 3,000 emails a day last week, and I'm now averaging about 1,000 a day. It's tapered off a little bit, but I suspect that it will go back up now that people know that we're going to go for Third Reading vote here soon, assuming that we pass this forward. And I really recommend that we pass this forward.

"All the previous speakers said we're not listening to the people. Again, I want to say, I do believe we're listening to the people and hearing from the people. And I do believe we should not support this motion. Thank you."

Representative Fukumoto rose to speak in support of the motion, stating:

"Thank you, Mr. Speaker. In support of the motion. I was going to save my comments for the underlying bill, but I think they're more fitting here, because the major problem that I have with this bill is the process that we've taken it through. And this is not to malign anybody's character here, I think everybody tried really hard. But we were put here by the Governor in a process that was impossible. We were never going to be able to do this well. Last night I said that I did think that there was more transparency, and in that transparency, we saw how ugly this process actually is. The public being involved, and the public was able to see what actually happens in this building, Mr. Speaker. And they're unhappy with it, they didn't like what they saw, they're angry.

"I think that the best thing we can do at this point is to put this off and say, 'okay we're going to give you a real process, a good process.' Because when we ask for transparency, all we do is open it up so that more people can see what we do and how we do it. And what they've seen is that this process is unfair and that it's broken, and they're upset. And I think the only thing that we can do at this point is to give it more time, Mr. Speaker. So I ask that all the other members consider this motion to postpone. Thank you."

Representative Belatti rose to speak in opposition to the motion, stating:

"Thank you, Mr. Speaker. I rise in opposition to this motion to postpone indefinitely. I truly believe that the time for delay has come and gone. I'm genuinely sorry that we're at a point where we just have to agree to disagree. I do agree that this is the single most contentious, divisive measure that's come before this Body, at least in the time that I've been in here. But I also believe that we are a duly elected Legislative Body who's called upon to make tough decisions. This is probably going to be the toughest vote of any of our political careers. But we are elected to do this job.

"We were called by the Governor. September 9, 2013. The DOMA decision came down in July. The day the DOMA decision came down, with my understanding, that this would be an issue that would come up. I began immediately to do my due diligence as a full-time legislator, as a full-time Representative of the people my district, to begin to understand what were the options in front of us.

"Over 30 of us sat in hearings. We listened, we heard, we amended the bill. We provided a bill that will satisfy many of the concerns that were raised. I am very proud of the process that this House has engaged in, and I think, again, the time for delay has come and gone, let us take the vote, justice delayed is justice denied. Thank you, Mr. Speaker."

Representative Jordan rose to respond, stating:

"Thank you, Mr. Speaker. As we all know, Illinois just passed, the House of Representatives just voted it out. But do we all know that their Senate Body voted it out in February. In February, Mr. Speaker. Almost six months. I don't know why the delay was there, maybe they had to garner the numbers. But at least they had time to go out and talk to the people. The constituents in our state can't even look at SB 1, HD 1. They can't come back and comment on this.

"This is what I'm trying to express, true transparency. I mean, I can argue the point, I've been talking to my constituents since before DOMA fell. In fact, I was asked at a neighborhood board, 'how do you stand?'

Right after DOMA fell. And I've been engaging with my clergy, my pastors, my community members that had no clue what this was all about. But now we do have a measure before us, and I feel it's my obligation to at least explain what the changes were made.

"I don't think I have that opportunity at this point in time. I have a challenge, I don't even think this was being televised today, so I'm going to have more people saying, 'hey, what happened?' I was supposed to be at a meeting right now and somebody said, 'are you going to make it?' and I said, 'no, I am not.' 'Well, what are you guys doing?' 'Well, we're still on the Floor because they couldn't hear it.'

"Transparency, I'm sad to say, that I'm going to have to just say, it is what it is. Thank you, Mr. Speaker."

Representative Brower rose to speak in opposition to the motion, stating:

"Thank you, Mr. Speaker. We've been talking about the issue of same-sex marriage since the conversation started over civil unions, and that's been a few years. And in my opinion, we're not undoing 1,000s of years of marriage tradition, because we're not eliminating marriage between a man and a woman. If anything, the definition of marriage is growing. And ironically, Mr. Speaker, putting this off, we would be undoing decades of how we've done local legislative processes here in Hawaii. Thank you."

Representative Fale rose to respond, stating:

"Mr. Speaker, once again in support and just with a brief rebuttal. We've been told that we need to accept same-sex marriage, Mr. Speaker, because we need to *aloha* all. But the people who make *aloha* what it is cannot be trusted to vote on that. So we come to you because of who you are, what you represent, and the unique culture that you have in the State of Hawaii, but that's nice, we're not going to trust you to actually voice with *aloha* how you feel on this measure. This delay, Mr. Speaker, will allow that opportunity.

"Those are local people outside. You hear those voices? Those aren't people from Connecticut, those aren't people from Massachusetts, those aren't people from Washington. Those are people born and raised on these islands, who foster, who nurture, who care for what we call *aloha*. And we're saying, 'we can't trust you, we can't trust you to share *aloha*.' And we say, we come out, 'trust us guys.'"

The Chair addressed Representative Fale, stating:

"Would you please restrict yourself to the merits of this motion, which is to postpone indefinitely, whether it's meritorious or not in the particular nuances with the bill?"

Representative Fale continued, stating:

"Yes, Mr. Speaker, and that goes exactly to my point. SB 1, HD 1 came out yesterday. And the only people from my community who have had a chance to look at it, Mr. Speaker, which isn't everybody, because everybody isn't paid to do the political thing that we are paid to do, they're busy living their lives, who haven't had the opportunity, who haven't even gotten a break from work, school, or family to look at this bill. Haven't had an opportunity to look at it. And we're supposed to say, 'hey, just trust us, we're the guys who passed PLDC over here, trust us.'"

"What I'm saying, Mr. Speaker, is that not enough time has passed. And we have scrambled to repeal bills that have gotten less outrage than what we're seeing today. And we are just railroading this through. What a time to be a freshman, Mr. Speaker. Can you remember those days when you were a freshman, Mr. Speaker?"

"So what I'm saying is, Mr. Speaker, District 47, and the people who live there, have not been able to review what has been done, and the few who have, have said that the amendments that were made have been inadequate. And too many times have we had to backtrack and try and fix mistakes because we move things through that shouldn't have been moved through. And there is no excuse, there is no reason, when we know we have 30

days, the people know we have 30 days, but because somebody said, 'we are just going to pass this through.'"

Representative Lee rose to a point of order, stating:

"Mr. Speaker, point of order, I believe the speaker is out of time."

The Chair addressed Representative Fale, stating:

"Representative, you have been called out of order. Would you please close your remarks?"

Representative Fale continued, stating:

"Okay, I just want to say, Mr. Speaker, I hope my time as a freshman will be just as good as yours was, and we do the right thing. Thank you very much, Mr. Speaker."

Representative Har rose to respond, stating:

"Thank you, Mr. Speaker. Just a brief rebuttal. The Representative from Makiki said that she's proud of this process. That we heard, we listened, and we amended the bill. But, Mr. Speaker, I would submit, the overwhelming voices that resonated for me in that hearing, and she sat right next to me, was not 'amend the bill,' it was, 'vote no, kill the bill, let the people decide.' The people did not ask to amend the bill. That was the overall message, Mr. Speaker.

"So when we talk about transparency, openness in government, public engagement, again, I will submit, we are failing the public, and this is why people don't trust government. For these reasons, Mr. Speaker, I support the motion to postpone indefinitely. Thank you, Mr. Speaker."

Representative Oshiro rose to respond, stating:

"Mr. Speaker, this is a quite extraordinary motion, as you know, because it has the effect of killing the bill in the process. But extraordinary circumstances require extraordinary measures like this. And there is a clear and present danger that we might do something that can never be undone.

"I've been sharing this with the community at large and those colleagues who choose to seek out my counsel. But I too, like the Representative from Makiki, have been studying the Defense of Marriage Act, decision of the Supreme Court, the Kennedy decision. I have studied the *Perry v. Schwarzenegger*, the Hollingsworth decision that was entered in the close of the Supreme Court's last session.

"A couple of things I take away from it. First of all, in the Windsor case, there was no establishment of fundamental right of a civil right to same-sex marriage. It stands for its basic proposition, a federalism. Where our state determines and defines marriage between a man and a woman, or between people of same-sex, Congress does not have the authority or the power to supersede the decision of the state. Mr. Speaker, I agree with that decision. I think it's the prerogative of the states to decide how they'll define marriage. I think that's the correct decision.

"Also in the decision, Mr. Speaker, is this important point, that if a couple gets married in a state where you have same-sex marriage, and they move to a different state to domicile and set up their household and live as a couple, the same rights and privileges that they acquired in the celebration state, or the celebration place, will go with them. I talked about it earlier, but that's the basic premise of the Defense of Marriage Act case, the Windsor case.

"The *Perry* case is interesting, Mr. Speaker, it stands for this proposition. That once the legislature approves same-sex marriage, and once the first marriage license is issued, there's no going back. You will have a vested property right, that I will have to defend under the state constitution, that most courts will see under the state constitution, and to take that away and be a violation of one's due process. Life, liberty, property without due process. And that's what they held in the *Hollingsworth v. Perry* decision.

"Furthermore, even with Proposition 8, even with a constitutional amendment, to change the decision of their court. Even that could not change it because the basic principle there, Mr. Speaker, once a property right is acquired by a person or group, it can never be taken away. And that's why this is a substantive motion, has substantive effects on where we are today. I stand again in strong support. Thank you."

Representative McDermott rose to respond, stating:

"Mr. Speaker, I'll give you two concrete reasons why we shouldn't proceed. One, as you know, there's litigation pending on the meaning of the 1998 constitutional amendment. There's Supreme Court law that says the people's intent supersedes any committee report, any statutory language, any shenanigans buried deep inside. We have had people, not me, acknowledge that the language was, well, bad at best, if not confusing. So we have litigation pending. Number one.

"Number two, despite the best efforts of leadership, and you're all good people, there have been a blizzard of House Rules violated. Unintentionally, most of them. Secondly, according to Mason's, when rules are violated, and/or there's an act of bad faith, that statute can be thrown out.

"Now I refer you, sir, to earlier this week when we went through the, and this is why we should adjourn and not come back, the membership kurluffle in here that we had. House Rules were never waived. Two House Rules were never waived relating to minority rights to reorganize, and committee rights. That in itself alone is not fatal. But what, Mr. Speaker, I'm giving you a reason why we should adjourn, pending legal action, if you'd like me to explain it I can. It might give you pause, and members of your caucus pause. I have one lawsuit, and I've got another one in the queue.

"The committee assignments, the majority replaced a known 'no' through public utterances with a known 'yes' through public utterances. Subsequently, we tried to replace a known 'yes' through public utterances with a known 'no'. We were forbidden from doing that, so the deck was effectively stacked against us. Relieving us of the dynamic that might occur in a one-vote split where that person who casts the deciding vote would be the person who casts the deciding vote.

"So you see, that's the bad faith issue. We weren't allowed to do what we wanted to do. You never polled the members, Mr. Speaker, you never polled the minority members to see how they felt. A verbal assurance is not the same thing as someone being on record, you also send a letter.

"So the actions spoke of that faith. That and the blizzard of violation of rules provides a, and I'm not insulting you, sir, I love you and you know that. The action itself, it provides a basis for legal action because it's an extraordinary circumstance.

"So you have two issues, one currently under litigation and one that could come of litigation, as soon as we get rolling through tomorrow. So a prudent man would pause."

At this time, the Chair stated:

"Members, I believe we have had sufficient debate. There has been a call for roll call. Mr. Clerk, would you check if there are the required votes for a roll call."

The request for roll call was put to vote by the Chair and upon a show of hands, the request was granted.

Roll call having been approved, the motion that S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be postponed indefinitely, was put to vote by the Chair, and on the following show of ayes and noes, failed to carry:

Ayes, 19: Aquino, Awana, Cabanilla, Carroll, Cullen, Fale, Fukumoto, Har, Ito, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Tokioka, Tsuji, Ward, Woodson and Yamane.

Noes, 30: Belatti, Brower, Coffman, Evans, Hanohano, Hashem, Ichiyama, Ing, Kawakami, Kobayashi, Lee, Lowen, Luke, McKelvey, Mizuno, Morikawa, Nakashima, Nishimoto, Ohno, Onishi, Rhoads, Saiki, Say, Souki, Takai, Takayama, Takumi, Thielen, Wooley and Yamashita.

Excused, 2: Cachola and Choy.

(Main Motion)

At 7:40 o'clock p.m., Representative Fale requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 7:42 o'clock p.m.

Representative Matsumoto rose to speak in opposition to the measure, stating:

"Mr. Speaker, I'll keep it very brief, this is the first time I've stood up today. In opposition, and I just wanted to say a few brief comments. On this Floor we often hear the statement, 'my community feels' or 'my constituents feel,' but how can we say with certainty what our constituents feel? As a young legislator I believe in public involvement, and that's why I was so encouraged this last week to see how many people came out on both sides to have their voice be heard. I didn't sit on the committee, I'm not on Finance or Judiciary, and so instead I went around and thanked each and every person for coming out, and gave them a Snickers or a Kit-Kat, because I believe in public involvement.

"Many members of this Body have made the point that a vote is the greatest equalizer, and I believe that. We also talk about the 1998 vote. In 1998, I was 11-years-old, Mr. Speaker. I was not old enough to vote. And I believe there was an entire generation that wasn't old enough to vote on this issue. And on something that is so polarizing, I feel that it is so important to put it in the people's hands of Hawaii. I'm not against equal benefits, but I am for putting it to a public vote. Thank you so much."

At 7:44 o'clock p.m., Representative McDermott requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 7:44 o'clock p.m.

Representative Jordan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I know I've said a lot today. Some of it was meant for right now, so I won't put you through that. People have been here for a long time today. Probably earlier than I got here. But you know, Mr. Speaker, everybody has heard my vote, they heard what I voted. I'm going to stand by my vote in opposition to SB 1, HD 1.

"I just want to share with you, Mr. Speaker, there was a woman that came on Halloween evening and testified. And I hadn't seen this woman in maybe 20 years. You see, Mr. Speaker, I was so amazed, there were many people I hadn't seen in 13 years, in 10 years, and it's not because we're not friends, it's just that we all get busy with our lives, and I'm like, wow. And some of them move out of our communities, you don't see them any longer. But I was quite surprised and very honored that these people remembered me and came up to me, and they didn't even realize that I was a legislator at this point in time in my life.

"This woman that came and spoke, obviously in opposition to the measure, she went home because some things were said to her out in the hallways. See, she didn't know me on a personal level, she knew me by my professional level. And I didn't know her on a personal level, I knew her family because it's quite large. And she had mentioned that she had a sister-in-law that was in the hospital with a massive stroke. So I took it upon myself to go outside and say hello, and 'which sister-in-law were you talking about?'

"While she was out there waiting to testify, there were some people chattering in the halls. And it was so amazing to see people for and against, chattering out in those halls, and coming to some kind of understanding. And I think that's what we really need to do, Mr. Speaker. There's a lot of people that do support this issue, they just don't know a lot about it right now. And many people testify, we should be doing some *ho'oponopono*, and I don't disagree to that.

"But I'm not going to share the whole email with you, because it does get rather personal. But she felt compelled, after what was said about me in the hallway, to write me, and she even apologized for writing me. But at the end of it she said, 'is this an act? Will you sincerely vote according to all the testimonies given, or have you already decided to vote for SB 1, because of pressures you may sustain if you don't support it?'

"Mr. Speaker, she was talking about my personal life. I felt so bad for her. I cried. Yes, Mr. Speaker, I sat in my office and cried when I read this. And I'm still trying to figure out the words to respond to her. Because I owe her. No, nobody's going to beat me up. Nobody's going to throw me out of my GLTB community. Not quite sure of that. But I do owe a response to her. And yes, for her satisfaction, I listened to the testimony. I kept my heart and my conscience clear. I set aside my personal beliefs. I said that on the day I stood at that rostrum being sworn in three years ago. I will set aside any of my personal beliefs, any of my personal thoughts, even if I can benefit from this. And I listened to individuals, I listened to testimonies, I listened to experts, and I might vote against something that I personally believe in.

"I personally believe I should have the right. You know how hard it is for me to say 'no'? I have to say 'no'. And I said it earlier. If I need to upraise minorities, I cannot erode anybody else's rights. I personally haven't come to that in the current measure we have before us, Mr. Speaker. I always have my four agreements with me. Be impeccable with my word."

Representative Say rose to yield his time, and the Chair "so ordered."

Representative Jordan continued, stating:

"My four agreements that I shared with you guys twice, up at that rostrum with invocations. And I always go back to it. In fact, I have my book with me, so I can remind myself, because there were some hurtful things said in those hearings, that weren't directed at me because they didn't understand. Be impeccable with my word. Don't take anything personal, Mr. Speaker, and I didn't, I walked away from those hearings not taking anything personal. Don't make assumptions. Everybody made an assumption about who I was and how I was going to vote on this issue. Shame on everybody. Including the media and my fellow legislators here. Don't you have faith in me? Always do my best. I'm doing my best. Yes, I am who I am, and I'm speaking on this Floor doing the best I can. And I will vote no, as the measure is written, and I'm praying that it can be resolved. Thank you, Mr. Speaker."

Representative Johanson rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition. This has been a very emotional and difficult issue for both the public to grapple with, as well as all of us in the Legislature here. I do think we are called to make difficult decisions, and I think that is what we are all trying to do. I, like many, do not necessarily want to see people in loving relationships denied certain benefits. But I also think that that can be accomplished in ways that we have yet to explore, because it is not necessarily expedient in this special session. I personally think that relief may also come at the federal level, if the IRS or the federal government were to just expand its definition of what would be included for federal tax benefits.

"I think there are myriad ways that we can potentially try to redress a lack of equitability and benefits. This bill, however, in ostensibly trying to grant those benefits, engenders what I think are a whole host of unresolved and unreconciled issues that we are all still grappling with today. My opposition to this bill primarily rests on two points.

"Firstly, this bill does not reconcile the natural tension that is created with the passage of this bill between a newly created state-sanctioned right and First Amendment rights as guaranteed in our time-honored federal constitution. What happens when they conflict? How do we reconcile them? I'm not sure that any one of us 51 members knows how to answer those questions with certainty. And I understand that we may not have those answers, but because this fundamental clash will exist, those answers are things that we need to struggle with, and we need to find, and we need to ascertain with some degree of certainty before moving forward in this course.

"Secondly, I also feel that in a democracy, how do we potentially dismiss the will and the consent of the governed? I don't think we can, nor should we. Under normal circumstances in this Body, the sheer level of opposition to this issue would have been enough to, at the very least, warrant additional time and consideration, if not doom the bill.

"I wholly recognize that many good people will disagree with what I'm saying. But in deference to all of the disagreement, the unreconciled issues, and a bill that may contravene the peoples' will, I must respectfully oppose this bill. Thank you."

Representative Brower rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support. I believe, members, if you support the bill, you will find a way to vote up. And if you don't support it, you'll find a way to vote down. No excuses. For me, a good legislator isn't on either side of the issue. He or she is objective.

"And that's in part why I attended, what I will call, quote, 'the House-sponsored Informational Briefing' held prior to special session. And I asked its featured guest there, a professor on constitutional law who flew in to give testimony. My question to him was, would it be better to allow Hawaii's courts to decide the issue of same-sex marriage, or to allow the State Legislature to decide? And I added, couldn't the Legislature provide more protections to the churches? And his response, 'yes, it is much better for the Legislature to make that determination. These types of decisions are part of your responsibilities as a lawmaker.'

"Ironically members, for me, a vote against this bill is a vote in favor of the courts to decide the issue. And as much as I would prefer that the Legislature not have to make this decision, I fear the decision of the courts more. Thank you, Mr. Speaker."

Representative McDermott rose and asked that the Clerk record a no vote for him, and the Chair "so ordered."

Representative Ward rose to speak in opposition to the measure, stating:

"Mr. Speaker, I rise in opposition. As a legislator, I expect that we can do better, we can do better than any state. We're the most beautiful state, we excel in just about everything. But I think this is not the approach that we can take, we need something a little bit more reciprocal, something a bit more balanced, something a bit more of a two-way street. Something where, when I took Peace Corp training on the Big Island when they said, 'something that respects the human value and personal worth of every individual.' The human value and personal worth of every individual. Mr. Speaker, this means if you believe, you don't believe, you're heterosexual, homosexual, whatever sexual, it means all of them.

"We have a bill that's dividing families and people. We are a 237-year-old experiment in self-government. We are now going up to the edge to see whether we can keep ourselves together, where we can be a solid, united, as we do our pledge of allegiance. 'One nation, under God, indivisible.' These are the tears in the social fabric that we are about to bring about.

"Mr. Speaker, I come from a bit of a different background, half of my relatives are Muslims. Half of my relatives don't eat pork. Half of my relatives say, 'how can government tell you to eat pork or that you should be now eating pork?' This is the equivalent of what we're telling a lot of these people here. Everything in this particular bill is acceptable now,

because it's stamped by the state. The state is, in effect, overshadowing, eclipsing, if not taking over the churches.

"Yes, this protects the churches or protects the pastors in a small way, while they're marrying or they're celebrating. What about burying and christening and all the other things? Pastor, it's not there. If the gay couple wanted to have their adopted kid come in there and they said 'no', then people say, 'well that's the First Amendment.' We shouldn't have to defend our First Amendment. Who do we think we are overturning the First Amendment with this bill? Who do we think we are that we can be superior to the First Amendment that 237 years ago, made this country what it is?

"Mr. Speaker, what we're going to do, we're going to turn each other against each other, and we're going to be in court. We're going to fight this out, word for word, and all the interpretations, public accommodations this, public accommodations that, this is covered, that's not covered. We have a very loosey-goosey bill here for the solidarity of the people of this society. We are legislators responsible for that.

"Mr. Speaker, this is not a responsible bill. It leaves totally silent the human value and personal worth of those who are convicted as individual small businesses. Those who are going to be serving the community. Those are entirely unprotected. The teachers of conscience are unprotected. The mothers who are crying, and as I said will be back as mother bears, who have their children under threat. They are totally amiss of this particular bill, they're not here. But, Mr. Speaker, you know they're coming back.

"This bill marks a dividing line in the sand. We've heard from the Hawaiian community, we've heard from the Polynesian community, we've heard people say things that they never even thought that they would say, we've seen people who gave testimony who never even thought they could speak in public.

"Mr. Speaker, this is a new Hawaii under your jurisdiction. When this bill passes, Hawaii is never the same as we knew it, just like 9/11 was never the same America after the bombs and the planes hit the twin towers. Mr. Speaker, that's a heavy responsibility for all of us. I suggest we all weigh very heavily as we vote for this bill, as we push it on. The responsibility of those who have been elected, to choose the direction of which their society should go. We have a heavy responsibility ahead of us. We are a grand experiment, but Mr. Speaker, we should be very, very mindful of how fragile it's becoming. We love our people, we love our families, let's keep them together. Be a peacemaker, not a divider. Thank you, Mr. Speaker."

Representative Fale rose to speak in opposition to the measure, stating:

"Mr. Speaker, in opposition to the measure. I think a lot of what, there's not much more we can say. I'm tired. The people who are here are tired. We have had an outpouring from the public that has never been seen in the history of Hawaii. And as a matter of deference, Mr. Speaker, I believe that at the very least, we should delay this a little longer to encourage, to let people know, that when you come to your government, they'll hear you.

"This could all be avoided. Nobody wants to deny benefits to anybody. Nobody wants to take away religious rights from somebody. But everybody agrees the manner in which this is being driven forward is wrong. We could take a few more days, we could take a couple more weeks to look at this. We could give the communities around the State of Hawaii an opportunity to weigh in. If I had the opportunity to take this HD 1 back to my community, we could get a different answer back. But until we give people the opportunity, we should not take it away.

"Just on the sheer fact that we have never seen this, ever, in the history of Hawaii, where people are crying out, 'just wait, hold on a second there.' If we are going to completely dismiss that, if we are going to say, 'you came and you spoke.' I hear that phrase more than anything else in this building, that one voice counts and we need to listen to our people. It's just a matter of deference for that. Let's at minimum use the 30 days that we're given, and maybe even the 15-day extension. Just to show the people of

Hawaii that we have heard you say, 'hey, just one second there. Let us look at this. Don't divide us this way.'

"The divisions, the wedges that are being driven into families, into communities, and into this state, Mr. Speaker, will be there for a very long time. Those feelings of hurt, of pain, will be there for a very long time because of the way this is being done. This isn't the way we do things in Hawaii, we don't divide people. And yet we are here standing side-by-side with the Governor upstairs, driving a wedge through the hearts of tens, of hundreds of thousands of people.

"When my little brothers, when my little sister, or anybody in my family comes to me and asks me for a second, I say, 'sure, I got a second.' If thousands of people come out in record numbers to the State Legislature and say, 'hey, can you guys hold on for a second? Can you hear what we have to say? Can we sort through this maybe in a different way? Can we satisfy both sides in such a way where everybody can say, yeah I can live with that?' We haven't even afforded that opportunity, Mr. Speaker.

"I'm concerned about the precedence that this sets. If we can take the most divisive issue, that many people are hurting over, and we can say, if it's okay for our leaders to cause this much pain, to cause this much division, to cause this much hurt, what's the message we are sending to our communities? What's the message we're sending when we have historical, I will never see this turn out, probably, in my entire career in politics. Probably not a single person will ever see what happened at this time, Mr. Speaker."

Representative Fukumoto rose to yield her time, and the Chair "so ordered."

Representative Fale continued, stating:

"So it just doesn't make sense to me. And it doesn't make sense to anybody, whether they're for or against this. Why are you going to pummel this through? I believe that the message we have sent merits a little more time. Merits a little more discussion, merits a little more debate, merits maybe a couple visits to the neighbor islands.

"We're exhausted. The only reason why we're delayed as far as we are is because the people of Hawaii decided to speak. And so here we are today. We know that the intention was to rush this through much faster. And the only reason why it didn't get rushed through the way it was intended was because the people of Hawaii took a stand and said, 'one second.' So I cannot dishonor the amount of effort the children who slept on cold, concrete floors, the mothers and fathers who gave up hundreds of dollars of work.

"I don't know if we understand what they went through. Through this entire process, we were paid to be here. And for those thousands of people who came, cars towed, parking tickets, hundreds of dollars, well maybe that's hundreds of dollars good to the city or whoever collects the money out of the parking meters. But nobody, that time that was spent here, nobody is going to give that time back to the people. Nobody is going to give that money back to the people. And nobody is going to be able to wipe away the memory from those children who came here and learned the lesson that even if you come speak with all your heart, might, mind and strength to your Legislature, they will not listen. Nobody can remove that. That's going to go down in the history books, Mr. Speaker, right along 'record turnout at Legislature in the State of Hawaii. Nothing changed.'

"I think it merits further discussion. This bill shouldn't go through right now, and people should give, this Legislature should give the people of Hawaii a little more credit, as we just received a lesson about from the good Representative from Waianae. Let's give people a little more credit. That's all I have to say, Mr. Speaker."

Representative Brower rose to respond, stating:

"Thank you, Mr. Speaker, just briefly. The previous legislator talked about us creating division and hurt. I would ask members, if you sat in the auditorium in the last few days, who do you think has experienced more hurt in their lives? The people wearing the leis, or the people not wearing

the leis? And who has demonstrated more anger throughout these proceedings? And that's just a rhetorical question. Thank you, Mr. Speaker."

Representative Evans rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I stand in support of the bill. I just want to say that the people that showed up to talk were for it and against it. But they all came and they participated in government, and what democracy is all about. And that was very exciting for me to see that.

"I've been at the Legislature for 11 years and I've always seen people get involved at whatever level they want to get involved, on issues that somehow grab them. I know we had just as many people show at the Legislature, just as much chanting, just as much rallying over the GMO taro bill that we had some years back.

"So there's issues that grab the community, grab them, and we don't know what they'll ever be. We introduce bills, we introduce thoughts, we introduce ideas, and so I don't see this at all like the other legislator that spoke before, I see this as a very exciting time in Hawaii's history, and that is where people became more empowered learning how to have a voice, and learning a lot more about democracy and what our process is about.

"I've always told people when I talk to people in my community, it's really interesting how the West Hawaii Today talks an awful lot about the council meetings and what's happening at the council level. You always hear about the rows and the dogs barking, some land use decision about a development, rail transit, you're going to hear about it because it's a local issue. Now how about the congressional. Obama, he talks about things, the federal government, they talk about things and they get a lot of press.

"But I'll tell you, West Hawaii Today normally doesn't talk a whole lot about what we do at the state level. The type of stuff that we vote on, the issues that we try to pass, we get very little coverage. But this one got an awful lot of coverage. And when it got coverage, it engaged people, they found their voice. I'm telling you, hundreds and hundreds and hundreds of people wrote emails or called from district. It was very exciting to understand that people finally felt that, 'I really want to weigh in on this, I really want to say what I want to say.' To me, it was just exciting. To think this won't happen again, of course it will. Physician-assisted suicide, gambling, issues like that that just pull and tug on people and their beliefs. We'll have this again.

"I want to say for the freshmen that came here, my goodness, who would have thought your freshman year you would be involved in something of this magnitude. But you know, we can't ever predict. But I want to say for the people that took the time to network, to get the word out across the state and tell them to get involved, they did a fabulous job. There were so many people that were for it and so many people that were against it, and then a lot of people that were just saying, 'can you find balance? Can you give civil rights, equal rights, and at the same time protect the church?'

"So I really believe this bill tried to find the balance, and I'm very pleased that the Judiciary and the Finance members and the chairs really weighed in on, what I believe, is a bill that tried to strike that balance. For that reason I support the bill. Thank you."

Representative Ward rose to respond, stating:

"Mr. Speaker, just a couple of more comments. I think the phenomenon that we're witnessing is rare. But I think a lot of people came, wanting to remind us that, 'we've already told you guys about this, but I'll show up and try to reinforce it, and let you know that look, this is what we voted on and this is what you should be doing.' Unfortunately, Mr. Speaker, I don't think that they're going to be satisfied with how we voted today, or what direction we are now headed in.

"I find the difficulty is where they're not going to know where to turn. I think the one thing that is the big result of these five days is that they have reached political puberty over five days of seeing the legislative process. You can make up what you want of what political puberty is, but to me it's an awakening to the political process, which they've seen very close, which

they've tried to be convincingly influencing, which they found that they have not been able to. And because of that, and now that they are aware of the system and their eyes are opened, we have got to be prepared for the consequences of that. I think that's where things may be turning. Thank you, Mr. Speaker."

Representative Kobayashi rose to speak in support of the measure, stating:

"Mr. Speaker, I'd like to speak in support. I'd like to explain what I think has been a major problem. We have come from such passionate and different points of view that we are unable to see past our own beliefs. We believe we are right. Each of us, whether we're on this side or on that side. And in a sense, we have gotten to a point where almost no information, no statement, can change our beliefs. Justice Levinson, in joint committee in the auditorium, said in response to a question, 'people believe what they want to believe.'

"Now, on four points, I think this is true. One point, what is the majority? Number two point, is homosexuality a lifestyle choice or somehow rooted in our biology? And on that point hinges the question of whether this is a civil right or not. The third point is people's understanding of God, church and faith. Particularly Christian faith, as was so often mentioned in the auditorium. And the fourth point is process. Is the process fair?

"Now, I don't want to get too academic, but some of us know about something called cognitive dissonance. And cognitive dissonance is that, when we have a discrepancy or a conflict between two things, one set of beliefs and perhaps another set of information or beliefs, we try our hardest to preserve our beliefs, and reject, or explain away, or avoid the new information or the new beliefs of the new things that might change our beliefs. And this, I think, is what has happened on those four points. Who is the majority, lifestyle choice or not, belief in church, God, faith, and is the process fair?

"I don't think there's anything that we can say right now that will change many people's minds, because we are clinging to our own beliefs, and we are protecting those beliefs by shutting out, by avoiding, negating, everything else that is contrary to our beliefs. And I'm afraid that is often the case in many things.

"I once was involved in a very difficult issue having to do with traffic. And many people, on many islands have said, 'traffic is just terrible, terrible' on their island, whether it's Kauai or Big Island or Maui or Honolulu. East Honolulu or West Honolulu. There's a notion of a perceived rightness, or perceived majority. People believe, sometimes, that there is a majority based on what they see. And sometimes, we believe that we have the worst or one of the worst traffic jams because of what we see. We see cars around us all the time, we see the time ticking away. Of course, you can measure traffic jams, but then you get into an argument, how do you measure it? There's a big difference between commuting on the Big Island and commuting here."

Representative Mizuno rose to yield his time, and the Chair "so ordered."

Representative Kobayashi continued, stating:

"I appreciate that. But nonetheless, I would submit that there is much to say about the huge outpouring of real people that showed up in the auditorium. The level of commitment, the level of intensity, the level of passion was huge. But we have seen similar situations where this gallery has been packed on other issues. We don't know whether those people in the gallery represent the majority. I can remember union issues, where you had people all over, and I can tell you sitting here, I couldn't tell you whether the union members there represented the majority of the people.

"I can remember the Hawaii Convention Center, if you remember that. That had a demonstration upstairs the likes of which far exceeded what we saw out there. I mean literally, people thought that the floor was going to collapse because of the thundering and the numbers of people were so huge.

"So the difficulty, of course, is that with a cognitive dissonance kind of thing, a perceived majority becomes a self-reinforcing perceived majority. I think that cannot be avoided. We each here, legislators, I hope are of sound judgment, sincere belief to do the public good, and I think had paid great attention to the details of the bill, to the arguments left and right, and exercised their very best to come up with a decision, 'yes' or 'no'. I think the people have to respect that, because I believe that legislators here have tried their best, are sincere, and want to do the public good.

"But we have a fundamental difference that perhaps cannot be bridged in terms of our beliefs and how we are protecting these beliefs, on those four points that I mentioned. I would suggest to you that we have to say at the end that we tried our level best to figure out who was the majority in each of our districts and in the State of Hawaii. That we looked at the question of whether homosexuality is a lifestyle choice or not. That we heard people express their understanding of God, church and faith. Of course, there were many churches there, some here and some there.

"Lastly, that we believe that we looked at the process, and while any process is not perfect, it was a fair process. So on these four points, I think you have to give the legislators here, who are going to vote, the benefit of the doubt. That they did their very best in coming up with their decision. So on that basis, I would suggest that we continue with discussion, and respect that we all have differences in our beliefs, and we all have differences in the facts that we choose to support our beliefs. Thank you."

Representative Tokioka rose, stating:

"Thank you, Mr. Speaker. Can I ask for a point of information? As a neighbor island Representative, and there's many of us in here, is Third Reading going to be televised on 'Ōlelo? If it is, I'll reserve my comments for Third Reading."

The Chair then stated:

"Yes, it is."

Representative Tokioka continued to speak in opposition to the measure, stating:

"But, Mr. Speaker, as I have the Floor right now, I want to say a couple of things. I rise in opposition to the bill. Second point, and the most important point for me of the day is today is my daughter's 14th birthday. She's not watching because it's not on, but I want to wish her a happy birthday.

"So thank you for allowing the opportunity for 'Ōlelo to broadcast this, because the people from my district, and I'm sure on every neighbor island, want to see what we're doing. And I think most people know me, I'm not a camera hogger, but they want to know what we have to say. So thank you very much, Mr. Speaker."

Representative Aquino rose and asked that the Clerk record a no vote for him, and the Chair "so ordered."

Representative Cullen rose and asked that the Clerk record a no vote for him, and the Chair "so ordered."

Representative Yamane rose to speak in opposition to the measure, stating:

"Mr. Speaker, I'm standing up in opposition with very brief comments. My opposition is a reflection of my community, Mr. Speaker. My community has contacted me in various ways, and we have a clear ratio of over 3.5 to every 1 support, in opposition. My staff, Danielle, can attest to that. She went through hundreds and hundreds and thousands of phone calls, emails, postcards and letters, all around her planning of a wedding, to make sure that every voice of our community was recorded.

"Mr. Speaker, as we have to decide how we're going to choose if we're voting up or down, a lot of people have stated on this Floor that they're making it because of maybe their perception of this value, their perception of that value. However, Mr. Speaker, I want it to be noted that I talked to

many people. Many of our colleagues in this Chamber, I've talked to social workers for and against, doctors for and against, I've talked to my students who are for and against. Many people have expressed very deep feelings about the definition of marriage.

"Mr. Speaker, I think as we went through this process, you've heard families, parents, fearful of what this measure would do, as well as, we've heard, of those people who have felt that their rights and privileges were denied. To both of those sides, we feel for you, we acknowledge that you have a value and your voice is heard. But Mr. Speaker, as many of us are here and contemplating our final vote that'll come up hopefully in a couple of days, I just wanted to note that in many of our communities, this is an issue. This has drawn out a lot of discussion both at home and amongst the community. Many of us here had to decide, which vote is more important? Those that are for and those that are against.

"I even asked my wife what her position is. But because I see her every day, does she equate to 10 people in the community? Right, I have to live with her, so you should take her opinion a little bit more than others. However, Mr. Speaker, as I struggled to decide how I would take every vote, every opinion, every rationale behind this moral or ethical, religious and civil rights issue, it came down to looking at what I was charged to do as an elected official of my community. So, Mr. Speaker, on behalf of my community, I'm in opposition."

Representative Oshiro rose to speak in opposition to the measure, stating:

"Thank you very much, Mr. Speaker. I appreciate the opportunity to use the public forum of debate and discussion to articulate the concerns that I have in the most impassioned way I can based upon my knowledge of the law and my reading of the constitution.

"Just a couple of things to point out in the bill. I don't begrudge my colleagues because of the pressure they were put under to come up with something. It's different from the Senate draft, it's a little bit better, but it's far, far from perfect.

"It merely covers the solemnization ceremony. Nothing more, nothing less. House Bill 6 covered everything, what I call wall-to-wall, within the religious establishment. Whether it's a bar mitzvah, whether it's a baptism, whether it's a funeral, whether it's counseling, whether it's post- or premarital support. This is just a solemnization of marriage. Non-religious solemnizers are not covered, the judges are not covered, that concerns.

"Again, the House bill covered employees and their freedom of conscience, freedom of religion outside of the church grounds in their public walk of life. So I have concerns about this and I'll articulate it even more.

"Let's look at what's not covered here. Individuals of conscience who run a small business, such as a wedding planner, photographer, florist, banquet hall, or making wedding cakes even in one's home, that's like my neighbor, can be sued under public accommodations law for refusing to offer their services in connection with a same-sex marriage ceremony. Religious daycare centers, counseling centers, meeting halls, and adoption agencies can be sued under public accommodations law for refusing to offer their facilities or services to members of the same-sex marriage.

"A church or other religious non-profit that dismisses an employee for entering into a same-sex marriage can be sued under employment discrimination laws that prohibit discrimination based on marital status, directly conflicting with the current ministerial exemption under federal and state law. A religious college, hospital, social service organization, that refuses to provide its employees with same-sex spousal benefits can be denied access to government contracts or grants on the grounds that it is engaging in discrimination that contravenes public policy. That provision is not in this draft, it is in House Bill 6. In other words, it protects the organizations, the churches organizations of 501(c)(3), to gain and have access to public funds through grants, contracts, etc.

"A religious charity or fraternal organization that opposes same-sex marriage can be denied access to government facilities, such as a lease on

government property, or participate in government-sponsored employee charitable campaign. It has already occurred in several states. Doctors, psychologists, social workers, counselors, and other professionals who conscientiously object to same-sex marriage, can have their license revoked. Religious fraternal organizations, or other non-profits, that object to same-sex marriage can be denied food service license, adoption agency license, child care licenses, or liquor licenses, on the grounds that they are engaged in unlawful discrimination.

"Religious colleges or professional schools can have their accreditation revoked for refusing to recognize the validity of same-sex marriage. Church-affiliated organizations can have their tax-exempt status stripped because of their conscientious objecting to same-sex marriage.

"Mr. Speaker, I know that the Chair of the Judiciary Committee never intended that in his draft, but again, this is part and parcel of this ill-conceived, ill-advised special session that we're in, to rush this thing through. It also leaves protections for religious organizations for loss of government benefits, who refuse to recognize same-sex marriage. It provides no protection for individual objectors other than ministers, priests, or other officials of the religious denomination of society. It provides no protection to religious organizations from private lawsuits brought under Hawaii's non-discrimination laws other than for refusal to solemnize a marriage.

"It is not the most robust protections. The most robust protections are found in House Bill 6, based upon the learned scholar and research of the same-sex marriage religious liberty scholars in this text right here.

"I'm just going to wrap this thing up with some closing comments, Mr. Speaker. Conflicts between same-sex marriage and religious conscience are reasonably foreseeable, and for that very reason unnecessary when a prudent legislature acts decisively to protect complimentary human values, liberty and equality, by adopting language that enables both interests to be protected realistically. Without such legislative safeguards, many religious individuals will be forced to engage in conduct that violates their deepest religious beliefs.

"A religious organization will be constrained in crucial aspects of their religious exercise. Hence, the Legislature should take care to ensure that the legalization of same-sex marriage does not restrict the inalienable right of religious liberty. This is entirely consistent with the Hawaii State Constitution that each member of the State Legislature has sworn to uphold and protect. Since its adoption in 1950 and ratification in 1959, the Hawaii Constitution has always protected religious freedom in the strongest of terms."

Representative Say rose to yield his time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you very much. I cite the Hawaii Constitution, Article I, Section 4. 'No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof'. Hawaii Constitution, Article I, Section 5, and this is the discussion I had with the Attorney General at the hearing last week. 'No person shall 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.' Race, I'm classified as Japanese. My religion might be Christian-Buddhist. Sex, I'm a male. Ancestry, Okinawan.

"Sexual minorities and religious minorities make essentially parallel claims on the larger society, Mr. Speaker, and the strongest features for our case for same-sex marriage make an equally strong case for protecting the religious liberties of dissenters. These parallels have been elaborated by scholars who work principally on religious liberty, and also by scholars who work principally on sexual orientation.

"First, both same-sex couples and committed religious believers argue that some aspects of human identity are so fundamental that they should be left to the individual, free of all non-essential regulation, even when manifested in conduct. For same-sex couples, the conduct at issue is to join personal commitment and sexual expression, in a multi-faceted intimate

relationship with the person they love. For religious believers, the conduct at issue is to live and act consistently with the demands made by the Being, capital B, that they believe in, that made us and holds the whole world together.

"No person who wants to enter same-sex marriage can change their sexual orientation by an act of will, and no religious believer can change his understanding of divine command by any act of will. Religious beliefs can change over time. Far less commonly, sexual orientation may change over time. But these things do not change because government says they must, or because an individual decides they should. Same-sex partners cannot change their sexual orientation, and the religious believer cannot change God's mind.

"In fighting rights to same-sex marriage, state courts have rejected a distinction between sexual orientation and sexual conduct because they have correctly found both orientation and conduct follows from the orientation central to the person's identity. Religious believers also face attempts to dismiss their claims as involving mere conduct outside of scope of any constitutional right and subject to any and all state regulation. This is the premise of denying judicial review to religiously burden laws that are truly general applicability.

"But believers cannot fail to act on God's will. It is no more reasonable for the state to demand that they do so, for the state to demand celibacy of all gays and lesbians. But religious believers and same-sex couples feel compelled to act on these things, part and parcel of their identity. Both same-sex couples and religious dissenters seek to live out their identities in public. Same-sex couples claim a right beyond private behavior in their homes. They claim their right to participate in social institutions, civil marriage. Likewise, religious believers claim a right to follow their faith, not just in worship service, but also in the charitable services provided through their religious organization and in their daily lives.

"Finally, both same-sex couples and religious dissenters face the problems that what they experience among the highest virtues is condemned by others as grave evil. Indeed, Mr. Speaker, I've shared this many, many times, they share so much in common, both are distinct, discrete minorities. Where same-sex couples see loving commitments of mutual care and support, many religious believers see discordant conduct that violates natural law and scriptural command.

"And where those religious believers see obedience to a loving God who undoubtedly knows best when he lays down rules for human conduct, many supporters of gay rights see intolerance, bigotry and hate. Because gays and lesbians and religious conservatives are each viewed as evil by a substantial portion of the population, each is subject to substantial risk of intolerant, unjustifiable, burdensome regulation. There is no reason to let either side oppress the other, Mr. Speaker. Same-sex couples can have civil rights, and the state should not force dissenting religious organizations to recognize and facilitate same-sex marriage."

The Chair addressed Representative Oshiro, stating:

"Representative you have stretched your time. Would you please wrap it up?"

Representative Oshiro: "Yes, Mr. Speaker."

Representative Takai rose to a point of order, stating:

"Mr. Speaker, point of order, it's been over 10 minutes, Mr. Speaker."

Speaker Souki: "Please wrap it up."

Representative Oshiro continued, stating:

"Mr. Speaker, when the Defense of Marriage Act was issued, our President, our own *keiki o ka 'aina*, President Obama, made a statement. He applauded the decision of the United States Supreme Court. But in the same proclamation or issuance of his public statement, he made this comment. That as we move forward based upon the Supreme Court's ruling, we cannot, and should not, overextend and abridge the freedom of

religions that are protected within state and our federal constitution. And I think we should take wise and heed the advice of our President Obama, our own *keiki o ka 'aina*. Thank you, Mr. Speaker."

At this time, the Chair stated:

"I think we've had extensive debate and the Chair will now be asking for you to submit, if you want to submit your comments for the record, rather than debate. It will be exclusively for that. I think we've had extensive debate for the last seven hours or so."

Representative Har rose, stating:

"Mr. Speaker, may I please be allowed to speak? This is the single most contentious issue of our time. Thank you, Mr. Speaker. I would appreciate it if you would recognize me to please speak in opposition."

Speaker Souki: "You shall be the last one. Let it be known. Please proceed."

Representative Har rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition to Senate Bill 1, House Draft 1, and in fact, Standing Committee Report Number 4. I rise in opposition first and foremost, on page 7 of Standing Committee Report Number 4 it states, 'the United States Supreme Court's recent decision in *United States v. Windsor*, held the federal Defense of Marriage Act, unconstitutional on the grounds that it violates basic due process and equal protection principles.'

"Mr. Speaker, the fact of the matter is this. The United States Supreme Court did not invalidate or find DOMA unconstitutional. They found Section 3 unconstitutional. So this is a misrepresentation, this is factually incorrect information. So I would submit that this committee report has factually incorrect information and should be changed. Again, nobody can dispute, the Supreme Court did not strike down DOMA, the Supreme Court only held that Section 3 was unconstitutional. So respectfully, Mr. Speaker, I would ask that the committee report be amended to accurately reflect the facts.

"Secondly, Mr. Speaker, I object to the passage of Senate Bill 1, House Draft 1, because of the process. Going back to the committee report, Mr. Speaker, on page 4, the standing committee report says, '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.'

"Mr. Speaker, let's look at the facts once again, you know I'm an attorney, I can't help myself. Mr. Speaker, first and foremost, the last time this issue was discussed was in 1997, 1998, when you, Mr. Speaker, were in office at that time. Let's look at the numbers. Of the 51 Members in the House of Representatives, only 10 members were a part of this Body in 1997, 1998 when we were having this discussion. So the fact of the matter is, when people say 'we've been debating this issue', 'we', the 41 of us, have not debated this issue. And so when people say, 'no, civil unions, we discussed it in civil unions', Mr. Speaker, as I recall, civil unions were not marriage. We did not have the debate on same-sex issue in civil unions. And that was made very clear when we voted on that bill.

"The fact of the matter is this. No same-sex marriage bill has been heard since 1997. So to say we've been debating this issue amongst all of us is factually incorrect. Consequently, Mr. Speaker, because no bill has been heard since 1997, the public has not had an opportunity to be engaged in the issue of same-sex marriage. Yes, they may have debated it outside, maybe the public just talked about it at the dining room table or at the cooler, but the fact of the matter is the public has not had the opportunity to weigh in on a bill since 1997.

"Secondly, Mr. Speaker, regarding the process. I'm sad to say this, this was raised earlier, I think some of the members know that had we let the process ensue, that perhaps a different result may have come out of the Judiciary Committee. I don't want to embarrass anyone, but we all know

what happened on the Judiciary Committee. We refused to respect the wishes of the minority, which in my opinion is unprecedented, so far as I'm concerned we always rubber stamp whatever the minority does, we respect what they want with respect to their lineup. We replaced a member on the Judiciary Committee who was a well-known 'no' vote with a 'yes' vote. So I would submit, had we let the process ensue, we could be in a very different situation right now, Mr. Speaker.

"We refused to hear House Bill 5, House Bill 6 and House Bill 7. Again, Mr. Speaker, why? We're in special session. When the outcome is preordained, has the process really been respected? We had a lot of debate over the infamous, now defunct, Public Land Development Corporation. And at that time, which by the way I'd like to note was passed in regular session, and at that time people screamed. We listened to the people, we repealed PLDC because we listened to the people. We don't like PLDC because it's not transparent. There's no openness in government, it doesn't allow the public to be engaged, it violates the public process. The same people who waved that flag to repeal PLDC have no comment on this issue when it comes to the public.

"Mr. Speaker, as an attorney, and many of those who are attorneys in this room, when we prepare for a substantive motion, it takes months and months of preparation."

Representative Say rose to yield his time, and the Chair "so ordered."

Representative Har continued, stating

"Thank you, Speaker Emeritus. It takes months and months of time, and as such, before we go before a judge, oftentimes that judge doesn't make a decision immediately, Mr. Speaker. What the judge does is, take it under advisement. And we have to wait."

Representative Ing rose to a point of order, stating:

"Point of order, Mr. Speaker, she's over her time. The Representative, Speaker Emeritus, has already used up his two times to speak."

Representative Ito rose to yield his time, and the Chair "so ordered."

Representative Har continued, stating:

"Thank you, Representative. And so, Mr. Speaker, I'll wrap it up. Again, the judge rarely ever immediately grants that motion then and there after oral arguments. We often have to wait weeks before we have a decision. And here in this situation, after 57-plus hours of testimony, approximately an hour and a half later we went into decision-making. We had a new House Draft 1 and we voted the bill out. Did we really read the 15,000 pieces of testimony that we got? It's the equivalent of three reams of Xerox paper. Did we do our due diligence?

"Mr. Speaker, I think the thing that frustrates me the most in this entire process was, a young girl who I met along the way, she testified, Annora Ng, she was number 2585. I asked her, well what's the big deal if we pass this bill during this special session? She said, 'if you pass this it proves that our government doesn't care, our government doesn't listen, our government is disgusting.' Mr. Speaker, I don't want to be a part of a disgusting government. I want our public to be proud of us. And again, I submit, I truly believe that QMark poll is correct. One of our members went on television touting that QMark poll. I believe that the people of Hawaii have in fact changed their views. So what is the harm in allowing them to vote? For these reasons, Mr. Speaker, I respectfully stand in opposition. Thank you."

Representative Fukumoto rose to speak in opposition to the measure, stating:

"Mr. Speaker, I know I already yielded my time so I just wanted to register my opposition in addition to, since I didn't get the opportunity to speak for myself, I wanted to adopt the words of the Representatives from Kapolei, Laie, Moanalua, as well as both Representatives from Mililani, minus our senior Representative's comments about his wife. Thank you," and the Chair "so ordered." (By reference only.)

Representative Carroll rose in opposition to the measure and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Awana rose in opposition to the measure and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Fale rose in opposition to the measure and asked that the remarks of Representatives Har and Oshiro be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Oshiro rose to disclose a potential conflict of interest, stating:

"Mr. Speaker, I have a question on a potential conflict of interest. I'm a licensed attorney in the State of Hawaii and I need to disclose the possibility of, given the law that we might be passing, it will probably lead to some legal service opportunities for myself. Thank you," and the Chair ruled, "no conflict."

Representative Ing rose to speak in support of the measure, stating:

"Mr. Speaker, I'd just like to ask for the wise comments of the Representative professor from Makiki to be inserted into the Journal as my own. I'd also like a ruling on a potential conflict of interest. I'm a straight man who will be voting on gay rights," and the Chair ruled, "no conflict."

Representative Thielen rose to speak in support of the measure, stating:

"Mr. Speaker, I'm sorry, I just wanted to make sure I cast my 'aye' vote. I thought we were going to have a roll call."

At this time, Representative Fale requested a roll call vote.

The request for roll call was put to vote by the Chair and upon a show of hands, the request was granted.

Roll call having been approved, the motion that S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," pass Second Reading and be placed on the calendar for Third Reading, was put to vote by the Chair, and on the following show of ayes and noes, carried:

Ayes, 30: Belatti, Brower, Coffman, Evans, Hanohano, Hashem, Ichiyama, Ing, Kawakami, Kobayashi, Lee, Lowen, Luke, McKelvey, Mizuno, Morikawa, Nakashima, Nishimoto, Ohno, Onishi, Rhoads, Saiki, Say, Souki, Takai, Takayama, Takumi, Thielen, Wooley and Yamashita.

Noes, 18: Aquino, Awana, Carroll, Cullen, Fale, Fukumoto, Har, Ito, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Tokioka, Tsuji, Ward, Woodson and Yamane.

Excused, 3: Cabanilla, Cachola and Choy.

ADJOURNMENT

At 8:55 o'clock p.m., on motion by Representative Saiki, seconded by Representative Fukumoto and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Thursday, November 7, 2013. (Representatives Cabanilla, Cachola, Choy and Fale were excused.)

NINTH DAY**Thursday, November 7, 2013**

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:11 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Roy M. Takumi, after which the Roll was called showing all Members present with the exception of Representatives Cachola, Carroll, Choy, Evans, Fukumoto, Ing, Ito and Oshiro, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Eighth Day was deferred.

ORDER OF THE DAY**ANNOUNCEMENTS**

Representative Luke: "Thank you. I forgot to announce that yesterday was one of our colleague's birthday, Representative Nicole Lowen. Happy birthday. Sorry, I forgot yesterday."

Representative Ward: "I appreciate that announcement from the Chair of Finance because it was Paige Altonn, my chief of staff's, birthday yesterday, and I entirely missed it. So, thank you very much. If you see her, wish her a happy birthday. Thank you."

ADJOURNMENT

At 10:16 o'clock a.m., on motion by Representative Cabanilla, seconded by Representative Thielen and carried, the House of Representatives adjourned until 10:00 o'clock a.m. tomorrow, Friday, November 8, 2013. (Representatives Cachola, Carroll, Choy, Evans, Fukumoto, Ing, Ito and Oshiro were excused.)

TENTH DAY

Friday, November 8, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:11 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Gregg Takayama, after which the Roll was called showing all Members present with the exception of Representatives Carroll, Choy, Ing and Oshiro, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Ninth Day was deferred.

INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative Luke introduced former Representatives: Heather Giugni, Blake Oshiro and Jackie Young.

Representative Tokioka introduced his constituent, Ms. Annette Oda.

Representative Lee introduced former HSTA Presidents June Shimokawa and Karen Ginoza; and Capitol TV staff: Glenn Booth, Conrado Bush, Zoe Tanaka, Keahi Renaud, Darrow Hand, Don Honda and Sharon Mujtabaa.

Representative Ohno introduced Pastor Max Fowler of Kakaako Christian Fellowship.

Representative Awana introduced Pastor Allen Cardines; Pastors Jay and Geri Amina from Ark of Safety; and guests in the audience.

Representative Fale introduced Youth Pastor Atama Vakalalabure.

At 10:21 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:03 o'clock a.m.

At this time, the Chair stated:

"To our guests in the audience, in order to maintain order and decorum in this Chamber, the Chair respectfully asks that the audience refrain from any outbursts or demonstrations which may disrupt the deliberations and proceedings on the Floor. Any disruption of these proceedings will be reviewed in violation of House Rules and Hawaii State Law. Continued outbursts will get you removed from the gallery. So I humbly ask that you allow us to do our job. Thank you very much."

ORDER OF THE DAY

SUSPENSION OF RULES

On motion by Representative Cabanilla, seconded by Representative Thielen and carried, the rules were suspended for the purpose of considering a certain Senate Bill for Third Reading by consent calendar. (Representatives Awana, Choy and Lowen were excused.)

Representative Oshiro rose, stating:

"Mr. Speaker, I just wanted to raise an objection of waiving the rules."

At 11:05 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:11 o'clock a.m.

THIRD READING

S.B. No. 1, HD 1:

Representative Saiki moved that S.B. No. 1, HD 1 pass Third Reading, seconded by Representative Cabanilla.

At 11:11 o'clock a.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:13 o'clock a.m.

At this time, Representative McDermott offered Floor Amendment No. 14, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by replacing its contents with the following:

SECTION 1. The legislature finds that the issue of legalizing same-sex marriage is one of the most contentious issues of this generation. After receiving Senate Bill No. 1, during the second special session of 2013, the joint house committee on judiciary and finance conducted a public hearing on the measure, which began on October 31, 2013 and did not conclude until November 4, 2013. No other issue has ever generated as much testimony in a single public hearing in the history of the house of representatives.

Therefore, the legislature further finds that rather than rushing to a decision on the issue of same-sex marriage in a truncated special session, it would be more prudent to convene a task force to study the potential impacts of same-sex marriage in Hawaii, before taking any legislative action.

The purpose of this Act is to create a task force to study the social, economic, and religious impacts of legalizing same-sex marriage in Hawaii.

SECTION 2. (a) There shall be established a task force known as the Same-Sex Marriage Task Force. This task force shall study the social, economic, and religious impacts of legalizing same-sex marriage in Hawaii, and examine, among other issues:

(1) Whether civil unions are sufficient to provide the rights and benefits necessary to ensure strong, healthy families in Hawaii;

(2) The impact of the United States Supreme Court's 2013 decisions in *United States v. Windsor*, regarding the constitutionality of the Defense of Marriage Act, and *Hollingsworth v. Perry*, regarding the constitutionality of California's ballot initiative banning same-sex marriages known as Proposition 8;

(3) The social, economic, and religious impacts of passing, or failing to pass, same-sex legislation in Hawaii; and

(4) The effects of legalizing same-sex marriage through legislative action, judicial action, or ballot initiatives, as seen in other jurisdictions of the United States, to determine whether Hawaii should follow those jurisdictions, and to determine whether improvements could be made based on the experiences of those jurisdictions.

(b) The task force shall be chaired by the director of the department of business, economic development & tourism, or the director's designee, who shall serve as the chair of the task force. The chair shall select the following members of the task force:

(1) The director of finance, or the director's designee;

(2) Two esteemed members of Hawaii's legal community, including at least one attorney who has served the State or one of the State's counties, or the attorneys' designees;

(3) Two members of Hawaii's business community, including at least one member representing Hawaii's tourism industry, or their designees;

(4) Two current or former clergy members, or the clergy members' designees;

(5) One member of a prominent community organization that advocates for same-sex marriage, or the member's designee;

(6) One professor of economics from the University of Hawaii at Manoa who has conducted research on the economic impact of same-sex marriage in Hawaii, or the professor's designee; and

(7) One professor of sociology from the University of Hawaii at Manoa who has conducted research on the sociological impact of same-sex marriage in Hawaii, or the professor's designee.

(c) Additionally, the task force membership shall include:

(1) One member selected by the president of the senate; and

(2) One member selected by the speaker of the house of representatives.

(d) The task force shall meet a minimum of five times before January 1, 2015.

(e) The task force shall report its findings and recommendations, including proposed legislation, if any, to the legislature no later than twenty days prior to the convening of the regular session of 2015.

(f) The task force shall cease to exist on June 30, 2015.

SECTION 3. This Act shall take effect upon its approval."

Representative McDermott moved that Floor Amendment No. 14 be adopted, seconded by Representative Ward.

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, thank you so very much. I realize that this may be a little redundant, and we are in the last legs of our long journey, Mr. Speaker. I have tried everything I can to give the majority an opportunity not to move forward with this measure that I believe, the underlying measure, unconstitutional, which I'll get into when we speak on the main measure.

"But the measure before us is the task force similar to the one that was passed earlier this year. However, it's different in the fact that it adds the Director of DBEDT in charge of the task force, vice the head of the law school, and it adds an additional member of the clergy. This is a more balanced approach, I think, and I think it takes into consideration the folks who have been here outside for the past two weeks sharing their voice with us. And it gives us an opportunity to do something that's constitutional, or do something other than an overtly unconstitutional act.

"I have spoken to leadership before this session, and I wanted to find a third way. This is a third way. It is a positive affirmative action. It is movement forward, it is a solution. It is not just carping and being negative. I am offering a way out, if you will, to do something. So, Mr. Speaker, with that, I ask for the humble consideration of the Body."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support. For a moment, if we could all take a look at the gallery. For a moment, if we could take a look outside the gallery into the entry area into this Chamber. We've seen what we're doing to the people of Hawaii, Mr. Speaker. Take a look, we have a red line that's dividing the community, a red line that's dividing families and the entire state as a whole, Mr. Speaker. Through this process of this division, we have not allowed other members, neighbor islands, to have the opportunity to speak, to have their opportunity to hear what this is all about, and to either accept or reject this, given the truncated special session that the Governor has handed down to us.

"I rise in support because we need to do what this amendment will do, as it talks about this issue being the most contentious issue of this generation. Therefore, the legislature further finds that rather than rushing to a decision on the issue of same-sex marriage in a truncated special session, it would be more prudent to convene a task force to study the potential impacts of same-sex marriage in Hawaii, before taking any legislative action. The purpose of this Act is to create a task force to study the social, economic, and religious impacts of legalizing same-sex marriage in Hawaii."

"This Body passed a measure to that effect, Mr. Speaker, and it was never given an opportunity to do what it was supposed to do. I remember the meeting that we had with the Attorney General and the Governor, and

in that meeting, Mr. Speaker, the first words out of the Attorney General's mouth were that we needed to pass this so that people from out-of-state could come and get married here because it would be good for the economy of the State of Hawaii. Those were the first words out of his mouth, Mr. Speaker.

"Now, my job is to represent people who live in the State of Hawaii. I'm not going to pass laws here so that it will be a matter of convenience or good for somebody outside of the State of Hawaii. My first priority has to be the people here. And if this measure, which we have seen the physical manifestations of the division that it's putting us through, why not make the study? Why not take an opportunity to make sure that what we're doing is the right thing, and not so that we can put extra money in the pocket of the state coffers, Mr. Speaker? That's the wrong reason to do this.

"Growing up here, my parents said, 'one of the last reasons you should do something is for a dollar.' And if that's what's being thrown out to us, well, we're going to get \$270 million or so. Is this worth \$270 million, Mr. Speaker? The divisions with family, with communities and in this state, is that worth \$270 million? Is that the number one reason why we're doing this, as the Attorney General threw out to us in the meeting that we had. Is the relationship that I have with my brothers, my sisters, is that worth \$500 billion? The answer is 'no', Mr. Speaker, the answer is 'no'.

"Until we know exactly what those impacts are going to be, I say it is wrong to push this measure through without knowing what it's going to do. And the reason, the overall reason is, we need to get people benefits for this coming tax season. That's why we have to do it now. Is it worth it? Is this worth it? If this Body feels that the wedges we are driving through the hearts of our communities, Mr. Speaker, for the extra money so that people can get some extra dollars this next legislative tax season, or so that the coffers can get a little more money over the economic benefits, I submit to you, Mr. Speaker, that's one of the worst reasons to rush this measure.

"For those reasons, Mr. Speaker, this amendment is something that the Body should consider to make sure that we understand what it is we're doing, so we can remove the pain, we can remove the wedges, and act in the best interest of the people in the state as a whole. Thank you, Mr. Speaker."

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support. I made a confession during the 55 hours of testimony that I came out of academia and as a freshman I was very, very disappointed in the way we do business here. We don't make decisions on the basis of data, we don't make decisions on the basis of facts. It's more opinion, it's more case, a corollary from here."

The Chair addressed Representative Ward, stating:

"Representative Ward, I apologize, you cannot infer the thought process of our committee members on Judiciary or Finance. If you recognize that or believe that, that's your own thought, but you cannot infer their intent or their thought process."

Representative Ward continued stating:

"In Indonesian they say [*speaking foreign language*]. Precisely because of what you said, is why we need this resolution. It says, 'let's keep score on what is going on with same-sex marriage in Hawaii.' In their testimony, the tax department didn't even know how to quantify what civil unions have cost. That's loosey-goosey, Mr. Speaker. This resolution says, 'let's do it, let's be evidence based,' as I was interrupted in the Finance Committee, you've interrupted me, in the Finance-Judiciary hearing, I was trying to commend a nurse who was doing, quote, 'evidence-based practices.' I said, 'I envy you for doing evidence-based practices.'

"That's what we need to do, Mr. Speaker, and if you can prove me otherwise. I'm not making a condemning notion of this Body, but I'm telling you, the way we do business, it's too loosey-goosey, it's not evidence-based. This resolution gives us some factual, empirical evidence

base to say, 'here's what we've done, here's what the scores look like.' That's all it is, Mr. Speaker, nothing more. Thank you very much."

Representative Brower rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. Previously we heard about division that's being created. And I ask members to think, who is creating this division? Who's the roadblock to inclusion on the underlying bill? Who was keeping someone else from receiving a privilege? Who was creating the division on this issue, and who was trying to create unity, inclusion and equality? Mr. Speaker, let the Legislature vote."

Representative McDermott rose to respond, stating:

"Mr. Speaker, first of all I would like to include the remarks from the gentleman from Hawaii Kai for his sage wisdom and the Representative from Laie for his passion, and it's been remarkable to watch him develop as an orator, I'm very proud of him, he is a bright star. Thank you so much.

"Just briefly, who's causing the division? We are, Mr. Speaker, we are. This is a remedy to an unconstitutional provision we are pushing out. The power invested in this Body comes from who, Mr. Speaker? The people. The people in 1998 spoke, and I'll get to that when we speak to the main bill, Mr. Speaker, but this is a positive alternative solution. We are causing a division. We are causing it because we are taking an action, they feel that they were tricked, a bait and switch. We are causing it, not them. They're reacting because they think they got shafted. That's why there's so much angst and anger out there. Clearly.

"So, Mr. Speaker, this resolution is a third way we can take a positive, affirmative action with this document, and say that we did something, but we didn't do anything bad or unconstitutional. Make no mistake, Mr. Speaker, this Body created the division. Thank you."

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of the floor amendment. I rise in support of the floor amendment because I think there's one issue here that was really overlooked during the 57-plus hours of testimony. The issue was the economic impact of what same-sex marriage would mean to the State of Hawaii.

"Now we had Mr. La Croix talk about what the positive impact could be, but we also had Dr. Minling Pan, also a Chinese economist from the University of Hawaii, who also talked about the negative impact same-sex marriage could have to our economy. Mr. Speaker and members, the fact of the matter is this. Our economy is built on tourism, and even a 1 percent decline in tourism from the Asian market will have a significant impact on our general fund and will offset any gains that were proposed by Mr. La Croix.

"For those reasons, Mr. Speaker, this is a very timely floor amendment. We must understand the economic impact, and quite frankly, I'm no longer a member of the Finance Committee, but I was quite surprised that the Finance Chair and many of the Finance members overlooked and just seemed to ignore Dr. Minling Pan.

"Mr. Speaker, the fact of the matter is we have, in fact, moved forward with this bill, and so all I can say is, based on moving forward with this bill, we have not done a thorough analysis on what the negative impacts could be. Again, even a 1 percent decrease from the Asian tourism market will have a significant impact on our tourism economy, our general fund, and more importantly, will offset any of the gains that were proposed by Mr. La Croix. For those reasons, Mr. Speaker, I support this floor amendment. Thank you."

At 11:25 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:27 o'clock a.m.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'm rising in support of this floor amendment, and let me explain to you the reason why. Although my first impression, that it's redundant, ill timed, ill conceived, it does serve the purpose of prompting my recollection that there actually should be a task force report or something similar to this before this Body. I think, if I recall correctly, sometime in mid-September there was a newspaper article in the Star-Advertiser disclosing the fact that a draft of a task force report, which was convened by both the House and Senate leadership, comprised of both House and Senate members, including some of the members of the clergy, the business community, members of the advocacy groups, university professors of economy, School of Sociology at the University of Hawaii at Manoa, some DBEDT officials and staff, and I believe the Dean of the Richardson School of Law at UH Manoa, I believe that article suggested that there was a draft report that was being circulated for approval by the task force members, and then finally publication released to the Body, House and Senate members, all 76 of us.

"Heretofore we have not received a copy, or I have not received a copy, but I haven't been here every day of the week so I may have not been around to receive it. So I guess as a way of supporting this floor amendment, I also beg the question through this support and my words herein. Where is the draft report? What happened to the draft report? And can we see the draft report before we vote on this floor amendment? Thank you, Mr. Speaker."

Representative Thielen rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'm in opposition to the amendment. In response to the Representatives from Laie, Kapolei, and Wahiawa, this is not about money. This is about equal rights. And, Mr. Speaker, let the Legislature vote, thank you."

Representative Fale rose to respond, stating:

"Mr. Speaker, I was in that meeting with the Attorney General, and I was in that meeting with the Governor. That's exactly what was told. The very first thing, number one on the list, good for Hawaii's economy, \$200-and-so million. That was the underscored thing that this was issue, about federal income tax or whatever federal benefits in regards to that and economic beneficiary issues. So I say again, Mr. Speaker, what I was told. I can only tell you what I was told about what this was all about, what the special session was about, and the urgency of calling it had to do with going into next year's tax season.

"I would say, Mr. Speaker, an answer to the question of who has caused the division. The Governor has caused the division, Mr. Speaker. He has put this on this Body, on this state, in our communities, without thinking through this and what the impacts were. We knew that there was, we're still waiting for that report on the study of what same-sex marriage would do here in the State of Hawaii. But once again, Mr. Speaker, we voted on SB 1, HD 1 on Wednesday. That report didn't even come onto our desks until we were already here in session. Not a single member of this Body was afforded the opportunity to take that measure back to their community and run it by them to see how they felt about it. Not a single Representative in this Body, Mr. Speaker, was afforded that opportunity to go back to the community and say, 'is this okay, is this alright?'

"We asked for that recess. We said, 'please, allow us, give us five days to arrange town halls throughout our communities so that we can talk to the families, to the people who are going to have to live under this.' I've been getting emails from everyone, who have been criticizing me on my position on this issue, and I said, 'I wasn't even given the opportunity to come and ask you and your family how you felt about this.' And that's wrong. I wasn't allowed the opportunity, that's my job, to be a conduit between myself and the district that I represent. And I wasn't even able to talk to those who were for and against it to see what their position was on SB 1, HD 1, and that's wrong.

"And my position is, even more important than letting the Legislature vote, is let the people vote, Mr. Speaker. Let the people vote. All power in the State of Hawaii is vested in the people of this state. And given the tight situation and the divisions that exist to this day..."

Representative Matsumoto rose to yield her time, and the Chair "so ordered."

Representative Fale continued, stating:

"Thank you very much. Given the importance of this issue, and what we're physically seeing manifested today on what it's doing, Mr. Speaker, on matters of this significance, of this importance, we need to go back to the authority that gives us the power that we have in this Legislature, Mr. Speaker, which is the people of Hawaii. I trust them. We all should trust them.

"Whenever we get into binds, whenever I have a rift with my brother, my mom and dad would tell me, it doesn't matter who's right. The bonds that you have as family are more important than anything else on the face of this earth. The bonds we have as people of the State of Hawaii is more important than any economic benefit that may be derived from this measure. And we've heard that there may not be any economic benefit to this. On the whole, it may be a negative, and we need to know that.

"But more importantly, far and above any of that, are the bonds that bind us together as people, Mr. Speaker, and this measure has caused more division than it's worth to our families, to our communities, and this state. And once again, Mr. Speaker, don't let this Legislature vote, let the people vote."

Representative Ward rose to respond, stating:

"Mr. Speaker, I feel compelled as a member of the Finance Committee, and one who cried for empiricism, when I hear my colleague from Kapolei talking about the numbers, I feel compelled to respond. The perspective I bring is a little bit different than most people. I mentioned earlier in another speech a few days ago, half of my relatives are Muslims. There're 300 million Muslims in the area that she spoke of. 300 million Muslims are a pretty viable number, and I should mention that I was speaking to the Dante Carpenter of Malaysia, the head of the coalition, who loves Obama, by the way, but he cannot figure out, what is this bent with him and the other states going towards same-sex marriage?

"The Muslim nations of the world are very concerned about what they see happening. So to say that the 250 million of the Indonesian population is going to come to Hawaii, which is now emerging as a big middle class, plus the other 1 billion from China. And, Mr. Speaker, we heard those who were just off the boat, if you will, they were very new immigrants. They said, 'in China I can't say these things, but in America, thank God I can speak out, same-sex marriage is antithetical to our culture, it shouldn't pass,' etc., etc.

"Those representing even a miniscule amount of the 1.3, now 1.4 billion in China, is going to be a formidable negative reaction. So again, for the sake of empiricism and keeping our eyes open, this measure has merit, and that's why I spoke twice on it. Thank you, Mr. Speaker."

Representative Luke rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, thank you very much. In opposition, and I take great offense to the accusation made by the Representative from Kapolei. The financial issues, although I don't know if it's relevant to this bill, was extensively debated, especially thanks to the Representative from Hawaii Kai who questioned various testifiers about the financial impact. So with that, I call for the question."

At this time, Representative Luke called for the previous question.

The motion that Floor Amendment No. 14, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to

carry, with Representatives Brower, Luke and Thielen voting no, and with Representative Choy being excused.

At 11:36 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:38 o'clock a.m.

At this time, Representative Ward offered Floor Amendment No. 15, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution; and
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. Within the past three years, several states, including Hawaii, have enacted laws that require school districts that teach sexuality health education to include age appropriate, medically accurate health education. The legislature finds that while sexuality health education in schools is intended to assist students in their growth and development, great care must be taken to uphold religious liberty for individuals of conscience, whether they be teachers, parents, or legal guardians of those students.

The increasing incidence of teaching so-called "alternative lifestyles" in schools, particularly homosexual lifestyles, necessarily implicates the First Amendment right to free exercise of religion under the Constitutions of the United States and the State of Hawaii. Many religious traditions do not condone homosexuality or homosexual relationships and therefore, teachers must be given the right to "opt out" of having to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. Likewise, parents and legal guardians must also be given the right to "opt out" of having their child receive any sexuality health education that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs.

Therefore, the purpose of this Part is to clarify that:

- (1) A teacher shall not be required to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. No teacher who fails or refuses to teach such material under this Act shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal. The school may, in its discretion, arrange for another teacher to teach the material in question;
- (2) A parent or legal guardian shall not be required to ensure the attendance of the parent's or legal guardian's child at sexuality health education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs. No parent or legal guardian who fails or refuses to ensure the attendance of the parent's or legal guardian's child under this Act shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal; and
- (3) A student shall be excused from sexuality health education classes or any portion thereof pursuant to this Act, only upon the written request of the student's parent or legal guardian. A student shall not be subject to any disciplinary action, academic penalty, or other sanction if the student's parent or legal guardian requests that the student not receive instruction under this Act.

SECTION 14. Section 321-11.1, Hawaii Revised Statutes, is amended to read as follows:

"[H§321-11.1H] Medically accurate sexuality health education. (a) Sexuality health education programs funded by the State shall provide medically accurate and factual information that is age appropriate and includes education on abstinence, contraception, and methods of disease prevention to prevent unintended pregnancy and sexually transmitted disease, including human immunodeficiency virus.

(b) For the purposes of this section:

"Age appropriate" means suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group.

"Factual information" means medical, psychiatric, psychological, empirical, or statistical information that is verified or supported by research conducted by recognized medical, psychiatric, psychological, and public health professionals or organizations.

"Medically accurate" means verified or supported by research conducted in compliance with accepted scientific methods and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

"Sexuality health education" means education in any medium regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases."

(c) A teacher shall not be required to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. No teacher who fails or refuses to teach such material under this section shall be subject to any fine, penalty, injunction,

administrative proceeding, or other civil or criminal liability for the failure or refusal. The school may, in its discretion, arrange for another teacher to teach the material in question.

(d) A parent or legal guardian shall not be required to ensure the attendance of the parent's or legal guardian's child at sexuality health education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs. No parent or legal guardian who fails or refuses to ensure the attendance of the parent's or legal guardian's child under this section shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal.

(e) A student shall be excused from sexuality health education classes or any portion thereof pursuant to this section, only upon the written request of the student's parent or legal guardian. A student shall not be subject to any disciplinary action, academic penalty, or other sanction if the student's parent or legal guardian requests that the student not receive instruction under this section.

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 14 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 15, 16, 17, and 18, as follows:

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on December 2, 2013."

Representative Ward moved that Floor Amendment No. 15 be adopted, seconded by Representative McDermott.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of the amendment. This Body has been accused of not listening to the people. This Body has been accused of having an inability to listen to particularly one group, one gender. I call them the 'mama bears'. Those were the women who, time after time, shouted out, 'in addition to protecting our churches, protect our keiki. We're in Hawaii, aloha and keiki are almost sacred concepts.' So on behalf of the mama bears, I want to repeat what I said the other day, I want to be very clear what they said to us, and very clear what this bill is about. This bill is about equality, but people contend it's not about education.

"Because what we've learned from other places, Mr. Speaker, is that after same-sex marriage comes the curriculum revolution. Massachusetts, Canada, etc., etc. And they say, 'well that's not true, it's not going to happen here.' And I said yesterday, which, by the way, we didn't have on television, we said it was 'Ōlelo's fault, Mr. Speaker, you know that Capitol TV is in the purview of you and the Speaker. And the reason why the people didn't hear that, I know I'm meandering but I want the people to know they didn't hear yesterday about these debates, and some of you are going to complain because I'm going to be repetitive, but the people were blocked from hearing the debate yesterday because you guys didn't allow it to happen.

"In continuation, I said you don't have to go to the moon to prove it's there. We don't have to go to Massachusetts to see their curriculum, we don't have to go to Canada to see their curriculum. We have to look to see that it's going to happen, if it's happened in these other places, unless we are a unique planetary exception to this.

"My point, Mr. Speaker, is that evidence was not believed, they said this is not an educational bill, we'll take that up later. But the mama bears are crying out, I said the mama bears are demanding, 'protect our kids.' And lo and behold, what has popped up. I want my brother from Laie to help me pass this thing out, because this is the first onslaught, if you will, the first indication, the first maybe tip of an iceberg, of which is an empirical based thing."

At 11:41 o'clock a.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 11:45 o'clock a.m.

Representative Ward continued, stating:

"Mr. Speaker, may I continue. I think I ended somewhere about, you don't have to go to the moon to prove it's there. We have some evidence of an emerging curriculum, something that's being tested, something whose purpose, if you would look at, I believe it's page 2. It's good curriculum, except it needs some nuancing in the interpretation of it, some clarification.

"The *pono* choices, as it is called, is a 10-module curriculum that provides young adolescents, and this is particularly the 7th grade, 12 to 13, when you reach puberty, that's the class that it's in now. It gives them knowledge, attitudes, skills that are necessary to reduce the risk of sexually transmitted diseases or sexually transmitted infections, STIs, and pregnancy. And it goes on in detail. The developers of this are the Berkeley Policy Associates, Hawaii Department of Education, Planned Parenthood of Hawaii, and Alu Like.

"If my colleagues would turn to page, I believe it's page 3, where it says what schools are being impacted, or let's say treated, this is where the experience of this curriculum that probably not too many people are aware of. It's Aliamanu Middle School, Highlands Intermediate, Hilo Intermediate, Iao Intermediate, Kapolei Intermediate, you guys can read it all. In the charter schools, Hawaii Academy of Arts and Science, Waters of Life, etc., etc.

"The point is, Mr. Speaker, this thing is pretty well circulated, and it's on a pilot basis, which is good, they're going to basically measure the effects of it, etc. Now this is probably good because kids need to know about sex. No question about it whatsoever. What may be questionable, or what may be presumptive about it is when we go to page 11. Everybody please go to page 11. Page 11 is when it actually meets at the student level when there are things called worksheets. The worksheets on the 'Pono choices' has a *pono* relationships worksheet.

"If you look at the worksheet, it has three different scenarios, this is the case-study method. The first two case-studies are heterosexual, and one is homosexual. A no big deal."

Representative Johanson rose to yield his time, and the Chair "so ordered."

Representative Ward continued, stating:

"Thank you, Representative. No big deal. Two heterosexual relationships, one homosexual. Well okay, it's appearing. But then the category of the heterosexual relationships is categorized as, quote, 'unhealthy.' Heterosexual relationships, unhealthy. But it just happens that the homosexual relationship is called healthy. Is that a bias? Well, does that say anything? Well, maybe not much. But then, Mr. Speaker, this is not a smoking gun, but when you get to the other worksheets, which I call ya-mills, I've been training entrepreneurs and we always have ya-mills. We've done about 3,000 graduates in 10 countries, and ya-mill is the sacred thing, yesterday's most important learning. The equivalent of a ya-mill is a reflection square which was brought into the classroom here. Where it was, I have no idea.

"The learning of the day was as follows. Oral sex, mouth on genitals. Vaginal sex, penis enters vagina. This is the student saying what they

learned that day. Three, anal sex, penis enters anus. Mr. Speaker, this again, it's not heavy, it's not a smoking gun, but it shows that something regarding what's going on in Massachusetts, what's going on in Canada, seems to be emerging, seems to be evolving, seems to be present in this curriculum. And it's something that the mother bears say, 'hey guys, okay, same-sex marriage, okay, but let's not have it go into the school system.' And I know somebody will stand up and say, 'well look, we have an opt-out policy', there's some controversial things about some parents have opted out of this, I'm not going to go into those details, but they're doing it with the DOE probably now.

"But, Mr. Speaker, we've got to give the mama bears some breathing room. Ideally, this gives the Body an opportunity to amend this bill and say, 'look, don't worry about it. We've got your churches covered, we've got your kids covered, let's just get on with it.' And if the vote maintains the same as it is, and without any amendments, these people are going to be very angry, Mr. Speaker. They're going to say, 'you listened to us, but you didn't do anything about it.' So I just bring that curriculum as new information that I added the other day to my Floor speech from where otherwise we amend where teachers can opt out, parents can opt out, and this is something that I heard very loud and very clear from the people of Hawaii.

"Mr. Speaker, I think we are compelled to pay attention, otherwise as some call it a sleeping giant, mother bears who are looking after their cubs are mother bears looking after their cubs. I didn't even mention the papa bears yet, I didn't even mention the Tenari Maafala's and the others with great intensity, want to make sure that what we're going to do is *pono* even though that's what they call this thing. We've got to do what's *pono*, we've got to unite these groups up here. We've got to live with each other, people, we've got to get beyond this I'm for, I'm against, you're this, you're that, we've got to unite people, Mr. Speaker. We, as leaders, have to project this unity. We have to get legislation that doesn't tie those groups up there in court. Or shouting at each other, or fighting each other, or making bullying remarks to each other, or bullying their kids in school.

"Mr. Speaker, we've got to address this issue on behalf of the mama bears. That's all I have to say, thank you."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support of the floor amendment, but I will vote against the underlying measure, the bill, if it comes to the Floor. To continue on to what my colleague was saying. Mr. Speaker, page 11, there are three scenarios as he discussed, and one of the three is a homosexual relationship. That would lead us to believe that 33 percent of the population, as it is being presented, are actually people who engage in homosexual behavior.

"Scenario one is unhealthy, it is a heterosexual behavior, it is described as unhealthy. Scenario number two, which is a male-on-male homosexual behavior which is described as, quote-unquote, 'healthy' by the student who took the class. So I'm not going to make any judgments, because who am I to judge? But I would refer the members to the National Institute of Health to review the statistics on male-on-male sex to make their own determination if it is a healthy activity. Scenario number three, the relationship is a heterosexual relationship, and it is considered abusive.

"So we seem to have an inculcation of our youth here. Now granted, it's a pilot project and I believe the parents were made aware of it prior, but this is the nose of the camel under the tent. Mr. Speaker, we do have a current policy, many people said this is not the curriculum. Well this is a pilot project for future curriculum and it misrepresents the behavior, in my view, and the quantitative analysis of the representation.

"But, Mr. Speaker, we have a current policy in place on controversial issues. And much to the members' chagrin, I need to refer back to my Dick and Jane books. Now they're not called Dick and Jane books anymore, but they're used as illustrations to amplify the curriculum contained therein. Mom and dad get in the car, spot the dog, the names and the faces have changed, but the principles are the same, Mr. Speaker.

"Parents need protection because it takes one individual who's adopted a child to file a lawsuit, a homosexual couple to file a lawsuit and say, 'you know, you don't have any illustrations of my family in any of these books. By not having our family in those books, like the third grade, the fourth grade, the fifth grade, the sixth grade, you are creating an environment where my child feels prejudiced. My child feels excluded. It's a hostile learning environment for my child.'

"It takes one judge, just one, and I think, Mr. Speaker, we can find one here in Honolulu, who would say, 'you're absolutely right' and strike down the controversial issues policy and mandate that this type of curriculum is in our schools, and there is no opt-out. And if you go to the principal and say, 'I'd like to opt-out', you will not be called by the principal, but you will be perceived in the community as a hater, bigot, homophobe. There's no opportunity to have an intellectual disagreement on this issue, Mr. Speaker, none. You're a hater, bigot, homophobe, or ignorant. Those are the options you have. Trust me, I know, they've been shared with me.

"So Mr. Speaker, current curriculum doesn't have it, but here's a pilot project. The camel's nose is now under the tent. It's coming. If we don't institute protections, parents will lose their rights to this newly created civil right. Mr. Speaker, it takes one judge to do this. One judge, and anyone to say that it won't happen, I told you before and I will tell you again, sir, I will bet my house, my house, that within 10 years this will be the case if this bill passes. There's no doubt about it, Mr. Speaker, none.

"In California they actually mandate it, Senate Bill 48, they have to change all their books. They haven't done it yet because they don't have any money. But in their curriculum they have to emphasize, if say a composer like Mozart, I don't know if he was gay, but if he was gay, it has to be part of the curriculum. Well he wrote these nine wonderful symphonies, and by the way, he was gay, a homosexual male, and he made wonderful contributions. They actually want to publicize his private behavior. It's a private behavior, Mr. Speaker. It's not an immutable, benign, genetic characteristic. Again, it is not an immutable, benign, genetic characteristic, it's a private behavior.

"So, Mr. Speaker, the camel's nose is under the tent, the parents need protection, and I urge my members to support this for the parents, for the children. The evidence, it's right here. Please. Thank you."

Representative Takumi rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I oppose this. Thank you, Mr. Speaker. Just two comments before I get into the underlying amendment. Just a quick clarification about the judicial process in the State of Hawaii, and in fact in every state. If one judge, in Honolulu I guess, says that schools have to teach the homosexual agenda, my last reading of the judicial system in our country and in our state, is that can be appealed. But I could be wrong.

"Second point is that I just hope, because the Representative from Hawaii Kai made mention that, although this amendment was introduced a few days ago, we weren't on 'Ōlelo. And now we're on 'Ōlelo, so the people of Hawaii can see what the proceedings are about. I hope this doesn't set a precedent that unless it's on 'Ōlelo, amendments will be introduced so that people can see it even more. That's never been the policy of the House, and I hope that doesn't become the policy of the House.

"Now let me get to the underlying amendment. And I hate to repeat myself, but I will, that the Department does have a policy, 2210.1, that clearly states that any time a school will teach a controversial subject, and I know it was brought up in one of the hearings, that if this bill should pass and it's legal, then it's normal, then it's not controversial. Mr. Speaker, let me remind you, abortion, whether some people like it or not, is legal in the State of Hawaii. It's legal, but it's still controversial. Birth control. Last time I looked, anyone can go to a drug store and purchase the birth control of their choice. It's legal, even though some people believe that birth control contradicts their faith. It's controversial. And thereby, when that topic comes up in the public schools, parents have the right to opt-out.

"The other reason why I think this floor amendment is problematic is because it's very narrowly constructed. It doesn't bring up what if a teacher, or parent, or student believes that evolution is not true. 'I believe in creationism.' Can they opt-out because there's no law, there's no statute? Mr. Speaker, again, the policy does allow a parent to opt-out if and when a school teaches about evolution.

"Another reason is that the superintendent sent a response, because obviously this, although it's not embedded in the underlying bill that we're going to be discussing later today, but she did want to clarify the Department's policy. Let me just read to you what she said. 'The Department of Education confirms that it has a clear process for providing parents with notice when a controversial issue will be taught in class. Parents and legal guardians are afforded the opportunity to opt-out their children from such lessons. There are no plans to change that process. To further clarify, an issue may still be considered controversial based on multiple factors including community and family opinions whether a matter may be, quote-unquote, "legal or not".' I made reference to that with the issue of abortion.

"And lastly, what's problematic about this amendment is, I feel for the colleagues on the Floor, that even though they support this, if they support this amendment and there's a House Draft 2, the language in here on page 9, lines 5 to 8, legalizes same-gender marriages. So if you are opposed to that, but support this, and you vote for this, unfortunately you are also supporting all the parts of this bill, which does legalize same-gender marriage. Thank you, Mr. Speaker."

Representative McDermott rose to respond, stating:

"Mr. Speaker, thank you. We're making progress. Still in support of the amendment, but I'm going to vote against the underlying bill. But since my colleague informed me, you won't need my vote anyway, because you've already got 30, so that's good. But Mr. Speaker, to help you out. Mr. Speaker, we've got acknowledgement. It can be appealed. For the first two weeks of this, 'oh, it will never happen, it will never happen, it will never happen, you're crazy.' It can be appealed. An acknowledgement that it is possible to happen. In fact, 30 years ago, the very idea of same-sex marriage was crazy. Today we're on the brink of legalizing it.

"Mr. Speaker, it can be appealed. Now I don't have much faith in the Governor, to be honest with you, pulling out all the stops, getting that legal team fired up and providing the protections we're seeking. Just don't have that warm fuzzy, Mr. Speaker, about that. I just don't have it.

"With regard to the introduction of amendments and speaking, and although some may seem repetitive, Mr. Speaker, sir, you've never accused me of brevity or lack of loquaciousness have you, sir, on Second or Third Reading. What of my friend from Hawaii Kai? In fact, Mr. Speaker, we are consistent, Second Reading, Third Reading, we've always done it. So we're not playing to the cameras. But, Mr. Speaker, the folks at home watching this need to know that your members who you send here are voting down parent protections. They see the curriculum, yeah, they brush it off, 'well, it's never going to happen.' Well, here's the camel's nose under the tent.

"'Well it'll only take a lawsuit, it'll never, never happen', 'well you can appeal it, we can rely on the Governor to appeal it.' We're getting pretty close to an admission that this is going to happen. Thank you very much, sir."

Representative Brower rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. One, from reading the answers from the student, I have my questions that the student may have been gay who filled out the survey, but written on page 11, the previous speaker said that a heterosexual couple was checked off as 'unhealthy'. But when you read the example, the reason the student checked 'unhealthy' is because Alexander bought earrings for Mia as a way to have sex with her, and they were about to have unprotected sex, and the student listed this relationship as 'unhealthy'. Thank you."

Representative Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'll be rising to speak against this floor amendment. It concerns me that it still contains some defective language that is still seemingly taken out of the Senate Bill 1, House Draft 1. Let me just draw your attention to the provisions in, let's go to page 5, first of all. Page 5, on lines 11 through 16, Section 572-C, Reliance on federal law. 'Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.'

"The concern that's raised there is whether or not we are delegating our state authority over the jurisdiction of marital laws and all related matters pertaining to marriage, property, trust, custody, support, etc. And that's the concern I raised, it's in this bill right here.

"The refusal language also contains so-called protection for the religious believers who do not choose to solemnize a marriage. I turn your attention to page number 6, lines 7 through 9, 'marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.' Again, I raise that concern and it seems to reflect the same language in Senate Bill 1, House Draft 1.

"What it fails to do, although it appears to provide protection from any fine, penalty, injunction, administrative proceeding, or other legal administrative liability, what it fails to do, Mr. Speaker, is to provide protection from any civil claim, cause of action, or state action that might cause the fine penalty injunction. In other words, this section here deals with any foreseeable penalties or imposition of any fines or other adverse consequences. But it does nothing to forbid or prevent a claim or cause of action from arising both from a government agency, the government through state action, and the commission or administration, public or private. And that's replete through this and other areas where you have the so-called protections or immunities contained in this draft.

"Let's go down the bill further to Section 7, on page 12 and 13, this is on page 13. Again, this deals with the issues of solemnizations, to join persons in civil unions, the same defect here again. It deals with the so-called sanctions, elements of the penalty or violation, but it has nothing about the cause of action, claim, state action, again, to enforce the laws. It appears again at the top of page 16. Again it says, this is under the section of religious organizations, exemption under certain circumstances. Top of page 16, lines 3 to 4, 'shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.'

"Again, it misses the key words that's contained within the whole Connecticut law and most other laws dealing with this issue of the civil claim or cause of action or state action that could come against the violator of these sections. So those are some of the errors on that.

"I also have grave concerns, Mr. Speaker, on page 19 of this draft here, Section 12, and this is a question that's come up before on other proceedings. 'The department of health may, in its discretion, make any changes that it deems necessary to internal procedures or forms, to aid in the implementation of this Act.'

"A concern that's been raised is whether or not this is an unlawful delegation of authority to a department, they lack sufficient guidelines and restrictions or limitations upon the authority that the Department of Health has, and not to go through the normal challenges..."

Representative Awana rose to yield her time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you, Representative from Nanakuli. The problem here is that this might be a way of eviscerating the normal channels of rule propagation through the public hearing process under Chapter 91. This gives the full measure and complete discretion to the Department of Health. I think it might also bypass the system that we set up years ago, whereby the rules,

the proposed rules, would go through the small business advisory group that looks at any rules that may affect or have no effect upon the businesses. It's for those reasons, Mr. Speaker, that I object to this.

"Well there's one more also, Mr. Speaker, I'm sorry. This is Section 10 in this bill, page 17, it's the jurisdiction of the family court that's expanded to give unique rights to same-sex couples who had their marriage solemnized in Hawaii but may not be currently domiciled of residence in Hawaii. To access our family courts and have their marriage annulled, dissolved, or even a separation order pronounced upon that, within the requisite domiciliary or residency requirements that we normally afford and require for family court petitioners in this matter. There's serious constitutional questions that have been raised by the expert from, I think, BY University who came in, I think Professor Wardell, who spoke against the probable constitutional problems, or even due process concerns are raised by this provision here.

"So for those reasons, Mr. Speaker, I strongly object to this floor amendment. Thank you."

At 12:10 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:15 o'clock p.m.

Representative Ward rose to respond, stating:

"Thank you, Mr. Speaker. Still in favor. Mr. Speaker, you know, and many know, that I often call this, the Floor, the marketplace of ideas. We share ideas, we share perspectives, we share opinions, and I think the good member from Pearl City needs to look at this historic 55 hours of testimony followed by all the things that the Representatives were saying were never heard by the public. This Body has a historic responsibility to set the record.

"We had five days of TV, then we had zero. The good gentleman from Pearl City must be equating this to a GET tax bill or something like that."

The Chair addressed Representative Ward, stating:

"Representative Ward, please, again, we cannot infer upon our members."

Representative Ward continued, stating:

"But he implied that I'm playing this to the camera, to tell the people the people of Hawaii that, 'oh we're on camera, we want to talk, and listen.' That is incorrect, that is personally offensive to me. When we go on record, the people of Hawaii should know. And the historic debate for 11 hours, not 1 hour of that was shown by television. And, Mr. Speaker, he incorrectly said it was 'Ōlelo. It's not 'Ōlelo, it's Capitol TV, which you and the Speaker control. It's \$75,000 a year, we pay them, and you told them not to do it or something, I'm impugning motive, I'm sorry.

"But the people did not see it. That's the first point."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order. That statement was incorrect, move to strike."

Representative Ward: "I want evidence that it's incorrect."

At 12:16 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:20 o'clock p.m.

Representative Ward continued, stating:

"Thank you, Mr. Speaker. Let me clarify what just took place. 55 hours of testimony from the public was seen by the public. 11 hours of debating that testimony of those five days was not seen by the public. I don't know why, and that's all I'm going to say. I don't know why, but it wasn't shown to the public, what we thought about what they thought for five days, we gave them zero air time. I don't know why that's the case.

"May I proceed to point number two of why I stood in rebuttal to the gentleman from Pearl City? Point two is as follows, and this is for the record. The committee report is supposed to be reflective of the testimony that we heard. The committee report is very, very conspicuous in its absence..."

Representative Souki rose to a point of order, stating:

"Point of order, whenever you speak, you should be speaking to the Speaker. He's not the Speaker."

Representative Ward continued, stating:

"But I love looking at you. Mr. Speaker, you're so good looking, so mature, my eyes just naturally go to you. Sitting behind you is the Chair of Judiciary."

At this time, the Chair stated:

"The Speaker is correct. Pursuant to the House Rules, Representative Ward, you've got to be facing the Speaker. You can kind of glance at him, but look at me."

Representative Ward continued, stating:

"Okay, I got you, you're in my crosshairs now. The point is this. Where that committee report is absent in the voluminous references, and I'm going to use the Ewa Beach colloquial, the Dick and Jane, the countless questions that he asked, the point where people were laughing. There was nothing at all in the committee report about what this amendment is about in terms of curriculum."

Representative Fukumoto rose to yield her time, and the Chair "so ordered."

Representative Ward continued, stating:

"And the notion that, as I call them the 'mama bears', that the women of Hawaii wanted to be concerned about their children. Nothing in the committee report does that. And Judge Levinson said, these are the things that are tertiary in a court case. First you take what the bill says, then you take, oh sorry, it's secondary, the secondary evidence is what the committee report says and the tertiary is what we small guys on the Floor have to say about it.

"Therefore, I would suggest if we really want to represent what the people of Hawaii said for five days on TV, we have to mention that in the committee report, that some parents are concerned about this issue which, it looks as though we may be voting down. Mr. Speaker, let's be honest, let's let the record reflect, other than very few people will probably go and look at the six or eight inch record of the Journal to find out what was said. So let it be on the record that all of the things that this amendment is about is conspicuously absent in the official committee report. Thank you, Mr. Speaker."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the amendment. I actually refer to the good Representative from Wahiawa's remarks in regards to the amendment. He has demonstrated that even this amendment has issues with it, Mr. Speaker, and that underlines the problems that we have when we rush legislation. And given the short amount of time that we were allowed to respond to this measure, this measure was introduced on the 22nd of October. Special session started on the 28th.

"Mr. Speaker, we were supposed to go and talk to experts, we were supposed to talk to the related government agencies in regards to this issue. I tried to get ahold of them. I believe that was a Wednesday. Have you ever tried to get an appointment within a day or two with any of these departments? The Department of Health, Department of Education, all these? Mr. Speaker, it takes more than six days to get a sit-down. Mr. Speaker, it takes more than six days for people to clear their schedule, and that's including a weekend. That's including a weekend. Special session started on a Monday."

The Chair addressed Representative Fale, stating:

"Representative Fale, please continue, but let's focus on Floor Amendment Number 15 that's before us."

Representative Fale continued, stating:

"Right. So this floor amendment, Mr. Speaker, is an attempt to do what we were not allowed to do and address a number of the issues that were raised with the House draft that came out of that hearing. Because remember, Mr. Speaker, not a single person in this Body, before they voted on this measure, was allowed to go back to their community and say, 'what do you think of the amendments that the House made?' We sat here while those amendments were being, the committee report wasn't even complete at 10 o'clock when we came into session on Wednesday.

"So again, not a single Representative in this building had the opportunity to take this measure to the community to get feedback on it. And so we have before us a river of amendments to deal with the 55 hours of concerns that were raised. So, Mr. Speaker, not a single amendment from this Body, as a whole, has been made. And so, Mr. Speaker, at least this amendment tries to deal with one of the issues that has been raised. Thank you, Mr. Speaker."

At this time, Representative Saiki called for the previous question, stating:

"Mr. Speaker, I call for the question. Please allow members to submit written comments. Thank you."

At this time, the Chair stated:

"Question has been called. Members, if you would like to submit written comments into the Journal, either in support or in opposition to the floor amendment, the Chair will allow you to do so."

The motion that Floor Amendment No. 15, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Brower, Oshiro and Takumi voting no, and with Representatives Cabanilla, Cachola, Choy, Ichiyama, Ito and Tokioka being excused.

At this time, Representative Ward offered Floor Amendment No. 16, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and

responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution; and
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. The First Amendment to the U.S. Constitution and Article I, section 4 of the Hawaii Constitution both protect the right to free exercise of religion. The legislature finds that if same-sex marriage becomes legal in Hawaii, it will be imperative to protect our nation's long and rich tradition of religious freedom. In particular, many religious communities and religiously committed persons have a deeply held understanding of marriage as a relationship that can exist only between a man and a woman. Without legislative safeguards, many religious individuals will be forced to engage in conduct that violates their deepest religious beliefs.

Therefore, the purpose of this Part is to amend the law on discrimination in public accommodations by ensuring that private individuals, sole proprietors, and owners of small businesses are protected from any type of civil or criminal liability for refusing to provide goods, services, facilities, privileges, advantages, or accommodations that assist or promote the solemnization or celebration of any marriage or civil union, or that directly facilitate the perpetuation of any marriage or civil union, if providing such goods, services, facilities, privileges, advantages, or accommodations would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

SECTION 14. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

"§489-3 Discriminatory practices prohibition. (a) Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.

(b) Notwithstanding any other law to the contrary, and except as provided in subsection (c), no individual, sole proprietor, or small business shall be required to:

- (1) Provide goods or services that assist or promote the solemnization or celebration of any marriage or civil union, or provide counseling or other services that directly facilitate the perpetuation of any marriage or civil union; or
- (2) Provide housing or lodging to any couple,

if providing such goods, services, housing, or lodging would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

For the purpose of this subsection, "small business" means:

a legal entity other than a natural person that provides services which are primarily performed by an owner of the business; or a legal entity that has five or fewer employees; or in the case of a legal entity that offers housing or lodging for rent, that owns five or fewer units of housing or lodging.

(c) Subsection (b) shall not apply if a party to the marriage or civil union is unable to obtain any similar goods or services, or housing or lodging elsewhere, without substantial hardship.

(d) Notwithstanding any other provision in this chapter, no refusal to provide goods, services, facilities, privileges, advantages, or accommodations pursuant to subsection (b) shall constitute an unfair discriminatory practice and shall not result in any civil or criminal claim or cause of action challenging such refusal, nor result in any action by the State or any of its political subdivisions to penalize or withhold benefits or privileges, including but not limited to tax exemptions or governmental contracts, grants, or licenses, from any protected entity or individual."

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 14 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 15, 16, 17, and 18, as follows:

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on December 2, 2013."

Representative Ward moved that Floor Amendment No. 16 be adopted, seconded by Representative McDermott.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the amendment. If we remember the concern about church protections and then children protections, the third is probably the most forgotten member of the faith community, that's the small business person. The individual of conscience. This amendment speaks directly to them by allowing their genuinely-felt religious beliefs to exempt them from doing things which otherwise are against their religion.

"Mr. Speaker, as I said earlier, half of my relatives are Muslims. If this bill said, 'from now on, it's okay to eat pork', or 'you should eat pork'. I mean, we can pass the law, but the conscience of these individuals will be seared, it will be where the state now becomes the church religion, it will be where the sanction of the church will rest with the state.

"Mr. Speaker, I know that this is unprecedented, but look, this is Hawaii. We can do better than those other 15 states. They never give this the way. And I have in my district empirical evidence, again, the empirical term. A bed and breakfast, who has this very issue tied up in court. Do you know how much it costs to go in court to fight these issues, or to settle these issues, to adjudicate these issues?

"Mr. Speaker, some of the churches, some of the small businesses, some of these cake-makers and florists and photographers, they're going to be hurting. Why can we not consider them? That's what this amendment appeals to. And for those who are genuinely members with a faith community that, in their conscience, you know we have conscientious objectors from one faith community they don't have to go in the military, we have people in the military that can't fire weapons, etc. We as Americans have always allowed your conscience to be very important.

And not as a way of putting it on to the equality issues. But to genuinely acknowledge that this is one nation under God, this is where 80 percent of the people believe in God, and there's probably a number of people who believe in God sincerely enough to get out of the business, which they've done already on the mainland.

"Mr. Speaker, we can do better. This is an amendment that will help and give those members of the faith community with conscience to do their work and at the same time keep their duty to God and their country. Thank you."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'm against the floor amendment. Having listened to all the testimony over the last week and a half, there may be some people who are forgetting that the Public Accommodations Law is specifically designed to protect those of religious belief. If you look at the list of protected classes, you have race, sex, sexual orientation, color, ancestry, disability, and religion.

"Religion obviously is a choice, you get to choose your own religion, it's not something that you're born with or you can't do anything about. It makes you wonder why religion is on the list. Well, the reason religion is on the list is because people with varying minority religious views have been persecuted and discriminated against for time immemorial. I think ever since there's been religion, there's been discrimination against religious people. I don't think that it's a good idea to erode the protections in the Public Accommodations Law for religious people. That's why I oppose this floor amendment. Thank you."

Representative McDermott rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, thank you. In support. Religious protections are guaranteed to us by the First Amendment. So important, that our founding fathers put them in there, because they came from all parts of the world to escape the tyranny of religious persecution. It was so important that it's our First Amendment. Freedom of press, speech, religion. It's so important, it was enshrined in that document.

"Now what we're doing is creating a new civil right. Now, as Justice Levinson testified before the committee, there is no constitutional right to same-sex marriage. As Justice Levinson testified, there is no fundamental right. But we believe we should create this new right. What's going to happen, invariably, and what all the legal scholars have said, you are going to have a constant conflict between these two rights.

"I go back to our friend the photographer, Mr. Roco from the Leeward coast. He loves his homosexual brothers and sisters. Right now, when he gets called to play for a wedding, he makes his living as a piano player. He gets a phone call, he's very nice, he says, 'you know, I'm a devout Catholic. My family has been Catholic for 400 years. I appreciate what you're doing, let me refer you to three or four folks who will do a fantastic job, and probably will do an even better job, because quite honestly, my heart is not in it.'

"If someone goes out to target him because they know who he is and he doesn't do the wedding, he'll be subject to a lawsuit, at which point, a man of modest means cannot fight all the way to the United States Supreme Court. He would need some help. And he would go through years and years of litigation. Without this protection, he would be subject, I'm sure if the pattern falls, it has in other states, to harassment. He would be smeared on the web. 'Don't go to this photographer. Hater, bigot, homophobe, ignorant.' That's what they'll say, it would be a web attack. And people would steer away from that because they don't want the controversy associated with that.

"So, Mr. Speaker, we'll put him out of business. It's not the first time we've put anyone out of business. But we'll put him out of business. Because we are saying this newly-created civil right is more important than the First Amendment that was guaranteed to him in the United States Constitution. We are denying our faith tradition of this country. Religious

freedom is so precious, Mr. Speaker, it's so precious, they put it in there as the First Amendment. You cannot deny it as the heritage of our country.

"Maryland, how did they get their name? Mary-land. That's where all the Catholics went. Pennsylvania, founded by William Penn, the Quakers, most tolerant of all the early faiths, and they had initially the largest Jewish community in the nation because of their tolerance. And I can go on and on and on. The Anglican Church in Virginia, that was a state religion, Thomas Jefferson didn't support that because they actually taxed their people to support the church. And that's where the separation of church and state came in.

"But each of these states have their own religion, so to deny that religion is a part of our fabric and who we are as a people, is to deny reality. Now, without protections we come against the conflict. The conflict of a sincerely-held religious belief and this new civil right. This new civil rights seeks, quote-unquote, 'equality', and it seeks 'legitimization', which is 'don't ask, don't tell', 'marriage', but they're still not there. They need de-stigmatization. And the only way you can get that is through shutting down people who disagree, calling people haters, bigots, and putting it into schools. That's the only way. They're not going to get my generation, they're not going to get the other generations who are older than me, but it's my kids in school.

"So, Mr. Speaker, we need to protect the business guys because they'll be shut down. This is like telling Cedars Sinai Hospital in Los Angeles, they have to serve a BLT sandwich in their cafeteria. I mean, that's the equivalent, Mr. Speaker. A Jewish hospital, you've got to serve a BLT sandwich. I don't know if they do. Or a Hasidic hospital run by devout Jewish people, 'you have to serve pork in your hospital because my dietary, I'm an Irish Catholic, I work there, you should have more dietary menus and I'm going to file a lawsuit.'

"The reason this is, without these protections, Mr. Speaker, this becomes very pernicious. People undoubtedly, undoubtedly, again I bet my house on it, will sue to make a point and put these guys out of business."

Representative Fukumoto rose to yield her time, and the Chair "so ordered."

Representative McDermott continued, stating:

"Thank you, Representative, I appreciate that. The totalitarian regime of political correctness will come crashing down on anyone who says, 'hey, I respect you, I love, you're a good dude, a good person, I don't want to participate, it's against my religion.' Sorry, you've got to do it. We've minimized, we are saying with the passage of this bill, the religious freedom, the religious liberty that we all cherish, falls by the wayside. In fact, Mr. Speaker, the emerging minority in this country are people of faith. They are the minority now, they are the one we never take seriously. In fact, Mr. Speaker, judge after judge after judge has ruled so narrowly on the lower courts with regard to religious freedom, it always has to get kicked up to the United States Supreme Court where they can't deny the reality of what the First Amendment says. It's pretty clear.

"A marriage counselor who doesn't want to provide counseling to same-sex couples, a therapist, 'hey I'm not comfortable doing this. You're not going to get my best because my heart is not in it.' Bang, lawsuit. You're going to go to court. And there are people who will test it because they want to shame the people of faith, 'you're archaic, you're knuckle-draggers, you don't know what you're talking about, and we're going to put you out of business because we've got the Hawaii Civil Rights Commission on our side, and we're going to hammer you, and hammer you, and hammer you. And if we don't spend you to death fighting the state with unlimited resources, we're going to smear you on the internet, we're going to picket your workplace if we can, and put you out of business.'

"Don't believe me? Ask Mike Gabbard what happened to his sandwich shop back in the 90's, or his wholefoods place. He had to sell it. People were picketing, he was making a good amount of money, Mr. Speaker. They would picket him, he couldn't sell any more sandwiches, he had to sell it. He lost his livelihood. Lost his livelihood. This is serious business. Thank you."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In support. I thank the good Representative from Ewa. I spoke on Wednesday. I too remember that testifier, Mr. Roco, from the Waianae Coast. And he spoke very eloquently. In fact, we called him back up for continued discussion in the hearing. He basically said he was a pianist and he was a psychologist that practiced with couples. And he told us, yes, he's been called for ceremonies to play piano, and he has turned business away with, 'here's three other people you can ask.' He understands the Public Accommodations Law, we asked him that.

"He spoke in opposition of SB 1 for fear that he could be in violation. He said, if SB 1 passes, he could be. And I truly understood that he understood our bill and understood the Public Accommodations Law. And this is what I was talking about on Wednesday. How do we allow people to have their own conscience based upon their freedom of religion?

"Now when Mr. Roco spoke before us, he didn't say he was just a practicing Catholic, 24 hours a day, 7 days a week, living by that. He told us his family was ingrained in the Catholic Church for 400 years. How can I deny him? We have to respect that. I personally feel that our current SB 1, HD 1 draft does not address that. It was brought up in our hearing. We didn't have that discussion in our caucus on vetting our measure. And this is bringing up this discussion again. I clearly understand. And I'm not going to say we're rushing the procedures, because everyone's telling me, 'no, you're wrong.' When am I going to be right?

"The good Representative from Laie said, what, seven days, we've been discussing this? Five of those in long hearings? When are we going to discuss this? I don't think our Public Accommodations Law can supersede our First Amendment right. Why don't we just put bright lines and define it right off the bat? Don't have individuals like Mr. Roco come before us and say, 'I'm just going to close my business.' When a question was posed to him in our hearings, 'well, Mr. Roco, why don't you just put in your advertisement, you do traditional weddings?' He felt very uncomfortable doing that. I would never ask anybody to put something on their business card, their website, or in their window, to say what they're going to service or not service. So how do we protect individuals and give other individuals rights? I haven't heard that question answered yet. And no, I'm not comfortable with our Public Accommodations Law. Thank you very much, Mr. Speaker."

Representative Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. I will be speaking against this floor amendment. There are the same deficiencies that are in the previous draft regarding the inauthentic or unrealistic protections for liability. Let me just speak a little bit about the direction this thing is headed. I'm looking at the language right here. It seems to be well placed along the lines of the Representative from Waianae, to a small business, which is five or fewer employees, or five or fewer housing units regarding housing. This is very narrowly drafted in the context of providing goods or services that assist or promote the solemnization or celebration of any marriage or civil union, or provide counseling or other services that directly facilitate the perpetuation of any marriage or civil union.

"So the creation of the civil union or marriage and the perpetuation or support of it, and the housing is similarly restricted just to those limited instances. But what I don't see here, and the reason I object, is that if you're going to embark on some kind of policy like this, I think there needs to be some kind of a review into the bill itself, and that's what's missing here. I would suggest that if this was to move forward, you would put maybe a three year sunset that was similar to what was put into House Bill Number 6, where you have this kind of provision.

"I want to make sure people understand that what you're having here is a lack of clarity between both the liberty rights of individuals as well as the religious rights of individuals in the business place. What the Representative from Waianae spoke to us of is a very practical type of conundrum that we face, although it's inevitable if you look at the literature that's been published going back to 2008. Same-sex marriage isn't a

religious liberty. You know it's going to occur and I think this is a good attempt to try and prevent that.

"If we could somehow get clarification on what tests will be used when you have both the religion interests under the constitution and the sex interests, or gender orientation issue, how is that going to be resolved? I'm suggesting we resort to the Sherbert test through the creation of a separate act to protect the religious rights and balance it against the due process equal protection concerns. Again, it would be determined by a bona fide, sincere religious beliefs. And that's helpful because it's not any willy-nilly kind of religion onto itself kind of creation, but what's bona fide and what's sincere religious beliefs.

"It also requires that the action substantially burden the person's ability to act on that belief. And then the burden will shift again to the government to establish that there's a compelling state interest, and number two, that it's a least restrictive or least burdensome manner.

"The reason why it's relevant for us today is, when I read the Hawaii Civil Rights Commission's October 17, 2013, Response to Inquiries, the Executive Director correctly articulates the law and the standards in place today and he states this. 'The State of Hawaii has a compelling state interest in eliminating discrimination in public accommodations. Our public accommodations law is a law of general applicability that serves a compelling state interest.'

"The concern I have there is that it seems to adopt, maybe by reference or by choice of words, the test that came out of *Employment Division v. Smith*, 494 U.S. 872 (1990), which I spoke about, basically that if government has a compelling state reason, that's all it needs to go and supplant and trump any religious freedoms. I have grave concerns over that.

"I've asked, and I hope they would consider, we would consider, that we return to the prior *Sherbert v. Verner* line of cases where Justice Brennan wrote and suggested that we need to have a balancing of approaches when you have two important constitutional rights.

"Also on a real practical note, Mr. Speaker, let's not forget that we need to start talking about photographers, or bakers, or butchers, or wedding planners, or florists. We're talking about a multitude of individuals and small businesses involved in the marriage ceremony today. This involves one's creative intellectual property, whether it's poetry or writing or publication or musicalization, a lyricist, a whole gambit of people would fall under."

Representative Awana rose to yield her time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you, Representative from Nanakuli. It seems to not be appreciated how far reaching it is. It's a quite reasonable request. It's not going to be sanctioning any kind of things that would oppress people like me of Okinawan ancestry or me of Japanese ancestry. But really, it would provide some bright lines of understanding. And the idea behind it, and certainly there's no animus intended behind this proposal, but it's a very practical one, that over the period of two or three years, you will see, and we hope to see, a developing niche of businesses that will cater to, exclusively to, our gay brothers and sisters in the area of marital services or those kinds of events and activities. And I think that's the idea behind it.

"The last legislature to look at this, I think was the Minnesota legislature several years ago. They went back and forth on this whole idea, because they based it upon the past history of other states where you've had this conflict, and they wanted to avoid it. They didn't want to get into a situation where New Mexico right now, where you have a photographer that was fined under their version of a Civil Rights Commission, and that may also prompt ultimately the higher appellate courts, or the United States Supreme Court, to look at that case. But the whole idea behind that is to prevent, as much as possible, these foreseeable conflicts from arising.

"Finally, Mr. Speaker, I need to suggest this. This is in no way condoning any type of discrimination at all. What this does is a very

practical approach to human nature and human custom, and as creatures of habit we all have inclinations, so that's what it does. But it also provides an opportunity for us to do the right thing for our people to avoid conflicts, and to address, Mr. Speaker, the fringe elements, the fringe elements on both sides of this debate and discussion.

"Most people will not impose themselves upon the mom and pops. That's understood. It's the fringe elements that this proposal here seeks to address. It's a good attempt from my Republican counterparts, but for other deficiencies, I will have to vote against this floor amendment. Thank you, Mr. Speaker."

Representative Lee rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in strong opposition and I'll be brief. This bill, while purporting to protect the rights of small businesses, actually undermines the civil rights of everybody else. It would allow a business to put a sign in a window saying, essentially, 'no gays allowed'. It codifies discrimination which is something we do not, here in Hawaii, especially, condone. I want to point out that no other state has taken a position like this. No other state has taken such an extraordinary step to open up this sort of law.

"Furthermore, under the underlying bill right now, nothing changes with the passage of marriage equality. Nothing changes from a perspective of a small business owner, because right now, discrimination based on sexual orientation is already prohibited by law. So with that, I thank you very much."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"In support of the amendment, Mr. Speaker. The previous speaker, it would be great if his remarks were true. And I sure wish I had the opportunity to share what he just said with my community. He says SB 1, HD 1 covers everything that we need."

The Chair addressed Representative Fale, stating:

"Representative Fale, I don't think he said that. He focused his comments on the amendment."

Representative Fale continued, stating:

"Okay, he says this amendment will codify discrimination, and that we do need to make sure that we compel people to do certain things. Mr. Speaker, in this country, we've never forced people to support religious ceremonies. Marriage is one of those ceremonies. Never have. That would be forcing people to support a religious institution. Forcing businesses to support marriage ceremonies, with which they fundamentally disagree, is forcing them to support a religious ceremony, Mr. Speaker. That would be codifying discrimination. That would be something compelling a people to do, that has never been allowed in this country before, Mr. Speaker.

"We have never forced people to support religious ceremonies, and we should never force businesses to support those religious ceremonies either, Mr. Speaker. And for those reasons, I believe that we're in a very good position to once again address this issue with this amendment and to not compel people to act against their conscience."

At this time, Representative Saiki called for the previous question, stating:

"Mr. Speaker, I call for the question, but please allow the introducer to present his rebuttal. Thank you."

The Chair then stated:

"Before that, I'd like to recognize Representative Oshiro a second time. Representative Marcus Oshiro, go ahead."

Representative Oshiro rose to respond, stating:

"Thank you, Mr. Speaker, second time. I just noticed that the draft on page 22 does contain an improper provision."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order. I did call for the question, but please permit the introducer present rebuttal."

At 12:53 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:55 o'clock p.m.

Representative Oshiro rose to respond, stating:

"Thank you very much, Mr. Speaker. I tried to rise up as quickly as possible. I have only a few more comments. I'm still in opposition, unless they can amend the floor amendment. I want to draw the attention of the members to page 22, lines 9 through 12, Subsection c, Sub-subsection b. This section 'shall not apply if a party to the marriage or civil union is unable to obtain any similar goods or services, or housing or lodging elsewhere, without substantial hardship.'

"Substantial hardship can be narrowed down to what might be the least restrictive alternative analysis, and that's why, again, I need to draw attention to *Sherbert v Verner*, 374 U.S. 398 (1963), where you have a mechanism of evaluating the hardships against the religious freedoms of the individuals and their business. So there is a safety valve there. For example, if there is a florist or a photographer or a wedding planner out in Naalehu on the Big Island, or maybe in South Point, or in Kilauea, on Kauai, or in the back of Waianae and Maili, and they're the only shop in town, you can't get to it. I think it's going to bend towards that situation without any kind of question because there is a substantial hardship on that individual or that couple to receive these services.

"So there's a safety valve there to prevent some unintended consequences, Mr. Speaker. I just wanted to point that out and let the members know that that's in this draft. But for the other reasons, I will oppose this floor amendment. Thank you."

Representative Ward rose to respond, stating:

"Thank you, Mr. Speaker, and with much appreciation to the Majority Floor Leader for this opportunity. I think the remarks of the czars who are going to implement this bill, SB 1, i.e. the AG and the Civil Rights Commission. I think their comments, because of the lack of certainty as to how these things will be other than taken to court, offers really no assurance or protections. So I think what we've got to do is we've got to look at the half-a-loaf. I know as legislators, we always talk about it, 'half-a-loaf is better than none', because right now it looks more like we're creating conflict than sharing and putting ourselves on a two-way street. I think that's going to be dangerous, I think the divisiveness is going to have to be where we've got to accommodate, as I said earlier, we've got to make peace.

"To entirely forget that community, the faith community that's business and professional, Mr. Speaker, is a big oversight. So it's going to come back. We don't want to do this in the courts. We are the legislators. If you remember what Judge Ahu said, poor legislation creates much litigation. And he said as a judge, 'I can't believe who wrote these laws', and this is his 10, 15 years on the bench. When we do loosey-goosey legislation, we're just simply saying, 'go to the mattresses in courts.' That's where we should not be sending our people. We should be sending them to a mutual understanding, we should be sending them to the whole sense of what we are as an *aloha* and *ohana*.

"Granted, we don't have 15 states putting any of this in. But Mr. Speaker, we are exceptional, this is Hawaii, this is *ohana*, this is *aloha*. We can do it. I mean, we've got a lot of good legal brains in this place. We can craft something that doesn't take advantage of either community, but somehow allows the continuation of faith and the continuation of equal rights, side-by-side. Because if they don't exist, that's not America.

America is all about what we do and we have a self-calibrating, a self-correcting constitution, we have laws, we have Representatives, who can calibrate this and make it work.

"The great pragmatism of America, why we are here today, is because when something didn't work, we fixed it. Mr. Speaker, we can fix this. This is one example of what we can do. If we don't do it today, we've got to do it another day. Thank you, Mr. Speaker."

At this time, Representative Saiki called for the previous question.

Representative Har rose, stating:

"Mr. Speaker, may I please be recognized?"

At this time, the Chair stated:

"After Representative Har, members I will recognize you if you would like to submit written comments in support or in opposition on this measure. Representative Har."

Representative Har rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker, I'll be brief. In opposition to the amendment."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, point of order. I called for the question. Please allow members to submit written comments. Thank you."

The Chair addressed Representative Har, stating:

"Representative Har, actually, Majority Leader is correct."

Representative Har rose in opposition to the proposed floor amendment and asked that the remarks of Representative Oshiro be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Fukumoto rose, stating:

"Mr. Speaker, thank you. I actually have a point of parliamentary inquiry. I think there's some confusion on the Floor as to which rules we're following and which rules we're not following. I just thought for the sake of transparency and maybe for the edification of the members and the public, if we could get an outline of which rules were necessary to suspend when we started this debate. I think it might be helpful for everybody that's watching.

The Chair then stated:

"Yes, we're following the House Rules and the rules in Mason's."

Representative Fukumoto: "And we've suspended them, Mr. Speaker, at the beginning of this. So if we could get an explanation of which rules were suspended, I think that might be helpful for us. Thank you."

At 1:00 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:02 o'clock p.m.

Representative Lowen rose and asked that the Clerk record a no vote for her, and the Chair "so ordered."

Representative Oshiro rose in opposition to the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I am opposed to Floor Amendment No. 16. While this floor amendment proposed by my brother from Hawaii Kai attempts to provide additional religious freedom protections to small businesses and individuals, in my opinion, it does not go far enough to ensure that the right to freely exercise one religious beliefs is balanced with the right to equal treatment under the law. Similarly, the amended draft would retain the same offensive or deficient features found within the House Draft 1.

"The floor amendment is similar conceptually with House Bill No. 6 to the extent that an exemption from the Public Accommodations Law would be provided to individuals and small businesses having five or fewer employees or five or fewer units of housing or lodging. However, the floor amendment leaves out many of the other protections that are essential to ensure balance, in my estimation.

"For the record, I believe the best approach to do this was offered in Floor Amendment No. 8, and as such, I ask that the Chief Clerk insert my remarks on Floor Amendment No. 8 herewith.

"For these reasons, I am opposed to this floor amendment."

[Please refer to Representative Oshiro's written remarks submitted on Second Special Session of 2013, Day 8, Floor Amendment No. 8, page 44.]

Representative Ing rose and asked that the Clerk record a no vote for him, and the Chair "so ordered."

The motion that Floor Amendment No. 16, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Har, Ing, Lee, Lowen, Oshiro and Rhoads voting no, and with Representatives Cabanilla, Choy, Fale, Say and Takai being excused.

At this time, Representative Ward offered Floor Amendment No. 17, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not

having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution; and

- (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. Section 489-2, Hawaii Revised Statutes, is amended by amending the definition of "place of public accommodation" as follows:

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. By way of example, but not of limitation, place of public accommodation includes facilities of the following types:

- (1) A facility providing services relating to travel or transportation;
- (2) An inn, hotel, motel, or other establishment that provides lodging to transient guests;
- (3) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of a retail establishment;
- (4) A shopping center or any establishment that sells goods or services at retail;
- (5) An establishment licensed under chapter 281 doing business under a class 4, 5, 7, 8, 9, 10, 11, or 12 license, as defined in section 281-31;
- (6) A motion picture theater, other theater, auditorium, convention center, lecture hall, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (7) A barber shop, beauty shop, bathhouse, swimming pool, gymnasium, reducing or massage salon, or other establishment conducted to serve the health, appearance, or physical condition of persons;
- (8) A park, a campsite, or trailer facility, or other recreation facility;
- (9) A comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm;
- (10) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment;
- (11) A mortuary or undertaking establishment; and
- (12) An establishment that is physically located within the premises of an establishment otherwise covered by this definition, or within the premises of which is physically located a covered establishment, and which holds itself out as serving patrons of the covered establishment.

"Public accommodations" do not include the real property, buildings, or other areas owned or leased by a religious organization and regularly used for religious purposes, notwithstanding whether the religious organization permits the community to also use some or all of the real property, buildings or other areas owned or leased by the religious organization.

No place of public accommodation defined in this section shall be requested to reconstruct any facility or part thereof to comply with this chapter.

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 13 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 14, 15, 16, and 17, as follows:

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on December 2, 2013."

Representative Ward moved that Floor Amendment No. 17 be adopted, seconded by Representative McDermott.

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of this measure for a couple of reasons. First is because of the lack of clarity from our chief legal officer, the AG, Mr. Louie. It was where we are very much protected by this particular bill, then on the other hand we're not protected by the bill. The same with Mr. Hoshijo, we are very much protected, but we're not protected.

"Because of those ambiguities, I thought, let's lock this down. Let's carve out the churches from the Public Accommodations Act. And that's exactly what this amendment does, it sets aside and says it's off limits, you churches, you go about doing what you're going to do. Because what we've gotten now, Mr. Speaker, is if you're going to do a baptism, a burial, a counseling, a basketball game, or whatever, you're not going to be able to protect it. It says only in marriages, solemnization and in celebration.

"Every time I bring this up people say, 'well that's covered under the First Amendment.' Well duh, this whole thing is under the First Amendment, but we're carving it out and not being specific enough.

"So this amendment is saying, let's be very clear on what we're saying, let's mean what we say, say what we mean, carve out the churches, let them carry on with their First Amendment rights by protecting them, by opting them out, i.e. carving them out, of the Public Accommodations Law. That's all this amendment does, Mr. Speaker. Let there be peace in the religious community, in the LGBT community, and let them carry on as members of our *ohana*. Thank you, Mr. Speaker."

Representative Oshiro rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise to speak against this floor amendment. On page 22, I think that's where language says, 'public accommodations do not include the real property, buildings, or other areas owned or leased by a religious organization and regularly used for religious purposes, notwithstanding whether the religious organization permits the community to also use some or all of the real property, buildings or other areas owned or leased by the religious organization.'

"I know the intention is of the author and the proposer of this floor amendment, but I think this goes to the other extreme now, Mr. Speaker. This goes to the other extreme by having the religious organization having no oversight going into what might be considered a public accommodation under our current civil rights laws and the Public Accommodations Law administered by the Civil Rights Commission. So I think that's where I have some problems with it.

"If I reference the jurisdiction of it right now, and I go to the outline that was given to the Body by the Executive Director of the Hawaii Civil Rights Commission, October 17, 2013, he talks about an analysis of methodology. The first question, is this a place of public accommodation? The religious facility is being offered for public use and it looks like it's a fact-based, case-by-case determination. And I think what you'd have here, you have this language in place of the current language, where you have an analysis and maybe balancing of competing, or seemingly competing

constitutional issues, we would tend to maybe go over on one side which would be to, in this case, start and end with public accommodations not being even covered under this section. It's similar to what would be like a private club right now, whether it's a Kiwanis Club, or Elks Club, or a Pacific Club, or Outrigger Canoe Club. A members' kind of organization that is not covered under the Public Accommodations Law.

"But I think most religious institutions or organizations operate in the public domain. They want to have that public intercourse of people coming in and out. Not only members but non-members. They want to open their doors to those who they might be able to convert or expose to their way of thinking under their practices, their precepts.

"So I think this tries to address the situation, but again, I think goes a little bit too far on that sense, Mr. Speaker. So that's where I have my concerns. I think we need to get back to what we're trying to do here, is to reconcile the competing interests of religious freedom within the institution, within the physical plan of the religious organization. With the same thing about the due process, equal protection rights of those who might want to enter or use those facilities in the domain, making sure that our constitutional rights, our protection of civil rights, regardless of one's sex or race, gender orientation, religion and ancestry, is protected. So I think this goes a little bit too far, and for that reason I'll be objecting to it. Thank you."

Representative Har rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition to the floor amendment. First of all, may I please have the words of the speaker from Wahiawa entered into the Journal as if they were my own? Thank you, Mr. Speaker. Secondly, I think what this floor amendment does, or is attempting to do, really does, in fact, highlight the issues with the underlying measure.

"Again, what we're attempting to do is balance Fourteenth Amendment equal protection, versus First Amendment guarantees. And that's really the crux of this issue, Mr. Speaker, and why we are debating this. Because at the end of the day, they are both interests that must be equally weighed. So while I certainly understand the introducer's intent, but I think what it really does is underscore and highlight the fact that the underlying measure does not, in fact, achieve the objective of balancing those Fourteenth Amendment and First Amendment rights.

"That's why we're in this predicament right now. We understand. I in fact received an email from a woman who is a wedding photographer. She said she's already being targeted because she was in opposition to Senate Bill 1. Her business is already being targeted. We're already starting to see it now, Mr. Speaker. So, again, as our job as legislators, our job is to ensure that everything that we craft is responsible and that we take everything into consideration, we balance, that's our job. And I would submit, Mr. Speaker, that if any law that we pass goes before the Judiciary for judicial review, and in fact is overturned, I would submit, Mr. Speaker, that we have failed as legislators, because we did not perform our due diligence.

"So I've urged other members of this Body that we have to take pause and look at what we are doing right now. So while I very much respect some of the comments about Chapter 489, the fact of the matter is, it does create conflict. I think that this floor amendment, again, continues to underscore the deficiencies in Senate Bill 1, and why we continue to have these issues now and moving forward, should this bill pass as is. For those reasons, Mr. Speaker, I am in opposition to the floor amendment. Thank you very much."

At this time, Representative Nishimoto called for the previous question.

The motion that Floor Amendment No. 17, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Har and Oshiro voting no, and with Representatives Brower, Choy, Kawakami, Lee, Ohno, Say, Takai and Takumi being excused.

At 1:11 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:11 o'clock p.m., with Speaker Souki presiding.

At this time, the Chair stated:

"Before we proceed, I'd like to make mention that we have 12 amendments that we need to consider and vote on. We are asking that they be limited to 10 minutes debate for each amendment, and then the question will be called for a vote. So with that, is there an amendment to be presented?"

Representative Oshiro rose, stating:

"Mr. Speaker, thank you for recognizing me. I will not cede to that earlier announcement. But at this time I would like to offer Floor Amendment Number 18 for consideration by the Body."

At this time, Representative Oshiro offered Floor Amendment No. 18, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution;
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith; and
 - (C) Harmonizing the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§489- Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall substantially burden a person's exercise of religion unless it demonstrates that the imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations

pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be ~~[only between a man and a woman,]~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~[-]~~ or civil unions, if any, other than an existing civil union

between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the [man and woman] parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health[-]; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended to read as follows:

"**§572B-4 Solemnization; license to perform; refusal to join persons in a civil union.** (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any clergy, minister, priest, rabbi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union.

(c) ~~[Nothing in this section shall be construed to require any person] Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations [pursuant to chapter 572 or] of civil unions pursuant to this chapter [to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal.] shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.~~

(d) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but

providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

[(d)] (e) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

[(e)] (f) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department of health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions."

SECTION 9. Section 572B-9.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§572B-9.5]]—Religious organizations and facilities; liability exemption under certain circumstances.~~ (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:

- (1) The religious facility is regularly used by the religious organization for its religious purposes;
- (2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and
- (3) The religious organization does not operate the religious facility as a for-profit business.

(b) ~~A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.~~

(c) ~~Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.]~~ **Religious organizations; exemption under certain circumstances.** (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."

SECTION 10. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§572C-2]] Findings. [The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

However, the legislature concurrently] The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by [such] legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son[-, or two individuals who are of the same gender]. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."

SECTION 11. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such

civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 12. The department of health shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to effect changes to internal procedures or forms necessary to aid in the implementation of this Act.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 14. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on December 2, 2013."

Representative Oshiro moved that Floor Amendment No. 18 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. Floor Amendment Number 18, footer 14-0232, adds a severability clause. It's similar to what was in House Bill 6. The purpose of a severability clause, Mr. Speaker, or inseverability clause, should I say, is to have the effect that any part of this law, or act, is deemed unconstitutional, null and void, the entire act goes away. It's based upon a non-severability clause, I believe in the State of New York, where that was enacted several years ago.

"The purpose and intention of having a non-severability provision is this. It calls both sides to debate and discussion to realize that each are equally responsible to maintain the integrity of the whole act, all of the parts, and that neither should use any deficiency of the part to be challenged and deemed unconstitutional, or null and void.

"In a way, it kind of puts both parties into a standoff, should I say, Mr. Speaker, so that the live-and-let-live values that we have in Hawaii will be able to continue going forward, and that we might never need to come back in and address this on a more subjective policy level. And that's been in place for several years now.

"So I put this before the Body just to ensure that we can get some kind of assurances from both sides of this debate and discussion, that neither will have their fringe elements seek to defeat the intent of this law as we attempt to balance both equal protection and due process with fundamental religious freedoms and rights.

"Another provision in this is to make the rule-making authority that we have been given to administer the licensing through the Department of Health, all the full measure and benefit of public involvement and participation and transparency under Chapter 91. Again, Mr. Speaker, the current language in the bill seems to give them carte blanche authority to do any and all things in the process of implementing this law. I think it's a dangerous precedent, it may also be an unlawful delegation of authority to an agency without guidance. And for that reason I think it should go by the normal Chapter 91 procedures of public participation, inspection, debate, discussion and disclosure.

"I believe it also would run afoul, as currently drafted, of HRS 201M-2, the small business impact statement, which reads as follows. 'Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3,' the Hawaii Administrative Procedures Act, 'the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented.'

"Mr. Speaker, the Governor has the authority, and he has used it in the past, in promulgating such rules as, I think, fishing regulations. So there is emergency rule-making authority, or emergency rule-making authority regarding the State Historic Preservation Division, so that can be done. But

the foundational law should not give any agency or department unfettered discretion to promulgate rules in effectuating the law.

"Number three, there is a divorce provision here that I believe others will speak to. I believe it's Section 10 that I believe unconstitutionally gives out-of-state litigants the ability to access our family courts, and thereby annul or seek dissolution or even support orders through our family courts, without having the requisite domiciliary requirements or residency requirements under current law.

"As a former family practitioner, Mr. Speaker, it was always impressed upon me that you needed to have both the res and the parties available in the jurisdiction which the family court sits.

"Finally, Mr. Speaker, an important element insofar as we are reflecting upon Connecticut State's law. And members need to understand that Connecticut State law is only of any support for the proposition of providing realistic support for the religious solemnizations or exemptions therein."

Representative Say rose to yield his time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you, Speaker Emeritus. The reason why they have any of the authority, or could have any of that, is that in Connecticut, they have adopted a states-version of the Religious Freedom Restoration Act. As I spoke before, that's an important component, to have the state as a private cause of action, a policy established by law, of having the Sherbert balancing test placed above all of its states agencies administering procedures and their commission. When you have that conflict between religious freedoms and individual liberties.

"Connecticut has that version on its books through its own Religious Freedom Restoration Act. And I think that insofar as we're looking at Connecticut's law, Mr. Speaker, it'd be wise and prudent, and consistent with the Connecticut law, to also have that in what we're looking at today.

"That's the purpose of my amendment this afternoon, Mr. Speaker. Thank you."

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, thank you. In support. First, may I please have the words of the speaker from Wahiawa entered into the Journal as if they were my own? Thank you, Mr. Speaker. Secondly, Mr. Speaker, I do have concerns about the section, and I did, in fact, mention this the night that we voted out Senate Bill 1, House Draft 1 from the Joint Committees on Finance and Judiciary.

"Specifically, again, this bill is entitled 'Relating to Equal Rights,' and when we talk about the divorce proceedings, we are essentially allowing couples now, who are not domiciled here in the State of Hawaii, to obtain a divorce in this jurisdiction if the jurisdiction in which they live does not provide for same-sex marriage.

"Mr. Speaker, again, if you understand divorce law, and I don't profound to be an expert, I actually have friends who have taught me over the past few days the problems, I have been consulting with my colleagues and some of my friends who contacted me about this section. They have grave concerns about this section. Insofar that it does, in fact, violate currently family court proceedings by allowing a divorce without providing for the children of the marriage. It doesn't require the same jurisdiction requirements that it does for heterosexual couples. So for example, a heterosexual couple that wants to obtain a divorce in the State of Hawaii would be required to have at least one of those parties domiciled in the State of Hawaii for six months.

"In this situation, both parties do not have to be domiciled in the State of Hawaii. That is not equal, Mr. Speaker. Moreover, it creates many problems. Why is it now the State of Hawaii's responsibility, our taxpayer's responsibility, to go after and obtain jurisdiction, for our courts

to obtain jurisdiction over two individuals who don't in fact live in our state?

"In addition, there's another problem with this section, Mr. Speaker. Let's assume that the same-sex couple is, in fact, separated, not legally, but physically separated. One is living in a state that does, in fact, have same-sex marriage, recognizes same-sex marriage, and one is in a state that doesn't recognize same-sex marriage. So does that now preclude forum shopping?

"So there continue to be many sections in this which are very problematic from a family law perspective. Again, Mr. Speaker, I am not an expert, but I have been contacted by the experts, and they are the ones urging me to support these floor amendments, because we will create several problems under family law if we pass this bill as is.

"For those reasons, Mr. Speaker, I support the floor amendment. Thank you."

Representative Kobayashi rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in opposition. Let me make a number of points. These floor amendments have not had public review, have not had a committee hearing. Number two, these amendments have been produced outside the normal process. The normal review by attorneys has not been made, because they have been dropped on our laps literally minutes ago.

"Number three, we have 29 amendments here, 29 floor amendments, perhaps more than ever before. Now, these 29 amendments have been dropped on us slowly. A couple at a time, a bunch at a time, strung out over days and at the last moment.

"From my reading, some of these amendments which we have before us and some of these of which we have just dealt with, are identical, or virtually identical, to amendments we have considered on Wednesday. I have not compared them word-for-word, but in my very quick reading in the time I've had, it seems that there is some redundancy.

"So, what do we do? We have gotten some assurance that, in terms of the technical aspects of this bill, we have a bill that is adequate and sound. Number two, we are not the last arbiters of this bill. This bill still has to go over to the Senate. The Senate has at least one three-day weekend to look at these floor amendments."

Representative Oshiro rose to a point of order, stating:

"Mr. Speaker, point of order. What the Senate does or doesn't do with this bill is not relevant."

Representative Kobayashi continued, stating:

"Well, I'm just trying to speak about the process. Then the bill goes to the Governor for further review and signature, another legal check. So there are opportunities to perhaps improve the bill if these floor amendments are worthy. We, right now, can only do what we can in the time we have, thank you."

At this time, Representative Saiki called for the previous question.

Representative Ward rose, stating:

"Point of parliamentary procedure, that supersedes his motion. Mr. Speaker, where in the rules does it say we can only talk about 10 minutes, where does it say we can only do 29 amendments, because we've already done 18 of those? The gentleman is talking about 29 amendments, there are not 29 more amendments to go."

At 3:24 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:33 o'clock p.m.

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

Representative Fukumoto rose, stating:

"Mr. Speaker, part of parliamentary inquiry please. According to House Rule 48, we need a vote if we're going to call for the question. Can we take a vote first, please?"

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Ito and Morikawa being excused.

The motion that Floor Amendment No. 18, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Kobayashi voting no, and with Representatives Choy, Ito and Morikawa being excused.

Representative Ward rose, stating:

"Mr. Speaker, point of parliamentary information that I asked for last time. I asked for what rule do we limit debate."

The Chair addressed Representative Ward, stating:

"Rule 48."

Representative Ward: "The Floor Leader said it was Rule Number 1. We can't find anything on Rule Number 1.

Speaker Souki: "48, sir. Read Rule 48."

Representative Ward: "I haven't got it memorized."

At 3:35 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:37 o'clock p.m.

Representative Ward rose, stating:

"Mr. Speaker, point of information in that Rule Number 48, which I did read, thank you very much for the reference, says that calling for the question and the procedures thereof. My question to you, Mr. Speaker, was why do we limit our debate to 10 minutes? We have gone through five days, 55 hours of hearings. What is the rush?"

The Chair then stated:

"You have had an opportunity to review the ruling, and we shall continue now."

Representative Ward: "I don't have a horse in the race but he's got some amendments to make which the people should be able to hear."

At this time, Representative Oshiro offered Floor Amendment No. 19, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and

responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution;
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith;
 - (C) Authorizing individuals to discriminate in public accommodations and employee benefits if their sincerely held religious beliefs would be otherwise violated; and
 - (D) Harmonizing the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

§489-A Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall substantially burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter.

§489-B Individuals protected. (a) No individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
- (2) Provide benefits to any spouse of an employee; or
- (3) Provide housing, lodging, or similar accommodation to any couple.

(b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or

controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-F Individuals protected. (a) No individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
- (2) Provide benefits to any spouse of an employee; or
- (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:
 - (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
 - (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs."

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be [only between a man and a woman,] permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, [brother and sister] two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) [The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;] Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The [man and woman] parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the [man and the woman] parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between [a man and a woman] two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~[-]~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the [man and woman] parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health~~[-]~~; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended to read as follows:

"§572B-4 Solemnization; license to perform; refusal to join persons in a civil union. (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any clergy, minister, priest, rabi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union.

(c) [Nothing in this section shall be construed to require any person] Notwithstanding any other law to the contrary, a clergy, minister, priest,

rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations [pursuant to chapter 572 or] of civil unions pursuant to this chapter [to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal.] shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.

(d) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability by the State or any of its subdivisions, agencies, or commissions for the failure or refusal.

[(d)] (e) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

[(e)] (f) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department of health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions."

SECTION 9. Section 572B-9.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§572B-9.5[]—Religious organizations and facilities; liability exemption under certain circumstances. (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:~~

- ~~(1) The religious facility is regularly used by the religious organization for its religious purposes;~~
- ~~(2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and~~
- ~~(3) The religious organization does not operate the religious facility as a for-profit business.~~

~~(b) A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.~~

~~(c) Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.]~~

Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."

SECTION 10. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

"[H]§572C-2[H] Findings. [The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.

~~However, the legislature concurrently]~~ The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by [such] legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son[, or two individuals who are of the same gender]. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."

SECTION 11. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 12. The department of health shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to effect changes to internal procedures or forms necessary to aid in the implementation of this Act.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 14. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on December 2, 2013."

Representative Oshiro moved that Floor Amendment No. 19 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. Floor Amendment Number 19 is footer number 14-0235. Again, it adds a severability clause, and let me just add, the import of severability clause is basically to put a truce on both sides of this contentious debate. It basically puts a notice of both sides that any of their fringe members of their organizations, if they were to file a lawsuit and any portion of this act were deemed illegal, void, or unconstitutional, the whole act would go away.

"It has been used in other states. I think New York is one state, I believe it may have been in Vermont or one of the North-East states. But it serves its purpose so far that no suits have been brought challenging the provisions either for the marital rights of same-sex couples nor the protections afforded the religious organizations in both the solemnization rights and/or the use of facilities therein.

"Again, it makes the rule-making subject to Chapter 91 of the Hawaii Administrative Procedures Act. I've always thought that this provision here gives too much discretion to the Department of Health and its agency for the promulgation of rules. I consider it may be an unlawful delegation of authority. In a statute like this, the Governor always has his emergency rule-making authority for that effect, Mr. Speaker, so that's why you also see it here.

"It also deletes the divorce provisions that's in, I think, Section 10 of the Senate bill. I believe the Representative from Kapolei has mentioned why it may run afoul of current family court practice. But I'd also like to draw people's attention to the expert witness testimony that came in through the Minority Caucus' informational briefing several weeks ago. Professor Wardle, who is a distinguished professor of family law, both nationally and internationally, opined that that particular provision waiving domiciliary requirements to intra-state marital relationships would indeed be unconstitutional primarily for violation of due process protections of those parties who may not be of the res or of the jurisdiction of the State of Hawaii. And also the effectiveness or lack thereof of the parties who may be on the mainland.

"I also need to add, Mr. Speaker, that it would apply to jurisdictions, or jurisdiction. So that means it could be of two states on the mainland, or it

could also be foreign jurisdiction. It could be a jurisdiction outside of the United States, it could be in a foreign land, and those parties too would have access to our family courts for the annulment, divorce, and/or support orders that our family court might let out.

"Finally, Mr. Speaker, it adds a provision here that clarifies the language in the current draft of House Draft 1, which I believe is deficient in that the language regarding the protections from legal liability only seems to address, and I point to page 6, line 5, 'shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.'

"That similar language is also contained in another section dealing with the facilities, and that is on page 13, line 19, where it states, 'civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal administrative liability for the failure or refusal.' What I believe, and this is odd, and I believe is substantive and in the legal sense, is that it should say that it shall not create any civil claim or cause of action or result in any state action to provide real protections to these parties.

"I also find that it's deficient in it does not cover political subdivisions of the state, which would include the counties, Mr. Speaker. This law has no effect over the counties and their regulations. And it certainly doesn't have any reflection or effect upon commissions, as is reflected in the Connecticut law where it has commissions. I think that omission is significant in light of the fact that under the current laws of the state regarding public accommodations, the Hawaii Civil Rights Commission may have jurisdiction over these matters.

"So for those reasons, Mr. Speaker, I ask that we consider these amendments to the current House draft. Thank you."

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of the amended language only, and not the underlying bill. First of all, may I please have the words of the speaker from Wahiawa entered into the Journal as if they were my own? Secondly, Mr. Speaker, it is the very reason that this bill was rushed that these amendments are necessary. These amendments were forced to right the wrongs of the majority, so I take great umbrage to one of my colleagues saying that these amendments were not reviewed and we're rushing these through, they didn't go through the proper process. These were all discussed in hearing, and we're trying to make a bad bill better, which is the reason for these amendments being offered, Mr. Speaker.

"For these reasons, I support the amended language. Thank you, Mr. Speaker."

Representative Awana rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Saiki rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I rise in opposition to this floor amendment. This floor amendment is similar to ones that we considered and voted down on Wednesday evening. In particular, the problem with this floor amendment is that it once again would allow for whole-scale discrimination by any individual who claims a sincerely-held religious belief. That discrimination is not limited just to same-gender marriages or ceremonies. It opens the door to any form of discrimination, whether it be on age, gender, ethnicity, or any other classification.

"Accordingly, I oppose this floor amendment, and I will call for the question in three minutes. Thank you."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Fale, Hashem, Ito and Tokioka being excused.

The motion that Floor Amendment No. 19, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Saiki voting no, and with Representatives Choy, Fale, Ito and Tokioka being excused.

At 3:47 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 3:51 o'clock p.m.

At this time, Representative Oshiro offered Floor Amendment No. 20, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution;
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith;
 - (C) Authorizing individuals and small businesses to discriminate in public accommodations and employee benefits if their sincerely held religious beliefs would be otherwise violated; and
 - (D) Harmonizing the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

§489-A Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall substantially burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter.

§489-B Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or
- (3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall

automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-F Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or

- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

"Religious organization" means a privately held corporation or other legal entity that both:

- (1) Holds itself out publicly as adhering to specific religious beliefs; and
- (2) Is operated consistently with those beliefs.

"Small business" means a partnership or legal entity other than a natural person that either:

- (1) Provides services that are primarily performed by an owner of the business;
- (2) Has five or fewer employees; or
- (3) Owns five or fewer units of housing in the case of a legal entity that offers housing for rent."

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be ~~[only between a man and a woman;]~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior

marriages~~;~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~[man and woman]~~ parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health~~;~~ provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended to read as follows:

"§572B-4 Solemnization; license to perform; refusal to join persons in a civil union. (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any clergy, minister, priest, rabbi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union.

(c) ~~[Nothing in this section shall be construed to require any person]~~ Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations [pursuant to chapter 572 or] of civil unions pursuant to this chapter [to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal.] shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.

(d) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability by the State or any of its subdivisions, agencies, or commissions for the failure or refusal.

[(d)] (e) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

[(e)] (f) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department of health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions."

SECTION 9. Section 572B-9.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§572B-9.5[]—Religious organizations and facilities; liability exemption under certain circumstances. (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:~~

- ~~(1) The religious facility is regularly used by the religious organization for its religious purposes;~~
- ~~(2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and~~
- ~~(3) The religious organization does not operate the religious facility as a for-profit business.~~

~~(b) A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.~~

~~(c) Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.] **Religious organizations; exemption under certain circumstances.** (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union that is in violation of its religious beliefs or faith.~~

~~(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."~~

SECTION 10. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§572C-2[] **Findings.** [The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

~~However, the legislature concurrently] The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by [such] legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son[, or two individuals who are of the same gender]. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."~~

SECTION 11. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 12. The department of health shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to effect changes to internal procedures or forms necessary to aid in the implementation of this Act.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 14. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on December 2, 2013."

Representative Oshiro moved that Floor Amendment No. 20 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Okay, Mr. Speaker, I can hardly hear myself with all the fantastic public display of democracy going on outside. Thank you very much, Mr. Speaker. I just want to add, and thank you, for allowing me the privilege of speaking on my constituents' behalf as a full and free member of the House of Representatives. It's great to be in democracy this afternoon.

"Floor Amendment Number 20 is footer number 14-0234. Again, it adds a severability provision, which I think is very important in these types of measures. It also adds the rule-making limitation to Chapter 91, the Hawaii Administrative Procedures Act, to the Department of Health. It deletes the divorce proceedings provisions that I find so offensive and maybe unconstitutional. It inserts the Connecticut State's Religious Freedom Restoration Act. Since one of our former congressman, now our Governor, is here, I need to mention that this Religious Freedom Restoration Act, which was approved by the United States Congress and Senate back in 1993, was for the important purpose of reestablishing the compelling interest test articulated in the Sherbert case, that was overridden by the Peyote case, the Oregon unemployment case.

"Then congress had the wisdom and the wherewithal to almost unanimously reenact the standard as far as federal courts go and federal agencies go on what the proper balancing test was. That's the Sherbert standard, whereby there is a government authority to issue regulations and rules of all people and practices. But it has to have a compelling purpose, and it has to be narrowly construed for that purpose when it rubs up against a person's individual freedom of religion under Article I of our Constitution, and that you cannot have a substantial burden upon the person's freedom of religion.

"I think that's an important component that needs to be put into this bill by clear legislative authority through an enactment of this provision so that the courts will have the proper guidance and authority to balance out the competing interests of equal protection and due process against First Amendment freedom of religion, freedom from religion, freedom of speech, freedom of publication, freedom of assembly.

"It also adds the exemptions for small business, and much ado has been said about it. Let me state for the record, be very, very clear about it, this is for a limited period of time, three years, applies to only small business, five or less, small mom and pop's. It deals with all the aspects of human creativity, of free speech, which is components of taking a photograph, writing a letter, singing a song, doing a poem, publicizing an announcement, or operating in the technological world of a website or database, wedding planning or advertising, or posting of gifts or solicitation. All those things are covered in the area of speech. That's why it's so important, Mr. Speaker, that's why it's so important.

"If the instance arises, Mr. Speaker, that the couple cannot receive those services, they are not easily attainable, then the pendulum swings back to that couple against the religious beliefs of that small business owner. But it provides at least a balancing test and an ability for the courts and for the Hawaii Civil Rights Commission to clearly look at the competing interests and values, and that's why I think it's so, so, so important. Thank you very much."

Representative Wooley rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. I just want to let the caucus know that I don't like the language of this bill. I just saw it for the first time just now, and I want to explain why. I'm a mama bear, one of the few mama bears in this caucus, actually. And there's something that mama bears do share, even though we are all very different in our opinions. During the testimony, there was one mama bear in particular that I saw who actually changed her testimony, I think she and her husband may have been the only ones to change their testimony, from opposition to comments.

"I asked her if she could explain to me why, and she wrote me a letter, and I would like to share that with you. She gave it to me this morning, and she also provided me with a book.

I'm writing you as a friend with as much *aloha* as I can send, and I know you'll hear me as a friend. I know you are up against a lot here. There's a typhoon going on in the capitol right now as well as the Philippines. My hope is that this letter can be, for you in this moment, and eye of calm in the middle of the storm.

I would like to share with you "the pivotal moment" for me this last week.

On Halloween I arrived at the capitol near sundown and saw a man from a distance. He was wearing one arm in a sling, walking down the sidewalk with a friend. As he walked past some "let the people vote" sign-holders, he turned to his friend and although I couldn't hear it, it was obvious from the deep sadness on his face he was saying something to the effect of, "This contention is so wrong."

When someone is in pain, is it not our nature as women, to be compassionate? To reach out to them and try to help? I felt drawn to him and wanted to help him, to find out why there was such sadness in his eyes.

I ran in to him again later. I asked if he was okay, and if he'd share with me what happened. He told me hesitantly that his arm had been broken in five places and that, yes, this happened at the hands of people who didn't like what he had to say.

And then he backed off, went to do something else.

I stuck around. I couldn't move. I wanted to know more. I was far more than curious. I *needed* to know how this sort of thing could happen. A few minutes later, he came back to talk with me.

Jessica, it was awful. His eye was still a painful deep purple. His nose, bent and broken. This soft-spoken, honest, intelligent young man had been pretty brutally beaten and badly injured for sharing his opinion. In America. Here in Hawaii. That week!

Granted, this kind of thing happened among the blue-shirts, too. Just a few days earlier I met a woman who had been rammed by a truck. Just for holding a picket-sign. Terrible.

If I had felt the first stirrings of feelings for the "other" side on Monday at the rally, here on Wednesday, it hit me: *overwhelming* compassion and understanding. I could not hold back the tears, and then we were both hugging and crying. I felt the same way - the exact same way - as I would feel if he were my son. The outpouring of love was almost tangible, and the connection between us was the most powerful I've ever felt outside my family.

I walked away from that experience a different person. How could I not?"

"I would like to submit these in writing, if that's okay. Thank you, Mr. Speaker."

Representative Wooley submitted the following letter:

[Continued from speech.]

"Did it mean I approved of same-sex marriage?

No.

But I found out that compassion and true love - good old fashioned charity for those around us - is more important than who is right and who is wrong. I also found out that I had been starkly lacking in charity before. I *thought* I loved the opposition. I would have told you I did. I would have even believed I was telling the truth.

It simply wasn't true until I felt what they felt, wept with them, and put down my shields - literally and figuratively. The scripture, "Inasmuch as you have done it unto the least of these my brethren, you have done it unto me," rang in my ears when I related the experience to my husband later.

So now I have a deeper appreciation for what you're up against. How can you stand to make a decision like this? You have an overwhelming majority clearly wanting to preserve the sheltering tree that is traditional marriage. It keeps us all safe - both sides of the issue.

But there is still a minority group here in pain. What they need, however, they will not find in changing the word "marriage."

There are many people wearing navy blue shirts right now who are simply afraid. I was one of them. My heart was touched and changed profoundly and the ripples extend out much farther than I can see. Those who oppose same-sex marriage need time to change their hearts. We need to understand that our brothers and sisters who experience same-sex attraction are not trying to destroy what we hold dear, they only want to be understood, respected, and accepted for who they are.

But way to acceptance is not to become the same as those from whom acceptance is sought. The way to acceptance is to overcome fear with mutual love and understanding.

I cannot tell you what to do, my friend. I see more storms ahead no matter how this gets handled, as I'm sure you do. But I want you to know that I love you - and even if I don't know you very well (yet?) - and that I hope we continue getting to know each other in the future.

Mahalo for your courage and your desire to do the right thing.

My prayers will be with you,

Alisa Smith"

Representative Wooley's written remarks are as follows:

"Let me clarify. I am in opposition to this amendment because, like all the other attempts to delay and/or kill SB1, HD1, it doesn't make sense. This amendment actually proposes to give every individual the right to discriminate against anyone for any reason if they believe it is their religious belief (circular reasoning, I know). How absurd!

"I believe the law and the oaths we all took to support and defend our State and Federal Constitutions require that the Legislature decide this issue of marriage equality, legislators vote 'yes' on SB1, HD1, and SB1, HD1 becomes law. I will continue to explain my legal reasons to support SB1, HD1, but I read this letter because it makes clear WHY the Legislature must decide this issue from a human and humane perspective and thus WHY these delay tactics must stop. The author of the letter wants the Legislature to vote. I know this in my heart; we have all witnessed how

delay can divide people and increase and prolong the pain for everyone involved. Mothers, in particular, agree that increasing and prolonging pain for anyone is counterproductive and unnecessary.

"This wife and mother, all the way from Laie, had begun her written testimony with the words 'I oppose this bill wholeheartedly.' Yet when she finally had her chance to speak into the microphone, she expressed only 'comments' and asked that we, the Representatives of the state, make the difficult decision. She made clear she was no longer testifying in opposition to the bill. What changed her mind so that when she approached the podium, her words were totally different?

"Like many, this mother must have learned a lot about the bill after she submitted her initial testimony. She took time away from her children and home life to testify in person. She literally spent days at the Capitol, in line, to get her chance to express her opinion to the committee members. During that time, she experienced many emotions and a pivotal moment so that by the time it was her turn at the podium, she dramatically shifted her perspective.

"When I approached Ms. Smith to thank her for her compassion and insight, I couldn't help but note the contrast between the blue shirts wielding signs on big sticks stating 'let the people vote' and her, sitting down while Joanne Adams held her baby to let her catch her breath. I'm guessing that this mom, like me, shed many tears and became more conscious of what many in the GLBT community experience on a daily basis. She may have felt the pain I too felt when listening to people say hateful things about same-sex couples, their families and their children. And she saw that hateful words have the power to turn some to hateful action. People were getting hurt, verbally and physically, and we were all witnesses to it. It seemed that a few 'people of Faith,' did not seem to recognize the irony of what they preached compared to their actions. Unfortunately, it just takes a couple bad apples to change the dynamic of a group, and these bad apples were effective.

"When I asked this mother why she changed her testimony, she described a connection she made with a young girl, maybe nine years old, who was the daughter of two mommies – a lesbian couple. I know exactly the girl she spoke of, I had met her too and been touched by her smart personality and will of steel in support of equal rights. I know the connection between the two of them must have been full of *aloha*. There must have been a moment of appreciation and recognition that people are just people, trying to love one another, take care of one another, raise children, be happy, and hopefully, make the world a better place.

"Her letter to me reflects the pain, physical and mental, that she witnessed on both sides. She felt true compassion and understanding for what she thought initially was 'the other side' and identified why we should never resolve this kind of issue by a popular vote. This very wise mother must have been awestruck in her heart and could see that pitting different religions against each other, asking brothers and sisters to go against one another, and putting equal rights for a minority group up to a popular vote would be cruel. It would increase animosity among us and erode our commitment to equal treatment of all people.

"She learned that some churches support, perform, and want the state to recognize same-sex marriages. She found out that there are same-sex couples already married and living among us, and many are raising children. I am sure she learned that this minority group of individuals is now denied rights and will continue to be treated differently by the federal government unless the state recognizes their marriages. I know she also learned that this bill actually protects freedom of religion and makes clear that churches can continue to only recognize and perform 'traditional' marriages if they choose.

"There were a few phrases from her letter that jumped out at me as messages that may help guide others as we move forward from here, especially for those who do not understand why SB1, HD1 must become law. Her messages are simple:

- 1) Compassion and true love – good old fashioned charity for those around us – is more important than who is right and wrong.

- 2) Those who oppose same-sex marriage need time to change their hearts. We need to understand that our brothers and sisters who experience same-sex attraction are not trying to destroy what we hold dear, they only want to be understood, respected, and accepted for who they are.

- 3) The way to acceptance is to overcome fear with mutual love and understanding.

"I want to thank this mother for her spiritual guidance that touched me in many ways. I want to thank her and all the testifiers for allowing me to better tap into the wisdom of our forefathers who wrote the United States Constitution and Bill of Rights to establish justice and liberty for all, helping me to see the critical purpose of maintaining a representative government for and by the people, and showing me why it is so important to separate the church and the state.

"Finally, I want to thank everyone for helping me see the wisdom in standing strong for equality and SB1, HD1, and opposing myriad attempts to kill it."

At this time, Representative Saiki called for the previous question, stating:

"Mr. Speaker, I call for the question, but please permit the movant to make a rebuttal."

Representative Oshiro rose to respond, stating:

"Thank you very much, Mr. Speaker. Just to clarify several items on the record. When I made the reference to a former congressperson back in 1993, I was making my reference to none other than our illustrious and beloved Governor Abercrombie. Also with him, at that time, was our much loved and beloved and respected and adored Senator Inouye. Also with him at that time was our much beloved, respected, and adored Senator Daniel K. Akaka. And of course, we all loved, cherished, adored, and think of many days, especially these recent past days, Congresswoman Patsy T. Mink.

"I'm proud to say that all of the Hawaii delegation at that time saw the wisdom and necessity to bring balance back to the equation that was driven apart in our country through the Rehnquist Court's ruling in the *Peyote* case, the unemployment case. That they felt and understood that it was important to recognize government's authority to regulate any and all avenues of public policy, but it needs to stop and pause when it gets to the door of a person's freedom of religion, a practice and belief of people.

"So they passed that law, the Religious Freedom Restoration Act, to provide that balance. And that's why I'm here again, on this Floor again, Mr. Speaker, asking for this floor amendment. It's consistent with the Connecticut law that we reference in this House Draft 1. I think it's necessary and appropriate to buttress whatever we try and do and offer protections in this draft. Thank you very much, Mr. Speaker."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Coffman.

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Takai and Tokioka being excused.

The motion that Floor Amendment No. 20, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Wooley voting no, and with Representatives Choy, Takai and Tokioka being excused.

At 4:03 o'clock p.m., Representative Oshiro requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:05 o'clock p.m.

LATE INTRODUCTIONS

The following late introduction was made to the Members of the House:

Speaker Souki introduced Governor Neil Abercrombie.

THIRD READING

At this time, Representative Oshiro offered Floor Amendment No. 21, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution;
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith; and
 - (C) Harmonizing the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§489- Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall substantially burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may

assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide

goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be ~~[only between a man and a woman,]~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;] Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;~~
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~[-]~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall

indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~[man and woman]~~ parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health~~[-]~~; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended to read as follows:

"§572B-4 Solemnization; license to perform; refusal to join persons in a civil union. (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any clergy, minister, priest, rabbi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union.

(c) ~~[Nothing in this section shall be construed to require any person] Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations [pursuant to chapter 572 or] of civil unions pursuant to this chapter [to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal.] shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.~~

(d) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability by the State or any of its subdivisions, agencies, or commissions for the failure or refusal.

~~[(d)]~~ (e) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

~~[(e)]~~ (f) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department

of health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions."

SECTION 9. Section 572B-9.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§572B-9.5]—Religious organizations and facilities; liability exemption under certain circumstances. (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:~~

- ~~(1) The religious facility is regularly used by the religious organization for its religious purposes;~~
 - ~~(2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and~~
 - ~~(3) The religious organization does not operate the religious facility as a for-profit business.~~
- ~~(b) A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.~~

~~(c) Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.] **Religious organizations; exemption under certain circumstances.** (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union that is in violation of its religious beliefs or faith.~~

~~(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."~~

SECTION 10. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

~~"[§572C-2(H)] **Findings.** [The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

~~However, the legislature concurrently] The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by [such] legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son[, or two individuals who are of the same gender]. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."~~

SECTION 11. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 12. The department of health shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to effect changes to internal procedures or forms necessary to aid in the implementation of this Act.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 14. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on December 2, 2013."

Representative Oshiro moved that Floor Amendment No. 21 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, this is a similar amendment to the prior floor amendments, but I want to just highlight what I'm trying to do here. First of all, Mr. Speaker, I believe that the current House Draft 1 is deficient in that it seeks to provide protections for the religious exemptions of both the solemnizers and for the use of the facilities. I had a chance to review the Connecticut statute and review the same. The deficiency is basically in that this draft here does nothing to hold off any cause of action or administrative proceeding or any civil claim or cause of action or any state action against the violators of this statute.

"It runs afoul of also not providing coverage for the subdivisions, which would be the counties in Hawaii. And the state does not cause this law and this section to fall out of the domain and jurisdiction of the Civil Rights Commission. So I think these are some fatal defects that need to be addressed.

"At the very least, Mr. Speaker, it needs to be clarified because it seems strange when you have a law like this, that you would state that it's no such penalties, fines, injunctions, administrative proceedings, or other legal administrative liability, the refusal to provide a service or a solemnization of marriages, but yet you have no cause of action stated herein. At least there's some confusion on whether or not that was a legislative intent, or was not the legislative intent. But as we learned from both Justice Levinson last week and from retired Judge Ahu, the law should be very clear on its face so that the courts will have guidance on how to implement the law. Thank you, Mr. Speaker."

Representative McDermott rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I stand in opposition to the amendment. I appreciate the protections in here, and the fact that I do find it objectionable should give the majority pause to take a good look at it. Mr. Speaker, Section 1 and items 1 and 2, I find objectionable. Then the Section 572-B, interpretation of terminology to be gender neutral. I understand we already do birth certificates as co-parent, although I'm not sure how a child can be created without a mom and dad, male and female, I haven't figured that out, I'm sure someone at the university can furnish me with a study that says that it is possible, but I haven't seen it yet, with the exception of human cloning, and maybe that's just a few years down the road.

"But other terms like widow, what do we say? Gender-neutral spouse still alive of deceased, dead, gender-neutral spouse. I mean, this is the charity of political correctness burrowing on. So for those reasons, Mr. Speaker, I will not support this. But I support the intent and the good language in there, that the majority should consider, because he's trying to make a point, I think he is making a point, and it should be enough there to encourage you guys to take a look at it because I can't support it. Thank you."

At this time, Representative Ing moved to call for the previous question, seconded by Representative Coffman.

At this time, the Chair stated:

"The question has been called. Before we proceed, the mover of the motion will have an opportunity to speak."

Representative Oshiro rose to respond, stating:

"Thank you very much, Mr. Speaker, for the three minutes on this important Floor debate. We've been hearing repeatedly through this discussion and debate that the Attorney General has approved this draft. I just want to point out for the record, and enter into the record, several statements that the Attorney General has made over the past several weeks on this particular Senate bill, and the reason why I need to bring this amendment to the Body for its consideration.

"In the Senate draft that was brought in about a week ago, this is his statement. 'This bill will allow marriage between two individuals without regard to gender within the State of Hawaii. The Department of the Attorney General strongly supports this important measure and urges the Legislature to pass it. To assist this Committee, this testimony is submitted to summarize the important legal implications of the bill and how the bill's provisions relate to existing law. In the Department's view, no amendments are necessary for the bill to accomplish the bills stated intent and purpose.'

"That was on the Senate draft. Fortunately, through the public hearing process, there was time to debate and discuss and look at the language and propose improvements to it. And I think that was done here to some degree although I'm not completely satisfied yet.

"This is the testimony that came in from the Attorney General at the House Judiciary and Finance Committee hearing. 'The Department of the Attorney General strongly supports this important measure and urges the Legislature to pass it. To assist this Committee, this testimony is submitted to summarize the important legal implications of the bill and how the bill's provisions relate to existing law. In the Department's view, no amendments are necessary for the bill to accomplish the bills stated intent and purpose.'

"Finally, Mr. Speaker, on a statement issued on or about November 5th, the Attorney General makes these comments. 'We urge the Legislature to pass this bill. The bill as amended is legally sound and is in accord with the Hawaii State Constitution. This bill will provide marriage equity and fully recognize religious beliefs in that context.'

"Thank you very much, Mr. Speaker."

Representative Belatti rose in opposition to the proposed floor amendment and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Belatti's written remarks are as follows:

"I rise in opposition to Floor Amendment 21 to Senate Bill 1, House Draft 1, because it adopts language that is overly broad, creates questions of legitimacy and validity of all laws enacted by the state or county legislative bodies, and opens up the state and county governments to broad liabilities that simply do not relate to the issue that is being contemplated by the Legislature during this special session, specifically ensuring equal treatment under the state's marriage laws.

"The language that is particularly troubling in this floor amendment, as well as Floor Amendments 18, 19, and 20, imports language from the federal Religious Freedom Restoration Act that applies an overly broad, vague, and difficult to apply test to whether laws of general applicability permissibly affect the right to exercise one's religion.

"Preserving an individual's free exercise of religion is an important and fundamental task of government, but as drafted, the floor amendment would also allow challenges to every state and county law if it burdens any religious belief. In other words, any religious objection could be brought to challenge any law including laws related to zoning, women's health issues, the definition and prosecution of crimes, and civil rights laws. The language of the floor amendment essentially creates a trump card for the free exercise of religion over any law that is enacted by the democratically-elected Legislature or county councils which are tasked with crafting laws and ordinances that balance competing constitutional principles and address the multitude of policy and community concerns unique to our state."

The motion to end debate was put to vote by the Chair and carried, with Representatives Brower, Carroll, Choy, Ichiyama, Kawakami, Matsumoto, Takai and Tokioka being excused.

The motion that Floor Amendment No. 21, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Belatti and McDermott voting no, and with Representatives Brower, Carroll, Choy, Ichiyama, Kawakami, Matsumoto, Takai and Tokioka being excused.

At this time, Representative Oshiro offered Floor Amendment No. 22, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry. However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in accordance with the Hawaii state constitution and the United States Constitution;
 - (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith;
 - (C) Authorizing individuals to discriminate in public accommodations and employee benefits if their sincerely held religious beliefs would be otherwise violated; and
 - (D) Harmonizing the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§489-A Free exercise of religion protected. (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall substantially burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Further a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I, section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter.

§489-B Individuals protected. (a) No individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-F Individuals protected. (a) No individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:

- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
- (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs."

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be [~~only between a man and a woman,~~] permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, [~~brother and sister~~] two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;

- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

"**§572-3 Contracted without the State.** Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal ~~[in the country]~~ where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"**§572-6 Application; license; limitations.** To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~;~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~[man and woman]~~ parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three

business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health~~[-];~~ provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended to read as follows:

"**§572B-4 Solemnization; license to perform; refusal to join persons in a civil union.** (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any clergy, minister, priest, rabbi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union.

(c) ~~[Nothing in this section shall be construed to require any person]~~ Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations [pursuant to chapter 572 or] of civil unions pursuant to this chapter [to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine, penalty, or other civil action for the failure or refusal.] shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.

(d) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability by the State or any of its subdivisions, agencies, or commissions for the failure or refusal.

~~[(d)]~~ (e) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

~~[(e)]~~ (f) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department of health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions."

SECTION 9. Section 572B-9.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§572B-9.5]—Religious organizations and facilities; liability exemption under certain circumstances.~~ (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:

- (1) The religious facility is regularly used by the religious organization for its religious purposes;
- (2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and
- (3) The religious organization does not operate the religious facility as a for-profit business.

~~(b) A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.~~

(c) ~~Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.~~ **Religious organizations; exemption under certain circumstances.** (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

SECTION 10. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§572C-2[H] Findings. [The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

~~However, the legislature concurrently] The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by [such] legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son[, or two individuals who are of the same gender]. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."~~

SECTION 11. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 12. The department of health shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to effect changes to internal procedures or forms necessary to implement this Act.

Section 13. If any provision of this Act, or the application thereof to any person or circumstance, results in a determination by the United States Department of Labor that the State is subject to the loss of its exemption from preemption from the Employee Retirement Income Security Act of 1974, such a determination shall act to invalidate every provision or application of this Act, and to this end the provisions of this Act are inseverable.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 15. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on December 2, 2013.""

Representative Oshiro moved that Floor Amendment No. 22 be adopted, seconded by Representative Say.

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Thank you very much, Mr. Speaker. Members, this is my last floor amendment this evening. It adds the inseverability clause. It clarifies a rule

making that's contained within this bill to Chapter 91 of the Hawaii Administrative Procedures Act. It deletes the divorce provisions that I believe are unconstitutional and creates problems for the family courts and all divorce decrees, annulments issued by the Hawaii courts. It inserts the Connecticut State's Religious Freedom Restoration Act, which I believe is core and essential to the effective implementation of the language contained within this bill.

"It clarifies that the religious exemption provisions to ensure the immunity applies to administrative proceedings, administrative liabilities of the state and all subdivisions of the state, including the counties and commissions. It also provides additional religious exemptions for individuals, Mr. Speaker, and let me spend some time on that.

"During the public hearings both in the Senate public hearing, and especially in the House hearing over the last five days, I've heard many, many, many people proclaim a concern about losing their religious freedoms protected by the constitution under the Bill of Rights when they check into work. And then when they enter their workplace in the public or private sector, they need to leave that part of their being at the door, and that part of them is left outside.

"What this amendment does, Mr. Speaker, is provide some protections to a sincerely-held belief of an individual to bring that belief with them to the workplace, and to also abide by that belief, sincerely held. It allows the person to say no to certain tasks or assignments that might be imposed upon that person, Mr. Speaker.

"Now not across the board, Mr. Speaker, not across the board against any work rules or requirements of the job, but in the instance, it's a bona fide, sincerely-held religious belief. And, Mr. Speaker, there's another agent, or another prop, a colleague, or another employer nearby, who can provide the same service to the general public. That's all it does. It's a real common sense thing, Mr. Speaker. And it's something that's appropriate for people like us in Hawaii. And that's what it does here.

"It addresses many of the concerns raised by those who talk about what might happen to the teachers in schools. If a teacher has these deeply-held, sincere religious convictions, but there's another teacher who is able to help them out, is willing to do it, there shouldn't be any problem. But that's what this amendment provides, Mr. Speaker, and that's why I ask the Body to consider it.

"Then finally, Mr. Speaker, during the discussion and debate on this bill, I heard concerns both within the discussion and outside, that by amending the marriage laws, we might inadvertently run afoul of the current ERISA exemption regarding the Hawaii Prepaid Health Care Act. And I know for you and many here in the Chamber, we know how important Hawaii's Prepaid Health Care Act is, and how we are very unique of all states in the country to have that ERISA exemption.

"In fact, several years ago, I believe the then Chair of Health Committee and the current colleague of mine from Pearl City who's seeking higher office, studied that issue carefully with the belief that the Affordable Care Act may or may not impose and disrupt that fine balance and agreement we have with the federal government regarding ERISA. But I raise this as a concern, Mr. Speaker, because I have not gotten a definitive answer on this issue that was raised. To preserve that argument, I have put it into this floor amendment for us to consider.

"But Mr. Speaker, thank you very much for this opportunity to offer this to the Body. Thank you."

Representative Ing rose to speak in opposition to the proposed floor amendment, stating:

"I rise in opposition. This will be the only time I will speak on this or any other amendment, and I'd like to call for the question after, as well.

"We live in a democratic republic, a representative democracy. We're all elected to make tough choices, and if we make the wrong choices, the people will see that we don't make any more. We were reminded of this

time and time again by testifiers in our marathon five day, 55 hour hearing. But that's the way that government works. Everyday people do not have the time to discuss these issues that affect their everyday lives. They have to work, they have to feed their kids."

Representative Awana rose to a point of order, stating:

"Mr. Speaker, point of order, I don't know what this discussion has to do with the amendment before us."

Representative Ing continued, stating:

"I'm getting there. So that's precisely why the people had hired us. The Representative from Laie mentioned that this issue has divided the people. But right now, who are they yelling at? Both sides. Where is all the passion, the anger, where is it directed to? It's directed at us. But the longer this drags out, the more we show that we cannot handle making the tough decisions, the more people will direct that anger to their neighbors. And we've already started to see that by the confrontations out in the rotunda."

"But we can end that division, and that's why the people hired us. I know that my colleagues on both sides of the issue have given more time..."

The Chair addressed Representative Ing, stating:

"Alright Representative, you need to speak on the amendments."

Representative Ing continued, stating:

"On the amendments, these amendments. More time, more research, and have attained the most thorough understanding of this bill, than they ever had on a single bill. So it's not about needing more nuancing and deliberation. We need to be real, let's call a spade a spade. To say it's about process and then at the last minute we have this, out of 55 hours. We introduced this many amendments that the public has never seen? To me, that's disingenuous, these are delay tactics."

Representative Fukumoto rose to a point of order, stating:

"Point of order, Mr. Speaker."

Representative Ward rose, stating:

"Point of personal privilege, Mr. Speaker. My point is, I find the comments of the gentleman who's making these personal remarks offensive, and he's called for the question, so after he says his piece, he can sit down and say nothing. He's calling people disruptive. There's a TRO that one group put against another group to shut down New Hope Church. There's a TRO that was out for the..."

The Chair then stated:

"Representative, you have made your point."

Representative Ward: "I'm doing what he's doing. He's pointing fingers. There's a TRO, the lawsuits have already begun."

At 4:22 o'clock p.m., Representative Saiki requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:29 o'clock p.m.

At this time, the Chair stated:

"To the good people in the gallery, if you can, I know you're very passionate about the bill here, but if you can refrain from outbursts so that we can get on with this business. I thank you all for your patience and your time here."

Representative Fale rose, stating:

"Mr. Speaker, I would just like to address some of the comments that were directed at me. I would actually say, I agree with the good Representative from Maui on the things that he said. He said that, as statements have been earlier, that these amendments have not gone through the normal review, they're outside the normal process, they're at the last moment, and we can't look at these because of the timeliness of this."

"Mr. Speaker, I couldn't agree more. I couldn't agree with this entire process, from the special session all the way through these amendments right now, have not gone through the normal review, are outside the normal process, and have been introduced at the very last moment. Mr. Speaker, we are talking about amendments that the public never had the opportunity to review. I could not agree more. House Draft 1, the public was never given the opportunity to review."

The Chair addressed Representative Fale, stating:

"Alright, Representative, your question was directed to the Representative, would you please direct your question. I'm not going back to your statements that you have now. If you have a grievance as to the statements, state your grievance."

Representative Fale continued, stating:

"Yes, Mr. Speaker. Well, I would say that I don't have a grievance, but I can say that we stand shoulder to shoulder on amendments that have never been given to the public to review, Mr. Speaker. I would like to agree with him to say we need to take this process further, we need to allow the public to review these, Mr. Speaker. I would like to say thank you for bringing that up. Thank you, Mr. Speaker."

At this time, Representative Saiki called for the previous question, stating:

"Mr. Speaker, I call for the question, but please permit the movant to speak."

Representative Har rose, stating:

"Mr. Speaker, I believe you recognized me after you recognized the speaker from Kihei. You did, in fact, say that Representative Har would go after the Representative from Kihei."

The Chair addressed Representative Har, stating:

"Representative Har, you wish to make written comments?"

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Actually, just two minutes Mr. Speaker, I'll be very quick. Thank you, Mr. Speaker. I rise in support of the amended language but not the underlying bill. Again, Mr. Speaker, I think this goes back to what was said previously about balancing the Fourteenth Amendment rights as well as against our First Amendment protections. I think the reason we're struggling so much with this, and the reason these floor amendments are being introduced, is that in everything we do as legislators, in every bill we've introduced and every bill we've passed, we've attempted to influence or regulate behavior."

"For the first time, Mr. Speaker, through this bill, we are now attempting to regulate thought. Freedom of conscience, the freedom to believe what one person wants to believe. And that is absolutely protected under the First Amendment. That is why this bill is so frightening and emotional for so many people, Mr. Speaker. We saw thousands of people come and testify, and they truly broke down. That's the issue, Mr. Speaker. So, you know, I was so moved by one gentleman, Mr. Travis Agustin, he was registered as number 3895. He said, 'the bottom line is this. This bill, Senate Bill 1, does not protect an individual's rights to express himself or herself, it does not give us the right to believe what we want to believe.'"

"The issue is not whether you believe what is right or wrong, that's not the issue. The issue is, under the First Amendment, you absolutely have

those protections. And so for the first time in history, in the history of the State of Hawaii, we are now attempting to regulate thought. That's why it's such a scary premise for so many people, Mr. Speaker. So respectfully, Mr. Speaker, for these reasons I support the amended language, because I urge this Body to continue trying to balance the Fourteenth Amendment with First Amendment protections."

Representative Awana rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Oshiro rose to respond, stating:

"Thank you very much, Mr. Speaker. Just a summary, to summarize the contents of this bill. Again, I believe these are well-placed amendments. For those who might be junior in tenure in this Body, this is part and parcel of the legislative process of the State House of Representatives. Floor amendments are put down upon bills for consideration by the Body. There's nothing inappropriate to these floor amendments being made. Mr. Speaker, you and I know that these concepts and these principles herein have been debated and discussed in various forms, of both formal and informal, on this very important measure.

"You yourself, Mr. Speaker, along with the Members of the House, received a pack of information from my office containing treatises and review documents discussing this very important issue of how you balance First Amendment rights with due process, equal protection liberties. So I don't think this is out of the box, being placed among anyone by surprise. Again, Mr. Speaker, this has been the practice and procedures and traditions of this Body for the last 20 years that I've been here regarding floor amendments, so I see nothing awry, and I'm not trying to take anyone by surprise.

"The Connecticut law, Mr. Speaker, may be the appropriate place to start, but let's remember that Connecticut is one of those five states that had courts by edict, or by decisions, grant same-sex marriage. Connecticut, California, Iowa, Massachusetts and New Jersey are those states we have same-sex marriage today because of court interpretation of their equal protection laws.

"Popular vote was done in Washington, Maine, and Maryland. State Legislatures of Vermont, New Hampshire, New York, Delaware, Minnesota and Rhode Island. And that's why I suggest we look at those states. Mr. Speaker, this is such an important issue. A concern that came up several weeks ago when I was on the neighbor island is this, what happens if the religious exemptions are struck down as unconstitutional? Well, given the severability provision in this law, the law continues on, without any protection to the religious organizations with their facilities or their solemnization ceremonies or their marriage ceremonies. There is no protection for them. And the history is replete, Mr. Speaker, that once we pass this law with insufficient or inadequate or questionable laws that cannot provide protections, and they are deemed illegal or void, there are no protections.

"That's why I ask, Mr. Speaker, for us to consider this really long and deep and hard before we get to the main motion. Thank you."

At 4:37 o'clock p.m., Representative Fale requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:41 o'clock p.m.

Representative Ing rose, stating:

"Mr. Speaker, I'd like to withdraw any comments I made that might have been taken as a personal grievance. I guess the only point I was trying to make is, I'm ready to take the vote, face the consequences, and let the healing in our community begin. Thank you."

At this time, the Chair stated:

"Your remarks are withdrawn. So ordered."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

Representative Oshiro rose, stating:

"Mr. Speaker, thank you for the opportunity to have this vigorous debate. I appreciate it very much."

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Ichiyama, Lowen, Nishimoto, Takai, Tokioka and Tsuji being excused.

Representative McKelvey rose to speak in opposition to the proposed floor amendment, stating:

"In opposition, permission to insert written comments into the Journal, and please look at page 3, 489-B, Subsection 2. Thank you."

Representative McKelvey's written remarks are as follows:

"I am opposed to Floor Amendment 22 due to the fact that the floor amendment has not gone through the vetting process of public testimony, committee questioning and review to ensure that what is purportedly being represented in the proposed language is what is truly being delivered. These steps make certain that there are not any unforeseen consequences from an amendment that could end up hurting the people in the State of Hawaii including those that the very floor amendment intends to help. It is unfortunate but Floor Amendment Number 22 illustrates this point exactly.

"The proponents of this floor amendment claim that it will reinstate religious freedoms and create a true balance between the right of a couple to receive federal benefits through the status of marriage and one's First Amendment right of freedom of religion. Upon closer examination, however, this floor amendment could seriously hurt those whom this proposed amendment is intending to protect. I draw your attention to page 3 of the floor amendment section 489-B(a)(2). If you read 489-B(a) it states that 'no individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious beliefs:'. Now along those lines I point out subsection 2 which states that one of the areas where this would be allowed to apply is providing 'benefits to any spouse of an employee'. Therefore if you look at this language which is supposed to balance competing constitutional rights you can clearly see that instead it opens the door for full-blown discrimination, even against those members who are being told that this amendment will protect.

"Hypothetically, under 489-B(a)(2) you could have a situation where a Muslim business owner would be able to refuse to extend benefits to the spouse of a Muslim employee whose wife is Christian because it violates his sincerely held belief that Christians and Muslims should never marry. I think our Christian friends in the audience would be shocked to know that if this amendment were adopted by this Body that their members could be discriminated against simply because they were married to somebody that the business owner sincerely felt was a violation of their sincerely held beliefs.

"Floor Amendment 22 if adopted would also create a huge gap in Hawaii's Prepaid Health Care Act by allowing employers to refuse to extend mandated coverage to the spouse of an employee because it violates their sincerely held beliefs, even if it is not a belief that by its very nature creates rampant discrimination in the workplace. In other words, you could simply say that the marriage of the employee to your wife violates your sincerely held religious beliefs as an excuse to not have them covered by the company's health insurance plan as required by the Prepaid Health Care Act.

"If Floor Amendment 22 is adopted it would endanger our ERISA exemption for prepaid health care with the federal government because now this section of law could be used to easily negate prepaid health requirements by many entities. The unforeseen consequences that exist in this floor amendment would have been revealed through the proper public hearing process as not only the community and experts could point out these issues, but the members of the respective committees could also zero

in on whether the effects that have been offered to you today as a warning would truly occur if this language were adopted. I would ask everyone to keep in mind all that glitters is not gold and if we are going to use the golden standard of process as the metric for developing good legislation, then the floor amendments should also have to go to that very process in order to smoke out the consequences and unforeseen ramifications of such language before they are codified into law, so that it truly helps and not inadvertently hurts the people of Hawaii."

Representative Fale rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

The motion that Floor Amendment No. 22, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Ing and McKelvey voting no, and with Representatives Choy and Tokioka being excused.

At 4:43 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 4:45 o'clock p.m.

At this time, Representative Har offered Floor Amendment No. 23, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Section 3 of Senate Bill No. 1, H.D. 1, is amended to read as follows:

"SECTION 3. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

"**§572-1 Requisites of valid marriage contract.** In order to make valid the marriage contract, which shall be ~~[only between a man and a woman,]~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any living lawful wife, husband, civil union partner, reciprocal beneficiary, or domestic partner and is not party to any other legally recognized union with another living person, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."''

Representative Har moved that Floor Amendment No. 23 be adopted, seconded by Representative Oshiro.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I offer Floor Amendment Number 23, and this deals specifically with the section on Senate Bill 1, House Draft 1, page 8 of the bill. This is section 572-1, Section 3 of the bill, which carves out what the prerequisites are for a valid marriage contract. So the section states, 'in order to make valid the marriage contract, which shall be permitted between two individuals without regard to gender ... Each of the parties at the time of contracting ... (must be) at least sixteen years of age.' And number three it says, 'neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A.'

"Mr. Speaker, the amendment that I offer, and to be clear, I support the amended language and not the underlying bill, is to clarify that we should include the words 'reciprocal beneficiaries, domestic partners, and is not party to any other legally recognized union'. The point is, we want to terminate these other contractual relationships so that we're not promoting additional benefits.

"So for example, the way this bill is written right now, Mr. Speaker, I could be in a domestic partnership in the State of California with a same-sex person. I could then come to Hawaii and then I could enter into a same-sex marriage, not dissolve or terminate that domestic partnership, get into a same-sex marriage with somebody else, and obtain all those benefits. So I could get benefits with another partner in the State of California through my domestic partnership, as well as in the State of Hawaii through my same-sex marriage license.

"I don't think that's the intent of this, Mr. Speaker, so I just wanted to be clear. This was, in fact, asked to the Attorney General. He did recognize it as an issue. He said it would have to go to the courts in order to be clarified. Mr. Speaker, again, I submit that if any of our laws that we pass go before the courts for judicial review, we have failed. This is truly a friendly amendment to ensure that polygamy doesn't exist. The intent really is to terminate all of the other existing relationships so that all the benefits will carry in the same-sex marriage. So, respectfully Mr. Speaker, I do stand in support of this floor amendment. Thank you."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, in opposition. With regard to the reciprocal beneficiary relationship concern, current law HRS 572C-7(d) says, 'if either party to a reciprocal beneficiary relationship enters into a legal marriage, the parties shall no longer have a reciprocal beneficiary relationship.' So that moots the need for that part of the amendment.

"With regard to the unions performed in other jurisdictions, HRS 572B-10, in essence says that if you have a relationship in another state that is equivalent to a civil union, we'll treat it like a civil union, which can then be converted to marriage through the rules that are in this bill. So for those reasons I oppose the floor amendment. Thank you."

Representative Har rose to respond, stating:

"Mr. Speaker, just a brief rebuttal. Thank you, Mr. Speaker. I want to thank the Chairman of the Judiciary Committee and the Speaker for allowing me to insert this amendment. I think something that we have to look at very carefully is on page 8, line 8, which clearly states, 'except as provided in section 572-A' of Senate Bill 1, House Draft 1. And it clearly states in that section of the bill that you will have continuous rights for reciprocal beneficiaries and civil union partners, and it will be terminated upon a same-sex marriage solemnization.

"So already this section conflicts, because this section on page 8 only talks about civil union partners, and then it says, 'except as provided in 572-A'. And then 572-A specifically refers to civil unions and reciprocal beneficiaries. So there is a conflict right now on its face in this bill. For those reasons, Mr. Speaker, I respectfully ask that this Body support the floor amendment. Thank you."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Coffman, Nishimoto, Say, Takumi, Tokioka and Wooley being excused.

The motion that Floor Amendment No. 23, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Rhoads voting no, and with Representatives Choy, Coffman, Nishimoto, Say, Takumi, Tokioka and Wooley being excused.

At this time, Representative Har offered Floor Amendment No. 24, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by amending section 5 to read as follows:

"SECTION 5. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages, civil unions, reciprocal beneficiary relationships, domestic partnerships, or other legally recognized unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages, civil unions, reciprocal beneficiary relationships, domestic partnerships, or other legally recognized unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."""

Representative Har moved that Floor Amendment No. 24 be adopted, seconded by Representative McDermott.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I move for the adoption of Floor Amendment 24. Again, this is a very similar problem that we just had in Floor Amendment Number 23. It deals with a separate section of Senate Bill 1, House Draft 1, and it deals with on page 9, regarding the application for a license and limitations.

"It says, 'to secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to

by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered.'

"Mr. Speaker, the friendly amendment that I am offering is to include the words 'reciprocal beneficiaries, domestic partnerships, or other legally recognized unions'. Again, I think that the intent of this measure is to ensure that people who are entering into marriages do not have other contractually recognized marriages out there. Whether you want to call them reciprocal beneficiaries, domestic partnerships.

"In this situation we've limited it to only civil unions. Again, I don't think that was the intent as based on 572-A in this particular bill. It makes it very clear that reciprocal beneficiaries and civil unions will, in fact, extinguish upon the solemnization of a marriage. And so we've left out the terms 'reciprocal beneficiaries' or 'domestic partnerships', and again, Mr. Speaker, as we know, same-sex marriage is, in fact, legal in other countries. So I'm not sure what the language is, what they call it, they may call it some other reiteration. But just to be clear, we added in the catch-all which would be, 'or other legally recognized unions', just to ensure that those relationships are, in fact, terminated, so that we don't have people who have multiple benefits from multiple different relationships, essentially polygamy, Mr. Speaker.

"So for those reasons, again, I offer this friendly amendment. Thank you, Mr. Speaker."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, in opposition. For the same reason that I opposed Floor Amendment Number 23, I oppose Floor Amendment 24. Thank you."

Representative Carroll rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Fale rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Har rose to respond, stating:

"Mr. Speaker, if I may, just a brief rebuttal. While I very much appreciate the comments from my Chairman from the Judiciary Committee, again, I don't know if it was the intent of this Body to sanction multiple relationships, multiple partners, I don't think that was our intent. But again, if you read this language very carefully, it only requires that a prior marriage or civil union be extinguished. So it does not require that reciprocal beneficiaries, domestic partnerships, or other legally recognized unions, be terminated before entering into a marriage in the State of Hawaii.

"Again, I do not believe it's the intent of this Body to sanction polygamy or multiple relationships, contractual relationships. So again, Mr. Speaker, I urge my colleagues and the Chair of the Judiciary Committee to please consider this friendly amendment. Thank you very much, Mr. Speaker."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Ing, McDermott, McKelvey, Nakashima, Nishimoto, Say, Takumi, Tokioka and Wooley being excused.

The motion that Floor Amendment No. 24, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Rhoads voting no, and with Representatives Choy, Ing, McDermott, McKelvey, Nakashima, Nishimoto, Say, Takumi, Tokioka and Wooley being excused.

At this time, Representative Har offered Floor Amendment No. 25, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by amending Section 2 to read as follows:

"SECTION 2. Chapter 572, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(e) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this

section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.""

Representative Har moved that Floor Amendment No. 25 be adopted, seconded by Representative Oshiro.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. Again, I offer friendly Floor Amendment Number 25. This deals with page 3 of Senate Bill 1, House Draft 1. On page 3, Section 2, 'continuity of rights, civil union and reciprocal beneficiary relationships', and this is a section that makes it very clear that a civil union couple, or a reciprocal beneficiary couple, who seek to enter into a marriage, may do so without first terminating their civil union or reciprocal beneficiary relationship, provided that certain things occur first.

"What's interesting in this section, Mr. Speaker, is if you move to page 4 of the bill, lines 8 through 15, Section (d), it clearly states here that 'the rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.'

"Mr. Speaker, the floor amendment that I have offered would strike this section, and essentially what we're doing right here is, we are allowing people to acquire rights in other person's properties retroactively. So essentially what we're saying is upon the solemnization of a marriage, if you had a prior relationship, a prior relationship pursuant to a reciprocal beneficiary or a civil union, now all of a sudden, any rights vested back then.

"The problem with this section, Mr. Speaker, that is being proposed, is the fact that same-sex marriage was not legal in 1997 when reciprocal beneficiaries were enacted. So it creates a problem, you're now trying to vest an interest in personal property and assets when same-sex marriage was not, in fact, legal in 1997 when reciprocal beneficiaries were first passed. And the same argument goes for civil unions, Mr. Speaker.

"Again, many same-sex couples may not want that. So I just think that we need to proceed with caution. Again, Mr. Speaker, to be clear, I am not a family law attorney, but I was in fact contacted by many of my friends who are family law attorneys, as well as estate planners. They say this is a very problematic section. Again, this is not necessarily equal, Mr. Speaker, so we have to proceed with caution on these issues. We cannot create more family law problems, and this section does, in fact, do that, which is why I am offering the amendment that will respectfully delete this section.

"So for those reasons, Mr. Speaker, again, I stand in support of the amended language and not the underlying measure. Thank you."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, I'm opposed to the amendment. If you look at page 4, lines 3 through 7, 'the act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.'

"Reciprocal beneficiaries, civil union members, and married couples, the rights aren't all the same, but some of them are. And all this does is allow, for example, if you are in a reciprocal beneficiary relationship, you can go visit your partner in the hospital when other people are not allowed to, a situation like that. So can someone in a civil union, so can someone who is married.

"So all this provision does is allow those rights that the reciprocal beneficiaries and civil union members had to continue on uninterrupted into the marriage relationship if they choose to become married if they were in one of those relationships before. Thank you."

Representative Har rose to respond, stating:

"Mr. Speaker, brief rebuttal. Thank you. I very much appreciate the comments provided by the Judiciary Chair. But I think he just underscored the problem with this bill. So he just read Section (c), 'the act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.'

"Again, Mr. Speaker, then you know what, I submit that Section (d) is essentially repeating what's in Section (c), it's unnecessary. It's basically redundant, because I agree with what he says in Section (c). So why we have Section (d), it's unnecessary. It's basically redundant and therefore, for the same reasons, Mr. Speaker, I respectfully request that we pass Floor Amendment Number 25. Thank you."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

Representative Oshiro rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, to the extent that Floor Amendment No. 25 seeks to clarify the language found in SECTION 2 of House Draft 1, I rise in support.

"My esteemed colleague from Kapolei is correct in identifying another problem with the drafting of House Draft 1. The particular language is found on page 4, lines 8 through 15, which reads:

"The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other."

"Floor Amendment No. 25 would delete this language. As noted by Vice Chair of the Judiciary Committee, it could be construed that all the rights, benefits, protections, and responsibilities of marriage were 'created' for a same-sex couple through the implementation of the administrative procedures established in SECTION 2 of the bill. That could mean that the rights, benefits, protections, and responsibilities of marriage would apply retroactively to the date that the civil union or reciprocal beneficiary relationship began in accordance with the aforementioned language.

"Retroactive application of marriage to civil unions does not appear to be so problematic since the only difference between the benefits provided to married couples and persons in a civil union are those recognized by the federal government. Ultimately, it would be up to the federal government to decide when federal benefits would apply, be it upon the effective date of this Act or previously.

"It is much more problematic for reciprocal beneficiaries though. Reciprocal beneficiaries are not required to have their relationship solemnized. Solemnization is an essential component to marriage. An official presides during the marriage ceremony and affirms that the parties willingly are entering into this relationship without duress, and that both parties are present in the jurisdiction where the marriage ceremony takes place. Should the rights, benefits, protections, and responsibilities of marriage be extended to reciprocal beneficiaries before the marriage is solemnized, it is unclear whether any jurisdiction other than Hawaii would

recognize it. In fact, Hawaii would be the only jurisdiction that would recognize marriage without solemnization.

"On the other hand, one could argue that a plain reading of the language asserts only the continuation of the rights, benefits, protections, and responsibilities of the civil union or reciprocal beneficiaries up to and through solemnization, and not the retroactive application of the full bundle of rights, benefits, protections, and responsibilities of marriage to the start of the civil union or reciprocal beneficiary relationship. But if that is truly the case, then doesn't the language in subsection (b) already take care of it? Subsection (b) reads:

"The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship."

"Since marriage includes all of the rights, benefits, protections and responsibilities of civil unions and because civil unions also require solemnization, these rights and benefits would continue uninterrupted. For reciprocal beneficiaries, the additional rights, benefits, protections and responsibilities of marriage would apply only after solemnization occurs, but the phrase 'shall continue uninterrupted until the solemnization' suggests that those common rights, benefits, protections and responsibilities, would continue uninterrupted.

"Be that as it may, why is subsection (d) necessary? In my view, it poses more risk than benefit and should be jettisoned.

"To the extent that the foregoing helps to clarify SECTION 2 of House Draft 1, and notwithstanding my numerous other objections to House Draft 1, I support this floor amendment."

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Cullen, Ing, Kawakami, McKelvey, Nakashima, Nishimoto, Say and Tokioka being excused.

The motion that Floor Amendment No. 25, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Rhoads voting no, and with Representatives Choy, Cullen, Ing, Kawakami, McKelvey, Nakashima, Nishimoto, Say and Tokioka being excused.

At this time, Representative Har offered Floor Amendment No. 26, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Section 2 of Senate Bill No. 1, H.D. 1, is amended by deleting subsection (e) of section 572-A on page 4, lines 16 to 19.

SECTION 2. Section 2 of Senate Bill No. 1, H.D. 1, is amended by amending the designation of subsection (f) of section 572-A on page 4, lines 20 to 21, to subsection (e) and to read as follows:

"(e) Property held by the couple in tenancy by the entirety shall be subject to section 509-3."

Representative Har moved that Floor Amendment No. 26 be adopted, seconded by Representative Oshiro.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I rise in support of the amended language and not the underlying bill, to be clear. Mr. Speaker, this section is actually right after the previous section we just previously discussed in Floor Amendment 25. So on page 4 of Senate Bill Number 1, House Draft 1, lines 16 through 19, Section (e) states, 'any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.'

"Mr. Speaker, the reason I offer this floor amendment, it would be to strike this section, because it seems to conflict with the previous section that said that all rights, benefits, should exist. So now all of a sudden we're saying any rights and benefits that were not recognized, all of a sudden they'll only go back to the date of the marriage. What is it? Are we doing it back to the date of the RB or the civil union? Or is it now the date of solemnization?"

"We're conflicting again, there're major problems in this bill, Mr. Speaker. For those reasons, I continue to submit that this floor amendment is a friendly floor amendment, I wish that the Body and the Judiciary Chair would seek these amendments and take them very seriously. For those reasons, I support the language. Thank you, Mr. Speaker."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"In opposition to the floor amendment. Basically, my arguments are the same as the Vice Chair's, 'any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.'"

"That's the whole point, that some of the benefits of marriage, there are more benefits to marriage than there are of civil unions or reciprocal beneficiary relationships, and that's why you have to have this provision. *Mahalo*."

Representative Fale rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, in support of the amendment. During the course of the 55 hour hearings, we heard a lot of discussion from a number of attorneys which included the Attorney General regarding some of the problems that currently exist in the bill that would have to go to court. Mr. Speaker, I think it's problematic if we are going to put the people of Hawaii through the expensive transactions of going through the court system to deal with some of the deficiencies that exist within this bill, Mr. Speaker."

"So I believe we also, through those hearings, we came across a number of problems that exist in regards to legislative intent and the ambiguity that exists in the language of bills that become problematic for the actual legislation. Mr. Speaker, this is an opportunity for us to address some of those problematic issues that we know that do exist, that the Attorney General himself acknowledged very clearly are problematic with the bill."

"Mr. Speaker, if we are going to put the people of Hawaii through a very expensive court process to find out what exactly some of this language means. Mr. Speaker, we shouldn't put the people of Hawaii through that. We should take advantage of the opportunity now, we should demonstrate leadership, and make these amendments to the bill, if this bill is going to pass to make sure that we are not laying a burden upon people, but actually just displaying leadership in making sure that we are addressing issues as we see them. And we know they exist, Mr. Speaker, the Attorney General said as much. For those reasons, I do support the amendment."

Representative Carroll rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Har rose to respond, stating:

"Thank you, Mr. Speaker. First and foremost, I don't disagree with the Chair of Judiciary, but I continue to submit, if we are in fact going to move in this direction, let's do it correctly. So all I'm saying is, again these are friendly floor amendments, I am genuinely trying to improve this bill for our same-sex couples. If this is, in fact, going to pass, why would you have two separate dates? I understand, again, whatever was not included, but we can try to find some, we can reconcile this. Again, the previous floor amendment, it just seems to be contradictory."

"Again, finally, Mr. Speaker, I do take great umbrage to the fact that we are being rushed in this. I understand that people are frustrated, but this is

the democratic process. We debate, we usually don't have 10 minutes on a floor amendment. These are all brand new floor amendments, Mr. Speaker, you know that. It's a little bit upsetting for me because democracy is not being allowed to take place in action right now. I understand that everybody is anxious to vote, but the fact of the matter is, these are very serious floor amendments, and they are friendly as I've indicated. I want to make this law the best that it can be."

"As one of our teachers said in a hearing, 'when I teach my kids, do your best, have you folks done your best?' Mr. Speaker, I would submit we haven't done our best on this bill. Particularly for our same-sex couples. So why wouldn't we make it better? That's all I'm saying, it's not about being for the bill, it's not about being against. It's about making the best law possible. I would submit that's not it, and that's the reason for these friendly floor amendments, Mr. Speaker."

"So for those reasons, I continue to stand in support of the amended language. Thank you, Mr. Speaker."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

Representative Awana rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Oshiro rose in support of the proposed floor amendment and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, to the extent that Floor Amendment No. 26 seeks to clarify the language found in SECTION 2 of House Draft 1, I rise in support."

"My esteemed colleague from Kapolei is correct in identifying another problem with the drafting of House Draft 1. The particular language is found on page 4, lines 16 through 19, which reads:

"Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized."

"This language is superfluous. Currently reciprocal beneficiaries do not have their relationship solemnized. All that is needed is for the couple to be registered with the Department of Health. Solemnization is a requirement for marriage, as previously stated in my remarks for Floor Amendment No. 25. As such, if this language was not in statute, any rights, benefits, protections and responsibilities of marriage would be recognized only from the date the marriage was solemnized."

Representative Belatti rose in opposition to the proposed floor amendment and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Belatti's written remarks are as follows:

"I rise in opposition to Floor Amendment 26 to Senate Bill 1, House Draft 1, because it continues to not afford individuals equal treatment under the law. This amendment proposes to delete Subsection (e) of Section 572-A of the underlying bill proposal that states 'Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.' By stripping this language from House Draft 1, the floor amendment effectively eliminates access to state and federal benefits by those couples who have previously entered into reciprocal beneficiary status and now would like their reciprocal beneficiary status recognized as a marriage."

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy, Cullen, Kawakami, Tokioka and Wooley being excused.

The motion that Floor Amendment No. 26, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Belatti and Rhoads voting no, and with Representatives Choy, Cullen, Kawakami, Tokioka and Wooley being excused.

Representative Ward rose, stating:

"Point of information, Mr. Speaker. Are you calling these amendments out by vote only and not by the Representative who introduced them? I'm either confused or you're doing stuff that's confusing."

At 5:12 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:14 o'clock p.m.

At this time, Representative Har offered Floor Amendment No. 27, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by amending Section 6 to read as follows:

"SECTION 6. Section 572-13, Hawaii Revised Statutes, is amended to read as follows:

"§572-13 Record of solemnization; marriages, reported by whom; certified copies. (a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~man and woman~~ parties married, their place of residence, and the date of their marriage.

Every person authorized to solemnize marriage, who neglects to keep a record of any marriage by the person solemnized shall be fined \$50.

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health.

(c) Certified copies of certificate of marriage. The department of health shall deliver one certified copy of the certificate of marriage or the contents or any part thereof as provided in section 338-13 to the persons married. The certificate shall be prima facie evidence of the fact of marriage in any proceeding in any court.

The department of health shall upon request, furnish to any applicant additional certified copies of the certificate of marriage or any part thereof.

Copies of the contents of any certificate on file in the department, certified by the department shall be considered for all purposes the same as the original.

The department may prescribe reasonable fees, if any, to be paid for certified copies of certificates."""

Representative Har moved that Floor Amendment No. 27 be adopted, seconded by Representative Hashem.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you. And thank you to the Representative from Kahala. Thank you, Mr. Speaker. I move for the adoption of Floor Amendment 27. Again, this is a friendly amendment. Mr. Speaker, on page 11 of Senate Bill 1, House Draft 1, this is Section 6 of the marriage statute, Section 572-13. And this section discusses those who solemnize, those who actually solemnize a marriage, a ceremony. And in Section (b) of the marriage statute in 572-13, it states, 'marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage

ceremony, to report within three days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health.'

"Now the additional language that was amended in Senate Bill Number 1, House Draft 1 is, 'provided that if any person who has solemnized a marriage fails to report to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date (and time) and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met.'

"Mr. Speaker, again, this amends the marriage statute. What this does is it almost renders solemnization moot because we already know in the statute as it exists, the person who solemnizes is currently under a duty to report to the Department of Health. And that's it. Within three days. But what we're adding in Senate Bill 1, House Draft 1, is language that says, however, if that person fails to report, the two persons who were married, all they have to do is file an affidavit, send it into the Department of Health. Once the Department of Health gets it, they're married.

"So we're now incentivizing fraud, which I don't think is the intent of this measure. Again, this applies to both same-sex couples and heterosexual couples. So my point is, if there is no solemnization necessary, why are we even solemnizing in this bill? This section essentially renders solemnization moot. So why are we doing solemnization then, if this section exists? If this proposed language in Senate Bill 1, House Draft 1, exists. It doesn't make any sense. We either take this section out, otherwise we've been derelict by basically promoting fraudulent marriages and, in essence, solemnization is not necessary with the language, as it stands, in Senate Bill 1, House Draft 1.

"So again, Mr. Speaker, for these reasons, I submit this very friendly amendment, and I hope that the members will support the amended language. Thank you very much, Mr. Speaker."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In opposition. Solemnizations are actually necessary under the language, so the affidavits that are required, if for some reason the paperwork is not forwarded, there's no accusation or allegation made, it may be purely accidental that it was not submitted, but those who are married may need to move forward even if the required paperwork is not submitted by the solemnizer. But the solemnization has to have occurred.

"The affidavits themselves are a check against fraud because you sign an affidavit under oath, I don't remember what the crime is exactly if you do that falsely, but it is a crime, and that's the check on the fraud. Thank you."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. I'm in support of Floor Amendment Number 27. I think that language should be stricken too, and we should just go with what we originally have in the statute. Thank you."

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I stand in support of the floor amendment, in opposition of the current draft. The more I look at this language here, first of all Mr. Speaker, I did have a chance to listen in on the Senate hearing down at the Senate Judiciary and Labor Committee. I never heard any request coming for this particular language, I don't even know why it's in here, for the necessity for us to amend the marriage statute to allow this. It seems quite extraordinary given the requirements for the solemnizers who have to basically submit the proper paperwork within the requisite period of time

that they, in fact, solemnized the union of the couple, which requires the solemnizers to be there physically along with the couple in the State of Hawaii. Those requirements are important because, again, to submit to the jurisdiction of the State of Hawaii and the laws therein.

"So I really don't understand why you would want to allow something like this. If the person is habitually late in submitting their solemnization documents, perhaps we should rescind their license or their permit to solemnize marriages. I don't know why you would want to do something like this and basically create a situation where a third party, not in the involvement of solemnization of a marriage ceremony, Mr. Speaker, to face this conundrum of not having the proper documentation, and yet, from their perspective, of warranting or perceiving a marriage ceremony and all the accretments thereof, and from that perspective, moving forward, believing this couple may or may not be married in an instance without having the proper documentation. So I don't understand the necessity for this.

"Furthermore Mr. Speaker, in the Judiciary and Finance Committee, again, I didn't hear any testimony regarding the necessity for this amendment to our marriage laws. Again, the basic laws require a solemnizer, who is there to witness that you have these component requirements, to be physically present. The solemnizer, the two people getting married, all in the same place at the same time on the same date. That's part and parcel of how we assure the integrity of our systems. So I don't really understand why you have this here, and I support the current floor amendment. Thank you, Mr. Speaker."

Representative Har rose to respond, stating:

"Thank you, Mr. Speaker. I very much appreciate the comments made from the Chair of Judiciary, however, again, as noted by the speaker from Wahiawa, the fact of the matter is, you need a third party, who is in fact going to solemnize the marriage. And yes, it is required, but with this proposed language that is now in Senate Bill 1, House Draft 1, it's actually not necessary.

"If for whatever reason the solemnizer forgets to submit his paperwork to the Department of Health, the two parties now do it. Now again, this doesn't only apply to same-sex couples. It applies to all couples. So you're taking away essentially the solemnization component because all you really need now is an affidavit by the two married people. Again, I don't think that's the intent of this language, Mr. Speaker. We're entering into very dangerous territory. Why are we having solemnization if we're going to have this language in there?

"While I respect the Judiciary Chair's comments that there are checks and balances, the fact of the matter is, if people understand this statute, there does not, in fact, have to be a solemnizer, and there could, in fact, be fraud. I don't think that that's what we're supporting. So again, for those reasons I offer this very friendly floor amendment. Thank you, Mr. Speaker."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

The motion to end debate was put to vote by the Chair and carried, with Representatives Choy and Lowen being excused.

The motion that Floor Amendment No. 27, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representative Rhoads voting no, and with Representatives Choy and Lowen being excused.

At this time, Representative Har offered Floor Amendment No. 28, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Senate Bill No. 1, H.D. 1, is amended by amending Section 2 to read as follows:

"SECTION 2. Chapter 572, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

"§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

"§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

"§572-D Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

"§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) Any refusal to provide goods, services, or facilities or grounds in accordance with this section shall not create any civil claim or cause of action, or result in any state action to penalize or withhold benefits from such religious organization or nonprofit organization operated, supervised, or controlled by a religious organization."

Representative Har moved that Floor Amendment No. 28 be adopted, seconded by Representative Oshiro.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In Floor Amendment Number 28, again, I support the amended language and not the underlying bill. The friendly amendment that is being offered in this section deals specifically with the religious exemption language contained in Senate Bill 1, House Draft 1. A particular note, on page 6 of Senate Bill 1, House Draft 1, line 16, through page 7, line 2.

"The current language in Senate Bill 1, House Draft 1 states, 'a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.'

"Mr. Speaker, the language offered in this friendly Floor Amendment Number 28, would essentially change Section (b) that is in Senate Bill 1, House Draft 1, and it will change it to the language stating this, 'any refusal to provide goods, services, or facilities or grounds in accordance with this section shall not create any civil claim or cause of action, or result in any state action to penalize or withhold benefits from such religious organization or nonprofit organization operated, supervised, or controlled by a religious organization.'

"Mr. Speaker, in the committee report it makes clear that we have based the religious exemption language on language that was from the State of Connecticut. And actually, Mr. Speaker, the amendment that I offer is actually directly from the Connecticut language. Essentially what it does is, it's just very awkward, quite frankly, the language that we've offered. We don't deal with civil claims or causes of action, which all the other states do.

"The language that I've offered is prevalent in all of the other states that have same-sex marriage, with respect to causes of action, civil claims, or state action. The language that we have is tenuous, because you're dealing with damages at the back end instead of dealing with the claim or cause of action on the front end.

"I think the point here is that we really want to ensure that no complaint can be filed for an alleged breach of this religious exemption clause. So that being the case, what we want to do is ensure that from the outset it's clear. No cause of action. No civil claim. No state action can be taken. And therefore for those lawyers of us in the room, a Rule 11 motion will therefore be granted.

"With the language that's currently in Senate Bill 1, House Draft 1, it makes it a little bit tenuous as to whether you could survive a Rule 11 motion. Sorry, I don't mean to get into the minutia of the legalese, but for those lawyers of us in the room, it's a little bit tenuous, quite frankly, and for those reasons I do offer this friendly floor amendment. Thank you, Mr. Speaker."

Representative Oshiro rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of this floor amendment. This is a very important floor amendment, Mr. Speaker, because it's part and parcel of the so-called protections given to religious institutions, solemnizers, or the use of their facilities. If this particular provision regarding the immunities, privileges, of the religious solemnizers is deemed to be unconstitutional or invalid, then in effect you have no protection for the religious institutions of any cause of action that could be brought against them, or any defensive claims they may be able to raise when the charges are brought against them.

"What that means, Mr. Speaker, is that this entire portion of the act could be ruled invalid or unconstitutional and could be challenged. It's been said many, many times before, these particular provisions that supposedly provide protections to the religious organizations, even in the

narrowest of senses, and the narrowest of purposes fall away, there is absolutely no protection of the law for non-solemnization.

"What that means, Mr. Speaker, is that they will have to comply with the other rules or regulations requiring the solemnization of marriages or face penalty, fine, or even the loss of license. I think that's why it's so important for us to go back in and to correct this deficiency in this draft. If we do not do that, the concern that I have, the fear that I have, is that this particular provision could be ruled invalid, unconstitutional, and thereby not provide any of the protections that we apparently seek to provide to religious institutions regarding solemnization of marriages and/or use of or lease of their facilities.

"For those reasons, Mr. Speaker, I stand in strong support of this floor amendment. Thank you."

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

Representative Oshiro rose in support of the proposed floor amendments and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, to the extent that Floor Amendment No. 28 seeks to clarify the language found in SECTION 2 of House Draft 1, I rise in support.

"My esteemed colleague from Kapolei is correct in identifying another problem with the drafting of House Draft 1. The particular language is found on page 6, line 16, through page 7, line 2, which reads:

"A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."

"She is correct that this provision fails to prevent the state from investigating a religious organization or nonprofit organization, nor does it bar a private civil action from being initiated. Either would exact a huge toll on the religious organization or nonprofit organization in the form of auditing cost, legal counsel and advice costs, and even attorney fees, which would certainly create a 'chilling effect' on the organization's practice of religious beliefs.

"Again, this is much more than a drafting error but substantive writing of new law. In fact, insofar as the language in House Draft 1 purports to be taken from the Connecticut public accommodations statute, it leaves out several key phrases and words. These are material and substantive choices of the Committee Chairs and all should understand that without such language in the House Draft 1, there will be severe and harmful effects imposed upon our religious organizations and churches. The relevant Connecticut marriage statutes reads in relevant part,

"Any refusal to provide services, accommodations, advantages, facilities, goods or privileges in accordance with this section shall not create any civil claim or cause of action, or result in any state action to penalize or withhold benefits from such religious organization, association or society, or any nonprofit or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society". [Emphasis Added.]

"This floor amendment makes clear that the religious organization or affiliated nonprofit's refusal would bar these private actions and administrative investigations. Failure to adopt this floor amendment will subject our constituents' religious organizations and affiliated nonprofits to civil claims, causes of action, and state action that could harm them and cause their untimely demise.

"For this reason, and notwithstanding my numerous other objections to House Draft 1, I support this floor amendment."

The motion to end debate was put to vote by the Chair and carried, with Representatives Cabanilla, Choy, Fukumoto Ichiyama, Ito, Matsumoto, Takai and Tokioka being excused.

The motion that Floor Amendment No. 28, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Cabanilla, Choy, Ichiyama, Ito, Matsumoto, Takai and Tokioka being excused.

At 5:33 o'clock p.m., Representative Har requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 5:35 o'clock p.m.

At this time, the Chair stated:

"It has come to my attention that some members in the gallery, whenever an 'aye' or 'nay' is called, they're repeating the 'ayes' and 'nays' and that's good, you're having a lesson in parliamentary procedure and thank you very much for your participation. But please have respect for the members who are speaking. Thank you very much."

At this time, Representative Har offered Floor Amendment No. 29, amending S.B. No. 1, HD 1, as follows:

"SECTION 1. Section 2 of Senate Bill No. 1, H.D. 1, is amended by amending section 572-E, Hawaii Revised Statutes, to read as follows:

"§572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

(c) A religious organization, or a nonprofit organization operated, supervised, or controlled by a religious organization, shall be immune from any civil claim or cause of action, including a claim pursuant to chapter 489."""

Representative Har moved that Floor Amendment No. 29 be adopted, seconded by Representative Oshiro.

Representative Har rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. Again, I offer this friendly Floor Amendment Number 29. I would direct the members' attention to page 6 of Senate Bill 1, House Draft 1, the religious exemption language. I want to thank the Chair of Judiciary for inserting this language, and he's made it very clear that he does not believe that this new language interferes with our Public Accommodations Law.

"So when you read the language, it clearly states, on page 6, lines 8 through 15, '572-E Religious organizations; exemption under certain circumstances. Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.'

"Mr. Speaker, we have had intense debate and nauseam regarding the public accommodation language. I've talked to my esteemed colleague, the Chair of the Judiciary Committee, and he, in fact, continues to contend that this 'notwithstanding any other law to the contrary' is what essentially exempts the churches from public accommodations.

"Mr. Speaker, I would have to respectfully disagree because if you turn to page 9 of the standing committee report, it clearly states, under the findings and intent. And for those of you watching us on Capitol TV, the committee report is what will forever go into history as our legislative intent should this bill ever go before a court for judicial review. It clearly states here on page 9, '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.'

"Mr. Speaker, throughout the 57-plus hours of testimony that we received, many, many of those from the faith-based community talked about the fact that by their very nature, they are public accommodations. And as such, they have grave concerns because they understood that regardless of whatever exemption we put into this bill, they could still be subjected to Chapter 489, which is a civil rights statute.

"So while I want to thank the Judiciary Chair for this language that says 'notwithstanding any other law to the contrary', because in the bill itself it makes it clear that if there is a public accommodations issue, the bill trumps. However, if you go to the standing committee report, that conflicts. The standing committee report makes clear that public accommodations trump exemptions.

"I think we have a problem here, Mr. Speaker. Again, one of the things I advocated for in the 57-plus hour hearing, was to have an explicit carve-out, so that we would not, in fact, have this bill go before the judiciary for judicial review. The fact of the matter is, based on the conflicting language in the standing committee report, as well as in the bill, there is a conflict. And so if the court finds a conflict, it would then have to go to the committee report, and what the committee report is advocating for is that Chapter 489 trumps, or supersedes, First Amendment, under the US Constitution. Is that constitutional? I would submit that it is not.

"So, Mr. Speaker, I do have some, again, very serious concerns about Senate Bill 1, House Draft 1, and accordingly, I am making these friendly amendments to ensure that we do not have issues, whether it's for our faith-based community. Again, it's about balancing First Amendment and Fourteenth Amendment, which is why I don't believe this bill achieves that objective, which is why I am offering these friendly floor amendments.

"For those reasons, Mr. Speaker, I stand in support of the amended language. Thank you."

Representative Jordan rose to speak in support of the proposed floor amendment, stating:

"Thank you, Mr. Speaker. In support of this amendment, Floor Amendment 29. During those long hearings we heard from former Judge and now Pastor Ahu, and he clearly explained to everybody in the room, as well as the committee, we need to have bright lines, we don't want to end up in the courts. Many people understood this Public Accommodations Law. And I think this is something that can help resolve the issues that we've been hearing, and make it clear and bright for our organizations that practice their deep beliefs.

"So, Mr. Speaker, I think this is very doable for everybody at this point in time, and I would consider the Body to really look at this. It would greatly help the two sides. Thank you very much, Mr. Speaker."

Representative Belatti rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, in opposition, and I'll be very brief. While I don't agree with the floor amendment being proposed, the idea of it, I think Subsection

(c), on its face, goes well beyond an explicit carve-out for public accommodations, and in fact, gives absolute immunity to religious organizations or non-profit organizations from any civil claim.

"Mr. Speaker, the state and the federal government don't even have absolute immunity from any civil claim or cause of action. So for that reason I oppose this floor amendment. Thank you."

Representative Rhoads rose to speak in opposition to the proposed floor amendment, stating:

"Mr. Speaker, in opposition. With regard to the question about the committee report. If you read the whole sentence, '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.'

"Perfectly consistent with the underlying language and it's a clear overriding of the Public Accommodations Law. *Mahalo.*"

Representative Ward rose to speak in support of the proposed floor amendment, stating:

"Mr. Speaker, I rise in support of the amendment. Precisely because of the uncertainty of the language in answer to the questions to Attorney General Louie, to Mr. Hoshijo of the Civil Rights Commission, this amendment is very, very necessary. Otherwise we're just going to have a court case back and forth, it's going to ping pong in the courts. That is not the intent of legislation that's meant to keep a community with rights, benefits, and a religious community, which has had 237 years of First Amendment rights.

"The less clear, the more litigation. Mr. Speaker, I think we can do better, this gives us a chance to be able to do that. Thank you."

Representative Har rose to respond, stating:

"Thank you, Mr. Speaker. Still in support of the floor amendment, the amended language. I'd like to note that there are 15 jurisdictions in the United States of America that have legalized same-sex marriage, 14 states and the District of Columbia. Of the 14 states that have legalized same-sex marriage, 11 states have passed it through legislatures. As we know, Illinois was the most recent.

"Mr. Speaker, of those 11 states, 10 states would exempt religious organizations from public accommodations, 10 states. So 10 legislatures explicitly acknowledged that religious organizations would be exempt from accommodations. And you know, Mr. Speaker, these are not bible-belt states, again, we're talking about Vermont, Connecticut, New York, Maryland, I mean these are not the bible-belt states, these are very progressive states, Mr. Speaker.

"Finally, I would submit, again, I mentioned this in the hearing the day we were voting out this bill in the Judiciary and Finance Committees. The State of Washington, the State of Washington which is considered the third most atheist state in the United States of America, a state that has legalized pakalolo, smoking marijuana as long as you're over the age of 21, they too have a public accommodations statute, they have a civil rights statute, and they expressly carved out in their same-sex marriage bill that no religious organization could be held viable, could be held accountable for a civil claim, a cause of action, or any state action based on that Public Accommodations Law. The State of Washington even has that, Mr. Speaker.

"I submit that the language in Senate Bill 1, House Draft 1, looks nothing like the other states that have passed same-sex marriage. And yet we talk about modeling our exemption after Connecticut. This language is not modeled after Connecticut, Connecticut does include an exemption for accommodations.

"So again, Mr. Speaker, respectfully, I offer this friendly floor amendment. Thank you very much."

Representative Carroll rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

At this time, Representative Saiki moved to call for the previous question, seconded by Representative Rhoads.

Representative Tokioka rose to speak in support of the proposed floor amendment with reservations, stating:

"With reservations because of the underlying bill. Thank you, Mr. Speaker."

Representative Awana rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as her own, and the Chair "so ordered." (By reference only.)

Representative Oshiro rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Ward rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Say rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Fale rose in support of the proposed floor amendment and asked that the remarks of Representative Har be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Wooley rose in opposition to the proposed floor amendment and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Wooley's written remarks are as follows:

"I oppose Floor Amendment 29 and this veiled attempt to kill SB1, HB1. Stop the delay tactics. This proposed amendment, the 29th one, is a waste of our time. If this floor amendment were to succeed and become law, it would mean we would eliminate all the clarifying language in the existing bill regarding civil unions and reciprocal beneficiaries, which would be an invitation to litigation. More importantly, however, is if this proposed amendment were successful, it would eliminate the application of our public accommodations laws to religious organizations and associated nonprofits in all situations. This would cause Hawaii to step backward so far and so fast it's shocking to me; we would eliminate protections we have long recognized to protect our civil rights. Each and every entity could prohibit individuals from use of their public accommodation facilities based on race, gender, or religion. The public accommodation rules in Hawaii work, why would anyone advocate to dismantle them on the Floor with no hearing process or discussion? The answer is, NO ONE. The supporters of this bill don't seem to actually support it, it is simply a delay tactic to prevent the House of Representatives from voting on SB1, HD1.

"As we stand here listening to the chanting 'let the people vote', I say 'let the people vote' too, though our meanings may differ. I have been firm in my support for equality since I first ran for office in 2008 and the people elected me. The people have elected me in three contested elections so far where the topic of marriage equality was always raised. My position has always been clear – against discrimination and for equality. Similarly, the people of Hawaii have voted for Congresswoman Tulsi Gabbard, a Hindu; Senator Hanabusa, a Buddhist; Senator Brian Schatz, a Jew; Congresswoman Hirono, a Buddhist – all elected officials that support equality and the right of same-sex couples to marry. It is the same for our former two senior senators, Senator Daniel Inouye, a Methodist, and Senator Daniel Akaka from Kawaiaha'o Church. Now we, the State Representatives, we need to do our job, our part; we have been waiting –

we have been elected, it is our job, we need to VOTE. Vote this 29th floor amendment down and get to SB1, HD1. Thank you."

The motion to end debate was put to vote by the Chair and carried, with Representative Choy being excused.

The motion that Floor Amendment No. 29, amending S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," be adopted, was put to vote by the Chair and upon a voice vote, failed to carry, with Representatives Belatti, Rhoads and Wooley voting no, and with Representative Choy being excused.

At 5:49 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 6:13 o'clock p.m.

(Main Motion)

Representative Rhoads rose to speak in support of the measure, stating:

"Mr. Speaker, we are now to the main motion. As we discussed, I think it was two days ago, because the floor amendments all failed, this is the same bill that we were looking at two days ago. Amendments from the Senate were that we expanded religious exemption, we took out the language on parentage, changed the effective date to a little later because the special session has gone longer than we anticipated, and there were some technical and conforming amendments."

Representative Luke rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise to speak in favor of this bill. This bill, Mr. Speaker, represents more than allowing marriage for same-sex couples. This is about a move towards acceptance, tolerance and compassion. Many today have already addressed the substance of this bill, and many will continue to do so. So rather, I would like to take this opportunity to thank the many individuals who helped behind the scenes during this special session.

"We often talk about the record number of days and participants involved in this special session. However, if we had spent 55 hours, our staff probably spent about 100 hours. There's also been some talk about the cost of the special session, but our staff didn't get overtime or comp time, working long hours and weekends as well. The staff of the House has supported us and each other in perhaps the most exemplary display of teamwork you will ever find.

"First of all, my deepest gratitude goes out to the Sergeant-at-Arms, Kevin Kuroda, Assistant Sergeant-At-Arms, Lon Paresa, along with everybody in the Sergeant-at-Arms office. Also, major thanks to Lieutenant Daryl Naauao and Sergeant Reid Ogata, the State Sheriff Robin Nagamine and Deputy Director Sean Tsuha and their sheriffs for an amazing job keeping everyone safe.

"Special thanks to House Chief Clerk Brian Takeshita, Assistant Clerk Rupert Juarez, and their staff, who were responsible for processing the thousands of testimonies, and they made our jobs easier. Big *mahalo* to them for processing all the testimony and working behind the scenes and making sure that our computers were working and making it very easy for us to follow the testimony.

"A special thanks to Janis Higaki from Chief Clerk's Office, along with a group of volunteers from our various House offices, who operated with grace and efficiency, taking whatever questions or complaints the public or the members had.

"In addition, the House Majority Staff Office and its leaders Joan Yamaguchi, Richard Dvonch, James Funaki, Rebecca Anderson and Jamie Go, were instrumental in supporting the Sergeant-at-Arms on the Floor, as well as answering and fielding many of the calls. They also volunteered at the hearing. Similarly, *mahalo* to the Minority Staff for their efforts as well.

"Chair Rhoads, it's been a pleasure working with you and Jessica Faige on the final draft of the bill. Thank you also to Sonny Le, who has really put a solid plan together. For the last two weeks it's been very challenging, but thanks to your staff for making it very smooth. Without you and your staff, this wouldn't have been possible.

"Thank you to the Senate for their countless hours in giving us guidance for making this a smooth process. I would also, of course, like to thank the Finance Committee members, Judiciary Committee members, and other members who came out to listen to the testimony. It was because of your participation that we are here today.

"There were so many people who helped with running the hearings and making it smooth. With your indulgence, I think it's deserving after all these hours of debate that I personally acknowledge every single one of them because I think they were the ones who stood behind, watched, and made sure that things went well. So with your indulgence I would like to name every one of them, if I may.

"Sonny Le, Representative Rhoads' office. Randall Hiyoto, Finance Committee. Susan Fernandez, Finance Committee. Stacey Tagala, Finance Committee. Julie Yang, from my office. Carole Kaapu, Representative Johanson's office. Kevan Wong, Representative Nishimoto's office. Randy Yamamoto, Representative Nishimoto's office. Jason Young, HMSO. Jamie Go, HMSO. Jon Kawamura, Representative Belatti's office. Mark Mararagan, Representative Morikawa's office. Tracy Weidie, Representative Onishi's office. Jonathan Tungpalan, Representative Saiki's office. Karen Kawamoto, Representative Takayama's office. Richard Silva, Representative Tokioka's office. Brina Dorser, Representative Woodson's office. Shawn Nakama, LRB Deputy Director. Matthew Coke, LRB. Shannon Mears, LRB. And last but not least, Nandana Kalupahana, who was instrumental in ensuring that the hearings ran smoothly.

"As you can see, the various staffers that work for these Representatives, voted differently on this issue, but it was actually the staff who set that all aside to make sure that it was fine.

"On a final note, special thanks to the Chief Clerk's Office and Jo Hamasaki for making sure that we had sustenance. Mr. Speaker, I probably missed many others, and if I could ask that the rest of the names be submitted into the Journal, and additional remarks be submitted into the Journal. Thank you."

Representative Luke submitted the following names of staff and volunteers:

JUD Committee Operations and Support:

Devon Grandy (Rep. Rhoads – volunteer)
Malia Taum-Deenik (Rep. Rhoads – volunteer)

Chief Clerk's Office – Testifier Check-in Desk and Information about Hearings:

Jon Kawamura (Rep. Belatti)
Jenna Takenouchi (Rep. Ohno)
Nancy Nishimura (Rep. Takumi)
Carole Hagihara (Rep. Choy)
Lori Hasegawa (Rep. Nakashima)
Kathy Kato (Rep. Hashem)
Melanie Kuroiwa-Steiner (Rep. Ichiyama)
Lois Tambalo (Rep. Yamashita)
Gini Kapali (Rep. Kawakami)
Danielle Bass (Rep. Yamane)
Keanu Young (Rep. Har)
Wendee Wilson (Rep. McKelvey)
Mark Rosa (Rep. McKelvey)
Napualani Young (Rep. Coffman)
Ross Miyasato (Chief Clerk's Office)
Lehua Saturnio (volunteer)
Royce Fukumoto (Chief Clerk's Office)
Jonathan Tungpalan (Rep. Saiki)

Chief Clerk's Office – Testimony Processing and everything else:
Brian Takeshita

Rupert Juarez
 Janis Higaki
 Neal Shigemura
 Roger Tyau
 Ashley Miho
 Ross Miyasato
 Tammy Tengan
 Summer Kaleo
 Emma Perry
 Thai Nguyen
 Josette Friedl
 Gail Iseri
 Matt Hanabusa
 Eric Lee
 Royce Fukumoto
 Craig Nakahara
 Kai Lau
 Ryan Kagimoto

Sergeant At Arms:
 Kevin Kuroda
 Lon Paresa
 Paulette Abe
 John Baker
 Rodney Haena
 Jesse Alvarado
 Grant Okamoto
 Glenn Okamura
 Richard "Tami" Tamashiro

House Majority Staff Office:
 Joan Yamaguchi
 Richard Dvonch
 James Funaki
 Rebecca Anderson
 Jamie Go
 Steven Lum
 Siobhan Ng
 Roy Nihei
 Alicia Duffin
 Alison Kim
 Brandon Masuoka
 Jeremy Aoyagi
 Maile Osika
 Nelisa Asato
 Jeremy Patton
 Doreen Belen
 Elsie Singson
 Jason Young
 Roger Kim
 Susan Iwata
 Ryan Sakuda
 Jeremy Lakin

Speaker's Office:
 Denise Liu

Senate:
 Chief Clerk, Carol Taniguchi
 Assistant Clerk, Jennifer Chow
 Sergeant-At-Arms, Ben Villaflor
 Assistant Sergeant-At-Arms, Jayson Watts

Representative Luke's written remarks are as follows:

"Mr. Speaker, I rise in support of SB 1, HD 1. My remarks address the amendments to the exemption for religious organizations located in Section 2 on page 6 of the bill.

"The intent of the amendments is to incorporate aspects of the language passed by the Connecticut Legislature, now codified at Conn. Gen. Stat. Ann. § 46b-35a 'Refusal to provide services or accommodations related to the solemnization or celebration of a marriage on religious grounds.'

"I support these amendments as a reasonable balance to address concerns raised by members of the religious community who were concerned that the original bill did not sufficiently protect their religious freedom. The amendments broadened the exemption proposed in the measure as introduced by exempting both religious organizations and nonprofit organizations that are operated, supervised, or controlled by a religious organization from coverage by the state's public accommodation law in the limited context of marriage solemnizations and celebrations that violate the religious organization's religious beliefs or faith. The amendments also removed the limitation that the religious organization not profit from the use of its facilities for marriages.

"The amended exemption clearly will permit a religious organization to refuse to make its facilities, grounds, goods, or services available for a marriage solemnization or celebration that violates its beliefs or faith. 'Religious organization' is meant generally as an organization with distinct religious beliefs and form of worship, congregants, and an established place of worship such as a church, chapel, temple, shrine, synagogue, mosque, or non-denominational building.

"My intention in supporting the extension of the exemption to 'nonprofit organization[s] operated, supervised, or controlled by [] religious organization[s]' is to provide consistency in the law's application so that a religious organization and any nonprofit entities that it operates, supervises, or controls are both exempt where the provision of facilities, grounds, goods, or services violates the beliefs or faith of the controlling religious organization.

"The exemption is *inapplicable* to nonprofit organizations that are *not* operated, supervised, or controlled by a religious organization, even where the nonprofit is religiously-affiliated or inclined, such as the Young Women's Christian Association. The exemption does not apply to 1) individuals, 2) private businesses, 3) for-profit businesses that are operated, supervised, or controlled by religious organizations, 4) tenants of religious organizations, and 5) subcontractors of religious organizations.

"While the intention of the exemption is to allow a religious organization, such as a church, and its nonprofit affiliates to refuse facilities, grounds, goods, or services for same-sex wedding ceremonies or solemnizations, it does not extend to organizations and businesses where the church does *not* have a controlling interest. In the same way that a private business is not permitted under the exemption to disregard the state's public accommodations law, neither is a church able to exert its beliefs or faith on that private business through the use of restrictive lease or contract terms.

"For example, a church that owns land which includes a shopping center may choose to prohibit businesses which lease space in the shopping center from engaging in certain activities that violate the church's religious beliefs or faith, such as banning the sale of alcohol. However, that church cannot require its lessees to violate the public accommodations law and refuse service for same-sex wedding ceremonies or solemnizations. In the context of a lessee florist company, the church may not restrict the florist from providing flowers for a marriage solemnization or celebration, even where the marriage may violate the church's beliefs or faith. The florist, as a private business, would also not be able to refuse to provide the flowers under the exemption.

"Finally, I note that since 1988, Hawaii has had a robust public accommodations law. It is my intention that Hawaii's long-standing prohibition against discrimination by a place of public accommodation not be altered except as specifically addressed by the exemption in the limited context of solemnization of a marriage and celebration of a marriage by covered religious organizations and nonprofit organizations."

At 6:21 o'clock p.m., Representative Johanson requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 6:22 o'clock p.m.

Representative McDermott rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition to this measure. I want to thank the two chairs, I think they did a much better job than our counterparts, they did let everyone testify who showed up, and I appreciate that, Mr. Speaker.

"This has been a long and grueling process, and I am about out of gas. Running on coffee right now, four hours sleep. But, Mr. Speaker, I oppose this measure for a myriad of reasons, but the least of which I believe it's unconstitutional.

"Let me explain. Mr. Speaker, in 1998, we told the voters, the State of Hawaii, through the Office of Elections, publicly funded informational documents that, and I quote verbatim, 'a "yes" vote would add a new provision to the constitution that would give the Legislature the power to reserve marriage to opposite-sex couples only.' The emphasis added, of course, was my own there, but that's the verbatim language.

"The two keywords to me, Mr. Speaker, are 'reserve' and 'only'. 'Reserve' means to keep, to hold, to secure, to set aside. When I make a car reservation, they're supposed to hold it for me. 'Only' means alone, in a kind of class, standing alone by reason of superiority, and finally, it means, and nothing else, nor.

"Now those are the words, Mr. Speaker, that we sent out to every registered voter in 1998. Those are the words that the state funded. The state has a responsibility to those voters. You're going to hear talk about justice, fairness and equity. What about the justice, and fairness, and equity, for the voters who cast their ballot based on this informational document that the Office of Elections sent out to every registered voter? They also advertised in the daily papers, every week for a month. Well, I think the daily paper has forgotten that, but nevertheless, it is true, Mr. Speaker. 'A "yes" vote would add a new provision to the constitution that would give the Legislature the power to reserve marriage to opposite-sex couples.'

"Mr. Speaker, that's plain language, and I'm a plain man. I can look at that all day, every day, and twice on Sundays, and I do not see how that gives us the authority to pass a same-sex marriage statute. In fact, whatever authority we had on marriage, this supersedes it. You see, Mr. Speaker, though we talk about legislative intent and committee reports, but all that is dwarfed by the power of the people who we derive our power from, when it is expressed in a constitutional amendment.

"A constitutional amendment is a basketball, a committee report is a pebble. I can't believe I'm the only one who sees this. We have a lot of lawyers in here, and I'm sure they will explain away the language. But again, Mr. Speaker, there's United States Supreme Court law that says the intent of the voters on a constitutional amendment trumps any statutory language, trumps any committee reports, trumps all this stuff.

"Now Mr. Speaker, we'll get our day to argue that next week. But it's not the first time I've brought it up. What about the fairness and equity for the voters who cast their ballot in 1998? We are telling them that somehow, this meant same-sex marriage. It did not. And I will close with, 'an honest man's pillow, is his peace of mind.' Thank you."

Representative Takai rose to disclose a potential conflict of interest, stating:

"Thank you, Mr. Speaker. I request a ruling on a potential conflict of interest. According to Department of Defense Directive 1344.10, use of military ranks, job titles, and photographs in uniform does not express or imply endorsement by the Hawaii Army National Guard, the Department of the Army, or the Department of Defense. I am, Mr. Speaker, a member of the Hawaii Army National Guard," and the Chair ruled, "no conflict."

Representative Takai continued to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I request your permission to insert a memorandum from the Secretary of Defense, Chuck Hagel, dated August 13, 2013, subject, 'Extending Benefits to the Same-Sex Spouses of Military Members'. I also request permission to insert a memorandum from the

Under Secretary of Defense, Jessica Wright, dated August 13, 2013, subject, 'Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members'. Thank you, Mr. Speaker.

"Mr. Speaker, I rise in support of this measure. Thank you, Mr. Speaker. I want to first acknowledge the thousands of people who have contacted our office, both in favor and against this bill. People have visited our offices, some have written or called, and many have emailed. As of last night, approximately 7,300 have contacted our office in support, and 6,200 have contacted our office in opposition.

"I thank everyone who has contacted me, and I thank them all for participating in the legislative process. And although I couldn't respond to every single person who contacted me, I hope that my words today help them understand my thoughts and my decision on this bill.

"My first day on the job was November 8, 1994, exactly 19 years ago today. I mention this, Mr. Speaker, because like today, this issue was front and center in 1994. Many of the concerns raised by the opponents are the same as the 1990s. But times change, Mr. Speaker. Times change, people change, and I've changed.

"In a year, I will be a former Member of this House. I have chosen to leave after 20 great years. Some people have accused me of voting in support of this bill because of my desires to be the next congressman from Hawaii. Nothing can be further from the truth. I am voting 'yes' because it is the right thing to do.

"Since the ruling earlier this summer by the U.S. Supreme Court on Section 3 of the Defense of Marriage Act, this issue has had widespread attention in Hawaii and throughout the nation. I have served alongside gays and lesbians as a member of the Hawaii National Guard. The service members who I've worked with during my 14 years in the National Guard have underscored the importance of treating everyone fairly.

"Our LGBT veterans love this country as much as I do. They fought, and some have died. When I was deployed to the Middle East in 2009, the military, our military family took care of my family. My wife and our two kids. Deployments are stressful, and couples in the military, no matter if they are straight or gay, need this support.

"I am pleased with the leadership taken by Secretary of Defense Chuck Hagel, and by the Joint Chiefs of Staff. Secretary Hagel states, 'it is now the department's policy to treat all married military personnel equally. The department will work to make the same benefits available to all military spouses, regardless of whether they are in same-sex or opposite-sex marriages.'

"Legal federal benefits are being provided to same-sex military families in Hawaii now. This bill will provide the same benefits to our local, same-sex families, as our military same-sex families are already receiving. My 'yes' vote for this bill is a vote for love, equality and fairness.

"Actually, Mr. Speaker, the truth is, there have been very hurtful words said about me by some of those who I have respected. Some have questioned my motives, some have threatened to abandon me, I've had numerous church bulletins singling me out, I've had not one, but two brochures mailed to our community from First Assembly of God and New Hope Leeward.

"But despite these hateful and negative tactics, I'm at peace. I made my final decision on this bill after speaking with my wife, Sami, who thanked me for this vote. She thanked me, Mr. Speaker. In my 19 years in this House, my wife hasn't said a word about any of my previous votes. But for this vote, definitely one of the most challenging, this vote means a lot to her, and it means a lot to me. I'm at peace, and I'm in a good place, Mr. Speaker, because I know my 'yes' vote today is righteous and *pono*.

"This is my chance to make the correct choice and to do the right thing. I will not have another chance here on this Floor to vote 'yes', and 20 years from now, I want to look back on my legislative career with no regrets. There are many who say they are opposing this bill because of their religion, they cite the separation of church and state."

Representative Hanohano rose to yield her time, and the Chair "so ordered."

Representative Takai continued, stating:

"Thank you Representative. However, there are many religions, there are many pastors, many Christian pastors, who support this bill. I support this bill because of the separation of church and state. If you and your church do not support marriage equality, then you are not forced to marry same-sex couples. You will not be forced to have gay weddings in your church.

"But this bill gives the churches that embrace all couples, no matter if they're gender persuasion, gay, lesbian or straight, this bill gives these loving, committed couples, the right to marry in churches that welcome them. Why can't couples, who care so much for each other, have the same wonderful marriage that we have, Mr. Speaker? Why can't churches that love these couples, and that want to marry these couples, do so? Why not, Mr. Speaker?

"The essence of our islands is captured in the Hawaii State Law. The *aloha* spirit is defined by state law, and I quote, 'the "Aloha Spirit" is the coordination of mind and heart within each person. "Aloha" is the essence of relationships in which each person is important to every other person for collective existence,' unquote. That's in state law, Mr. Speaker. I didn't make it up.

"In my mind and the deepest fibers of my heart, I believe that it is time that our laws reflect the *aloha* spirit. We are the Aloha State, and *aloha* means love. And this bill, Mr. Speaker, is all about love. It is my heartfelt honor, and my privilege, that for marriage equality in Hawaii, I vote yes. Thank you, Mr. Speaker."

Representative Takai submitted the following:



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG 13 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
UNDER SECRETARY OF DEFENSE FOR PERSONNEL
AND READINESS

SUBJECT: Extending Benefits to the Same-Sex Spouses of Military Members

The Department of Defense welcomes the Supreme Court's recent decision declaring section 3 of the Defense of Marriage Act, which prevented Federal recognition of same-sex marriages, to be unconstitutional. The Department has begun the process of implementing the Supreme Court's decision in consultation with the Department of Justice and other executive branch agencies. It is now the Department's policy to treat all married military personnel equally. The Department will construe the words "spouse" and "marriage" to include same-sex spouses and marriages, and the Department will work to make the same benefits available to all military spouses, regardless of whether they are in same-sex or opposite-sex marriages. The Department will continue to recognize all marriages that are valid in the place of celebration.

The implementation effort is led by the Acting Under Secretary of Defense for Personnel and Readiness, in coordination with the Military Departments. It is my expectation that all spousal and family benefits, including identification cards, will be made available to same-sex spouses no later than September 3, 2013. The Acting Under Secretary of Defense for Personnel and Readiness will issue further guidance as necessary as the Department works through this process.

On February 11, 2013, my predecessor directed that the Department of Defense extend, by August 31, 2013, certain benefits to same-sex domestic partners of military members, and, where applicable, the children of the same-sex domestic partner, once the Service member and their same-sex domestic partner signed a declaration attesting to the existence of their committed relationship. He also stated that the Department would reassess this decision if the Defense of Marriage Act were to become no longer applicable to the Department. After the recent Supreme Court decision made the Act inapplicable to the Department, that reassessment was conducted.

As the Supreme Court's ruling has made it possible for same-sex couples to marry and be afforded benefits available to any military spouse and family, I have determined, consistent with the unanimous advice of the Joint Chiefs of Staff, that the extension of benefits to the same-sex domestic partners of military members is no longer necessary to remedy the inequity that was caused by section 3 of the Defense of Marriage Act.

We recognize that same-sex couples not stationed in a jurisdiction that permits same-sex marriage would have to travel to another jurisdiction to marry. Accordingly, the Department will implement policies to allow military personnel in such a relationship non-chargeable leave for the purpose of traveling to a jurisdiction where such a marriage may occur. This will provide

accelerated access to the full range of benefits offered to married military couples throughout the Department and help level the playing field between opposite-sex and same-sex couples seeking to be married.

The Department of Defense remains committed to ensuring that all men and women who serve our country and their families are treated fairly and equally. Expeditious implementation of the decisions announced in this memorandum will help the Department remain true to that commitment.

Thank you.

Chuck Hagel

cc:
Secretary of Homeland Security
Secretary of Health and Human Services
Secretary of Commerce
Chairman of the Joint Chiefs of Staff
Commandant of the Coast Guard
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant to the Secretary of Defense for Public Affairs

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UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

AUG 13 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHIEFS OF THE MILITARY SERVICES

SUBJECT: Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members

REFERENCE: (a) Department of Defense Instruction 1327.06, "Leave and Liberty Policy and Procedures," June 16, 2009

As Secretary Chuck Hagel has stated, now that the Supreme Court has held section 3 of the Defense of Marriage Act (DOMA) unconstitutional, it is the Department's policy to treat all married military personnel equally. The Department will work to make the same benefits available to all spouses, regardless of whether they are in same-sex or opposite-sex marriages, and will recognize all marriages that are valid in the place of celebration.

Extension of benefits to same-sex spouses will require some policy revisions, and in the case of identification cards, technical upgrades as the Defense Enrollment Eligibility Reporting System currently does not authorize the issuance of an identification card to a spouse of the same gender. Per the Secretary's memorandum of this date, attached, the Department and the Military Services will take all actions necessary to extend spousal benefits to same-sex spouses no later than September 3, 2013.

Entitlements are retroactive to the date of the Supreme Court's decision, June 26, 2013. Any claims to entitlements before that date will not be granted.

Further, effective immediately, in recognition of the fact that many states do not recognize same-sex marriage, this memorandum supplements the policy language in reference Department of Defense Instruction 1327.06 "Leave and Liberty Policy and Procedures" to authorize non-chargeable marriage leave where a Service member is a part of a same-sex couple and is assigned to a duty station located more than 100 miles from a U.S. state (or the District of Columbia) that allows same-sex couples to get married. We will continue to monitor actions by states to recognize same-sex marriage and revise this policy if necessary. The following paragraph is added at Enclosure 2, paragraph 1(k), Non-Chargeable Leave, as follows:

(9) Marriage Leave for Same-sex Couples – The Secretary concerned may grant non-chargeable leave to Service members who are in same-sex relationships and are assigned to duty stations located more than 100 miles from a U.S. state (or the District of Columbia) that allows same-sex couples to marry, for travel to a state or jurisdiction that allows same-sex couples to be married. When two Service members who are a same-sex couple desire to be married, both members may be granted marriage leave for same-sex couples if qualified.

Eligible Service members assigned within the Continental United States (CONUS) may be granted non-chargeable leave for a period of up to 7 days. Eligible Service members assigned outside CONUS may be granted non-chargeable leave for a period of up to 10 days. When both members of a same-sex couple are Service members, each member may be granted the applicable number of days based on his or her individual assignment location.

Extensions of this non-chargeable leave period for the convenience of the Service member(s) will be charged to the member's leave account. Marriage leave may be granted only once during the career of a Service member.

The Joint Benefits Review Working Group will focus its efforts on extension of spousal benefits to same-sex spouses and identify any impediments towards full implementation consistent with current law. I ask for your help in resolving immediately any impediments that may be identified.


Jessica Wright
Acting

Attachments:
As stated

cc:
Secretary of Homeland Security
Secretary of Health and Human Services
Secretary of Commerce
Chairman of the Joint Chiefs of Staff
Commandant of the Coast Guard
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant to the Secretary of Defense for Public Affairs
Assistant Secretaries of the Military Departments for Manpower and Reserve Affairs

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Representative Brower rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support. Like so many single men who live in Waikiki, I live the lifestyle of an openly straight, heterosexual male raised Roman Catholic. And as many testifiers have said in our six days of hearings, now let me say it. I have friends who are gay, I don't hate gay people. As a longtime resident of Waikiki, I've met people who are gay, quasi-gay, gay-sian, bisexual, metrosexual, pansexual, heteroflexible, *fa'afafine*, transgendered, androgynous, *mahu*, and a granny who was a tranny.

"And while we are tolerant of different cultures in Hawaii's melting pot, the majority must strive to be tolerant of someone who is different. And people of alternative lifestyles must be respectful of society's norm. The strongest of all human qualities is acceptance, and through acceptance, we achieve wisdom, and that helps us to reach our full human and cosmic potential. Because you are a spiritual being having a human experience, and today is an opportunity for people on both sides of this issue to show the world that you have what it takes to evolve to higher standards.

"Personally speaking, the issue of same-sex marriage was not on my legislative priority list. Not on my radar, or my gay-dar. But similar to how a fireman must go into a burning building, a legislator must go to where the controversy is, with conviction, without excuses, when called to a special session.

"Personal feelings should influence but not overrule a legislator's objective thoughts and behavior. That is why I listened to the testifiers on both sides of the issue on this topic. Truth, Mr. Speaker, exists on both sides.

"I'm supporting this bill because it's the duty of state government to help minority groups, especially when the group is asking for what many consider logical, rational and fair. I believe that intimate, monogamous relationships with people taking care of people is the backbone of a strong society. And I have such respect for marriage, I'm not sure I can achieve it because I want it to be such a soul mate connection.

"I notice, figuratively speaking, this bill has all the same DNA as Hawaii's heterosexual marriage law. All the same rights, benefits and protections. The only point of contention is the eight letter word 'marriage'. Most against the bill say it is because it includes the word 'marriage'. But it would be illogical to call the law anything else other than 'marriage'. What are we going to name it? I can't believe it's not marriage? Or marriage with an asterisk? Or marriage in quotation marks? Or marriage wink, wink? Or hashtag marriage?

"I'm not religious in the traditional sense. I believe I have a relationship with God and I asked for his guidance, and I asked guidance from his partner Jesus. Perhaps God does not approve of homosexuality, it's not how he intended things to be, but neither, Mr. Speaker, is a lot of what we see in today's, quote, 'normal heterosexual lifestyle'. Spiritually, I do not feel that legalized same-sex marriage will make our state any more or less moral than it is or will be.

"In the eyes of God, how is same-sex marriage any different than same-sex couples living together monogamously without the marriage license? I encourage Christians to be more concerned with the actions of people who call themselves Christians than gay people calling themselves married.

"Isn't our faith, in the institution of marriage, between a man and a woman, strong enough to withstand an adjustment to its definition? This bill does not redefine God or the Bible's idea of marriage. It does not mean that gay is the new straight. It only readjusts or expands the State of Hawaii's definition of marriage, and perhaps it just declares that love is the answer. Thank you, Mr. Speaker."

Representative Wooley rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support. This process has been long and painful, but it has helped us all learn a lot about ourselves, our beliefs, and about each other. I want to thank everyone who talked to me about this issue, testified, emailed, called, sang, or blessed me. I listened and I learned a lot.

"Throughout these deliberations, I have been guided by the oaths I took to defend and protect the Constitutions of the United States of America and Hawaii. During the challenging hearing process, I listened and read testimony, and I searched for guidance from leaders past and present.

"In 1970, Governor John Burns allowed Hawaii's abortion statute to become law without his signature. Governor Burns said, quote, he 'must never let his private, political and religious convictions unduly influence his judgment as governor of all the people.' He continued, 'in the recent debates and public controversy over proposed abortion law changes in our state, I have been subjected to pleadings, warnings, even threats from many sources, including clergymen and lay members of my own Roman Catholic Church, and members of other churches and nonreligious groups. I have felt that my reputation has been unfairly and seriously attacked, and sadly enough, by a number of my fellow Roman Catholics who do not appear to understand precisely the separate roles of state authority and church authority,' end quote.

"I feel the same way. I vote 'aye' because number one, same-sex couples in Hawaii do not have the right to 1,138 federal benefits enjoyed by opposite-sex married couples. These benefits are now available because the U.S. Supreme Court determined in June that unequal treatment of married, same-sex couples is unconstitutional.

"Number two, this bill provides for broad religious protection, leaving every church free to decide whether or not to marry same-sex couples. Far from trampling on religious freedom, the bill goes far beyond the requirements of the First Amendment, allowing religious institutions to choose who can use their facilities for weddings and receptions, even if they are in the business of making a profit.

"My decision to vote 'yes' was ultimately determined by our nation's founding fathers who wrote the U.S. Constitution and the Bill of Rights. They agreed that a government for and by the people, requires that no single church dictate the actions of the state. Instead, American leaders agreed that there must be a separation between church and state, with

strong protections for religious freedom, a representative democracy, and a bill of rights to prevent the tyranny of the majority.

"U.S. Supreme Court cases interpreting the First and Fourteenth Amendments for nearly 50 years have laid the foundation for us to be here today to vote on this bill. In 1967, the U.S. Supreme Court ruled, in *Loving v. Virginia*, that laws preventing marriages between persons on the basis of racial discrimination violated the equal protection and due process clauses of the Fourteenth Amendment. The court ruled that the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

"Quote, 'marriage is one of the basic civil rights of man, fundamental to our very existence and survival. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the state,' end quote.

"20 years ago, in 1993, a lawsuit was filed against the state when it refused to grant a same-sex couple a valid marriage license. The Supreme Court ruled that, quote, 'no 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,' end quote.

"The arguments we have been hearing on this bill are eerily similar to ones debated and litigated for over 20 years. For some people, there will never be enough discussion, because they prefer the status quo.

"In response to the Hawaii Supreme Court decision, this Legislature took up the issue in 1997."

Representative Evans rose to yield her time, and the Chair "so ordered."

Representative Wooley continued, stating:

"Thank you, Representative. House Bill 117, introduced in 1997, by you, Mr. Speaker, in its final form, your bill said, quote, '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,' end quote. That is why we are here today.

"A mere five months ago, on June 26th, the U.S. Supreme Court ruled, in *U.S. v. Windsor*, that Section 3 of DOMA was unconstitutional. The court found that the avowed purpose and practical effect of the law, was to make same-sex marriages second-class marriages. U.S. Supreme Court Justice Kennedy stated, quote, 'DOMA's principal effect is to identify a subset of state sanctioned marriages and make them unequal. The principal purpose is to impose inequality. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects, and whose relationship the state has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples,' end quote.

"As a result, several federal agencies are changing their policies to comport with the Supreme Court ruling. For example, on August 9th, the Social Security Administration, Acting Commissioner Carolyn Colvin said, quote, 'I am pleased to announce that Social Security is now processing some retirement spouse claims for same-sex couples and paying benefits where they are due. The recent Supreme Court decision helps to ensure that all Americans are treated fairly and equally, with the dignity and respect they deserve,' end quote.

"I also looked for wisdom from Hawaiian leaders, and I really want to thank Kuhio Lewis, Chair for the Hawaiian Affairs Caucus of the Democratic Party of Hawaii. In urging us to support SB 1, he said, quote, 'it is time for Hawaiians who have been silent for so long on this issue to raise our voices against the parasitic capitalization of our culture, history, language and philosophy, by those who continue to convolute and decimate us, even beyond what has already been accomplished at the hands of the colonizers. *Kanaka Maoli* have been conditioned for so long to think and act like foreigners, that we have allowed the meaning and intent of our words, traditions and philosophies to be replaced by neo-

Christian beliefs and used to further a western political agenda on our islands,' end quote.

"Mr. Speaker it's critical to approach this issue with love and not hate. We should love all people regardless of their religious views or their sexuality. Now is the time for us to heal as this discussion continues to move forward.

"I want to just read a couple passages from a book that the woman I mentioned earlier from Laie, who is Mormon, has shared with me to help guide me in making my decision. 'The Lord uses the unlikely to accomplish the impossible. Try to speak your soul, heal your heart, unclutter your mind, lift your spirit, strengthen your resolve, energize and invigorate you. We need to seek truths, we need to speak truths to ourselves and others. We need to remember what we know to be true. We need to share what we know to be true with those we love. Let the truths you know and love connect you with the people you know and love.'

"With that, I would also like to ask to insert written comments in support. Thank you, Mr. Speaker."

Representative Wooley's written remarks are as follows:

"Now it is time for us to do our job and vote. As requested in writing by one Lutheran Pastor – 'it is time for the government to get out of the business of telling people it is illegal for them to marry the person they love.' I know many churches are looking forward to the day, on December 2nd if this bill becomes law, when they will have the freedom to choose to marry all couples, regardless of their gender. I also look forward to that happy day as we can finally bring closure to this critical movement in support of equal rights in *Hawaii nei*."

Representative Matsumoto rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I stand in opposition to Senate Bill 1, House Draft 1. My vote in opposition is not because I don't believe in equal benefits. My vote in opposition is against this process. The other day, one of our colleagues made an insightful point saying, and I quote, 'we are unable to see past our own beliefs. We believe we are right, each of us, whether we are on this side or that side. And in a sense, we have gotten to the point where almost no information, no statements, can change our beliefs.'

"I completely agree with that statement, and I would argue if we are in fact so stuck in our beliefs, that we are unable to make an objective decision, then maybe the 76 members of this Legislative Body shouldn't be the only people voting on this monumental measure. If we can't see past our own beliefs, then perhaps the 700,000 registered voters in our state should have a say as well.

"Mr. Speaker, as a young legislator, I do still believe in the process. In 2012, Washington State introduced similar legislation. The Senate passed it, the House passed it, and the Governor signed it. But then the citizens of Washington gathered sufficient signatures to put it on the ballot, and they voted on it. And the people passed it. 54 to 46. What's significant is all sides were able to have ownership of that decision. Ownership of that decision. So whether or not they agreed on the outcome, they had all taken part in the process.

"Here we can get that same opportunity. The people of Hawaii can have ownership in the decision. And so, my vote, Mr. Speaker, is not in opposition to equal benefits, my vote comes in opposition to the process. Thank you very much."

Representative Lowen rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. In support. First of all, thank you so much to the staff for all the hard work, to all the members of this Body, and especially to the many people who took the time to call, email, submit written testimony, and come to the Capitol to give testimony in person.

"I do regret there's not equal opportunity for my neighbor island constituents to participate in person, I've led an effort to bring greater access to government to the neighbor islands, and I will continue to work towards that.

"Nonetheless, I have heard from my community. From hundreds of constituents, through emails, calls, social media, and more, I've heard from both those in support and in opposition to this bill. I have tried to honor the concerns of all. With the amendments made in the House, many of which were specifically requested in testimony, this is a balanced bill and provides for both equal rights for all and protects the First Amendment rights of religious organizations at the same time.

"There are a few other things I have to say. After listening to over 50 hours of testimony, I was saddened by many of the hurtful and incorrect things that were said. It was indeed difficult to sit through, so here are a few things that I think need to be said.

"AIDS is not a consequence of being gay, it's a virus that affects over 35 million people worldwide, with almost 70 percent of cases occurring in Africa. Everyone is equally susceptible to this illness.

"Second, there is no homosexual lifestyle, just like there is no straight lifestyle. Within the LGBT community, there is the same diversity that can be found in society at large. All cultures, all religions, all nationalities, Democrats and Republicans, soccer moms, criminals, doctors, lawyers and carpenters. The LGBT community are just people like all of us.

"I do not believe that being gay is a choice, and recent scientific studies, as we heard in testimony, support this. But I don't need a molecular biologist or a geneticist, or any number of Harvard degrees to convince me. I respect that if someone tells me how they feel about themselves, that they are the experts on themselves.

"Regarding some of the incendiary claims that were made in testimony about how marriage equality will affect our education system, it is irresponsible to perpetuate these lies. This is fear mongering at its worst, and is a grave disservice to society.

"Finally, throughout this process, there have been many accusations of some of us having an agenda. And to that I say, there is no hidden agenda that I know of, rather, there is a conscientious effort to promote equality, uphold our constitution, and work towards a society based on mutual respect that tolerates differences and values diversity. And if that is my agenda, then I am proud of it.

"Thank you, Mr. Speaker. And with that, I would like permission to insert additional written comments into the Journal."

Representative Lowen's written remarks are as follows:

"Mr. Speaker, I rise in support of SB 1, HD 1. My remarks address the amendments to the exemption for religious organizations located in Section 2 on page 6 of the bill.

"The intent of the amendments is to incorporate aspects of the language passed by the Connecticut Legislature, now codified at Conn. Gen. Stat. Ann. § 46b-35a 'Refusal to provide services or accommodations related to the solemnization or celebration of a marriage on religious grounds.'

"I support these amendments as a reasonable balance to address concerns raised by members of the religious community who were concerned that the original bill did not sufficiently protect their religious freedom. The amendments broadened the exemption proposed in the measure as introduced by exempting both religious organizations and nonprofit organizations that are operated, supervised, or controlled by a religious organization from coverage by the state's public accommodation law in the limited context of marriage solemnizations and celebrations that violate the religious organization's religious beliefs or faith. The amendments also removed the limitation that the religious organization not profit from the use of its facilities for marriages.

"The amended exemption clearly will permit a religious organization to refuse to make its facilities, grounds, goods, or services available for a marriage solemnization or celebration that violates its beliefs or faith. 'Religious organization' is meant generally as an organization with distinct religious beliefs and form of worship, congregants, and an established place of worship such as a church, chapel, temple, shrine, synagogue, mosque, or non-denominational building.

"My intention in supporting the extension of the exemption to 'nonprofit organization[s] operated, supervised, or controlled by [] religious organization[s]' is to provide consistency in the law's application so that a religious organization and any nonprofit entities that it operates, supervises, or controls are both exempt where the provision of facilities, grounds, goods, or services violates the beliefs or faith of the controlling religious organization.

"The exemption is *inapplicable* to nonprofit organizations that are *not* operated, supervised, or controlled by a religious organization, even where the nonprofit is religiously-affiliated or inclined, such as the Young Women's Christian Association. The exemption does not apply to 1) individuals, 2) private businesses, 3) for-profit businesses that are operated, supervised, or controlled by religious organizations, 4) tenants of religious organizations, and 5) subcontractors of religious organizations.

"While the intention of the exemption is to allow a religious organization, such as a church, and its nonprofit affiliates to refuse facilities, grounds, goods, or services for same-sex wedding ceremonies or solemnizations, it does not extend to organizations and businesses where the church does *not* have a controlling interest. In the same way that a private business is not permitted under the exemption to disregard the state's public accommodations law, neither is a church able to exert its beliefs or faith on that private business through the use of restrictive lease or contract terms.

"For example, a church that owns land which includes a shopping center may choose to prohibit businesses which lease space in the shopping center from engaging in certain activities that violate the church's religious beliefs or faith, such as banning the sale of alcohol. However, that church cannot require its lessees to violate the public accommodations law and refuse service for same-sex wedding ceremonies or solemnizations. In the context of a lessee florist company, the church may not restrict the florist from providing flowers for a marriage solemnization or celebration, even where the marriage may violate the church's beliefs or faith. The florist, as a private business, would also not be able to refuse to provide the flowers under the exemption.

"Finally, I note that since 1988, Hawaii has had a robust public accommodations law. It is my intention that Hawaii's long-standing prohibition against discrimination by a place of public accommodation not be altered except as specifically addressed by the exemption in the limited context of solemnization of a marriage and celebration of a marriage by covered religious organizations and nonprofit organizations."

Representative Ward rose to speak in opposition to the measure, stating:

"Mr. Speaker, I rise in opposition. I'd like to make two categorical comments with different points under each of those. The first is the process. The process of being here is flawed. You didn't want to come into special session, the Senate didn't want to come into special session, but here we are because of the Governor, and the Governor I don't believe is with us any longer. But we did not come here at our own will. In fact, the surveys indicated that 70 percent of the people said this issue belongs to them, not to us. We haven't heard the last of that.

"Another part of the process that I think is flawed, Mr. Speaker, is I don't believe we acted in good faith in all the great things we're patting ourselves on back after these 55 hours. Remember that your chairs tried to shut down the hearing by going all night on Thursday night. Fortunately you, Mr. Speaker, saved us by telling your chairs, 'don't burn out the members, and don't burn out the public by going against what the majority press release said, that if there are people still in line by midnight Thursday night, they will be allowed to testify the next day.'

"Thank you for keeping your word. But know, Mr. Speaker, we could have been shut down the first night of the hearing. Fortunately we went on for 55 hours, they thereafter kept their word, and I'm very grateful for that because everybody who had a chance to speak, spoke. And that is very, very good.

"Mr. Speaker, I won't mention some of the more superficial things like people getting permission to go *shi-shi* the other day, we captured them in here, we wouldn't let them out unless they gave a driver's license, that was undemocratic. Shutting down debate today, Mr. Speaker, was undemocratic. The rush to make sure these amendments didn't do stuff. You guys spent more time in your caucus with recess than we spent out here on debate when we were starting, going.

"Mr. Speaker, what's the value here? When we've got the people of Hawaii wanting to hear what we said, and they're not hearing it. Which reminds me to remind you that the 11 hours of debate which has burned out a few of my colleagues, none of the people heard that, Mr. Speaker, because of decisions that were made, and I have no reason what the motivations were, that we did five days of television, and then we went dark. Five days to hear the people, and then one day they didn't hear their Representatives. Mr. Speaker, that was not fair. That was as bad as some of the House Rules that you pulled out today and shut the debate down.

"Okay, that's enough about the process. Let's go to the bill. I put in three amendments because, well number one, the churches are vicariously protected. They have a shield around them, but not with really an inability to be pierced. That's why the amendment was, and as the good Representative from Kapolei said, we need to make sure it's very clear about this public accommodations because given what the Attorney General said and the Civil Rights Commission, the penetration of that in lawsuits are going to be numerous.

"Mr. Speaker, another part of the lawsuits is where a TRO was filed against some of the church leaders, Wayne Cordeiro, Elwin Ahu, because of the people who were out here. So if we think we've created unity between the communities, even while we are doing the democratic process, a TRO was filed to shut down the people who are out there probably singing and shouting. Mr. Speaker, that's not good.

"The second part of the problem with the bill is the protections for those who are small businesses. The protection of those who have conscience. The protection of those who want to do commerce and at the same time remain true to their beliefs. This bill is entirely devoid of any of that.

"Thirdly, and I'm going to go back to the mama bear syndrome, the women of Hawaii, the mothers of Hawaii, have said, 'leave our *keiki* alone, leave our *keiki* out of this.' And Mr. Speaker, I gave you a touch of the *Pono* curriculum that I showed, that there were slight sentiments that were leading towards teaching of the homosexual lifestyle in our curriculum now, even before same-sex marriage is passed. Subsequent to that, Mr. Speaker, there are even more indications that same-sex, what's the best word to say, that same-sex activities, and how they are done, are already in the curriculum in some places and are going to be obviously discussed in the coming days.

"So, Mr. Speaker, these things about fearing that this is, I think one of my colleagues said very derogatorily, 'perpetuating lies'. Mr. Speaker, we don't have to go to Massachusetts, we don't have to go to Canada, we don't have to go to the moon to prove it's there. The curriculum revolution follows same-sex marriage. That's a corollary, that's the reality of it.

"Mr. Speaker, the point is, we keep our eyes open to what is about to happen. My fear is, the conflict between the two communities is going to be resolved in the courts."

Representative Luke rose to a point of order, stating:

"Mr. Speaker, his time is up."

Representative Ward continued, stating:

"We are not here to make money for the lawyers. My time is up and I thank you for the gratuitous remarks to make sure that I say lastly, Mr. Speaker, let the people decide. Because if they don't, they're going to decide who's here."

Representative Lee rose to speak in support of the measure, stating:

"Thank you, in support. Mr. Speaker, it has been 20 years since Hawaii's Supreme Court ruled that denying marriage to same-sex couples violated our constitution. For those families, it has been 20 years fighting discrimination to earn the same respect as everyone else.

"Testifying here the other day was a family of two women and their 16-year-old daughter. I asked them, how could they live in a community that rejects them, and sit through five days of people testifying loudly and repeatedly that they aren't a real family? That their love isn't real, that they are evil, that they are an abomination and they have no place here in Hawaii. They said for them, 'that hearing was horrific, but we endured, because we love our daughter, and our daughter loves us. And we still have hope that one day she will grow up in a Hawaii that is better than this. Where she won't face discrimination because her family is different than others.'

"Mr. Speaker, this bill is our chance to fulfil that dream of a better future and help end an era of discrimination that is hurting countless families here in Hawaii. Make no mistake, this is a hard issue, but we're elected to make hard decisions and do the right thing knowing that we're not going to make everybody happy, and not everyone will approve.

"When interracial marriage was legalized, just 20 percent of the public approved of such relationships, 20 percent. But I wonder how people back then explain to their grandchildren today that opposing interracial marriage was the right thing to do. What we do here today is not game changing, it is not precedent setting, it is not extraordinary. It is but one page in the greatest tradition in American history, the sacred obligation of each succeeding generation, to extend basic rights, liberties and freedoms to those previously denied them, and live up to the promise of freedom and equality this nation made at its inception.

"Women's suffrage, racial equality, and interracial marriage are now common place, but each were seen as unacceptable, controversial, and even immoral in recent history. These social evolutions were not easy, and it is unfortunate that the great march towards justice and equality often divides before it unites. But pursuing freedom for all has been the right thing to do every time. And our society has healed, and together we have grown stronger.

"It's time we move forward once more. Attitudes are changing, and I know the day will soon come when same-sex families are seen as equals. Because people aren't born discriminating against them, people are taught to discriminate against them. And those lessons are slowly disappearing with each passing generation as more people begin to recognize that they have sons and daughters, friends and neighbors, who are gay, but who are regular people with hopes and dreams, and who have families just like us.

"The truth, Mr. Speaker, is that the rest of us have little to fear because same-sex families have always lived in our society, and will continue to live here whether we pass this bill or not. They will continue to have relationships whether we pass this bill or not, and they will continue to raise children whether we pass this bill or not. But here we have a sacred obligation to see that everyone is treated equally and fairly under the laws of this great state where it is self-evident that we are all created equal, endowed by our creator with the unalienable right to pursue life, liberty and happiness.

"And I don't know anyone, anyone, who can find happiness while being discriminated against because of the person they love. I believe we are bound by the oaths we took to uphold the spirit of our constitution to pass this bill to ensure equality for all. But even if we were not, and I did not know how I was going to vote, as an elected leader I choose to err on the side of fairness. As a voice of the people I choose to err on the side of freedom. And as a son of these islands I choose to err on the side of *aloha*. And as a human, as a human being, I choose to err on the side of love.

"I want my children to grow up in a place where they will be treated the same as everyone else, whether they look Japanese or Hawaiian, whether they are straight or gay. Who they fall in love with and marry should be up to them and no one else. We can no longer allow the rights of one minority to be ignored. We should know better. In Hawaii we are all minorities, and we all deserve the same dignity and respect.

"Mr. Speaker, someday I am going to be the one answering to my grandchildren, and when they ask, I want to tell them that I did the right thing. I vote yes."

Representative Onishi rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support. Thank you, Mr. Speaker. I too would like to thank everyone who has participated in this process on this issue. This is a serious issue and I thank my colleagues for the respect they gave to those that participated from the public.

"Mr. Speaker, being from Hawaii Island and representing a district that stretches from South Hilo to Honuapo in Ka'u, a district of over 50 miles long, it is very difficult for my constituents to communicate with me in person. But they have found other ways to express their thoughts, via telephone calls and messages, through emails and personal letters. I have met with individuals, leaders and representatives of organizations on both sides of the issue on this bill, on Hawaii Island and here at the Capitol.

"I have received hundreds, and probably thousands of contacts from individuals and representatives of organizations from my district and Hawaii Island over the last five months, from when this discussion began on whether or not to hold a special session, to today, over Senate Bill 1, House Draft 1.

"I believe, clearly, that the constituents of my district have been innovative and capable of communicating with me during this special session, as they have been able to do during our regular session. Mr. Speaker, I've been able to hear their concerns and I've also been able to share my thoughts as well. I have shared that, for me, this issue is for equality.

"During my childhood, my focus was all about me and my needs, but as the oldest child, great responsibility and accountability was placed upon me without asking me. To take care of and ensure that my younger sister, brothers, cousins and our friends were safe, behaved, and were protected by me. I accepted that responsibility and accountability, although I didn't feel that it was fair to me. Because that was the way things were done for centuries in my Japanese culture. Was that fair?

"With that experience, I didn't put that responsibility on my oldest daughter over her sisters, it was my responsibility to treat each of them equally. That was an action of equality. Mr. Speaker, as an adult, I was very active in the Jaycees, as I know you have been. When I joined the Jaycees, it was only for men, no women allowed. When we were challenged in the 90's for not allowing and accepting women to join our organization, I supported the decision to change decades of past practice and to allow and accept women into the Jaycees. That was an action of equality.

"Mr. Speaker, when I joined the County of Hawaii as an employee, I got involved with my union, the Hawaii Government Employees Association. I became a leader on Hawaii Island, and later at the state level as a director and eventually as president of the HGEA. During my involvement, we faced many issues of inequality and unequal treatment of government employees, and we fought back to correct those inequities in the workplace, the practices within departments and agencies, promotion and hiring practices, and many, many more issues.

"We fought for equal pay for equal work, and the protection of benefits promised to current workers, and especially our retired government workers. Those were actions of equality.

"Mr. Speaker, taking into account all of the input that I and we have received and reviewed on the merits of this issue, today I stand in support of equality. Equality for the rights and benefits for same-sex couples that

want the right to marry. I also stand in support for protections of religious organizations, their associated organizations, their facilities, and all of their clergy, staff and volunteers. I believe these are the issues that have risen to the top."

Representative Takayama rose to yield his time, and the Chair "so ordered."

Representative Onishi continued, stating:

"We have received input, discussion, and debate over Senate Draft 1, HD 1, and it accomplishes both. To accomplish this, we must pass this now. Thank you."

Representative Takumi rose to speak in support of the measure, stating:

"Thank you very much, Mr. Speaker. In support. First off, I'd like to have written remarks inserted into the Journal, if possible. Mr. Speaker, I wasn't going to say anything, I didn't speak on Second Reading, and in fact, when the civil unions bill passed a few years ago, I only entered written remarks because I always felt at this point, everything that has to be said has been said.

"But as I was sitting on the Floor today, it hit me that there were only six members that served in this Chamber, including yourself Mr. Speaker, that were here in 1993 when the Baehr v. Lewin decision was rendered. So, with your indulgence, I'd just like to share a personal perspective and bring this full circle for me.

"As I listened to the testimonies and read the emails that came in, I was reminded how similar this issue is to another one in our nation's history. The Representative from House District 48 has alluded to it, and begging your indulgence I'd like to draw the comparisons between that case and the measure before us today. But in order to do so, Mr. Speaker, it's critically important to remember how America was in the 1950's. Jim Crow laws, schools, restrooms and even drinking fountains were segregated.

"And all of this was legal because of the Plessy v. Ferguson case in 1896, that the Supreme Court said 'separate but equal was not discriminatory.' But Mr. Speaker, we now know that America at that time was not a society built upon a separate but equal principal, but a society built upon a separate but unequal reality.

"As all this was happening in the small town of Central Point, Virginia, little did an 18-year-old black woman and a 23-year-old white man know that they were about to make history. Why? Because Mildred Jeter and Richard Loving committed a crime under the laws of the commonwealth of Virginia. You see, Mr. Speaker, they committed the crime of falling in love and getting married.

"Interracial marriage was illegal in Virginia and almost half the states in the country, so in June of 1958, the couple drove to Washington, D.C., got married, and returned home.

"Mr. Speaker, this is no different than some of the comments I hear that, 'why don't gays go to another state and get married and come back to this state?' A few weeks after returning to Virginia, and based on an anonymous tip, the police raided their home early in the morning, hoping to catch them having sex, which was illegal in Virginia. They were rousted from their bed, handcuffed, and taken to jail. On January 6, 1959, the Lovings pled guilty and were sentenced to one year in prison. But the judge suspended the sentence for 25 years on the condition that they don't return to Virginia for those 25 years. And so they moved to the District of Columbia.

"Mr. Speaker, in rendering the verdict, Judge Leon Bazile said, and I quote, 'Almighty God created the races, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix,' unquote. Surely the Judge was merely echoing the sentiments of his time that had the sincere religious belief that God did not intend for races to marry.

"Now over 50 years later, I would hope that most of us will say that their belief at that time, however sincere, was simply wrong. A Gallup poll taken in 1958 asked, 'do you approve or disapprove of marriages between white and colored people?' That was the term. Only 4 percent of the American people approved. Obviously, if we had let the people vote in 1958 whether or not interracial marriage should be legal, 96 percent of the American people would have voted 'no', because they thought such marriages were not normal, and the children of such marriages would suffer greatly.

"In subsequent Gallup polls, Mr. Speaker, it wasn't until 1983 that more Americans approved than disapproved of interracial marriage. In other words, the Lovings would have had to wait 25 years before public and popular opinion gave them the right to get married. The case went through the judicial system, and on June 12, 1967, the U.S. Supreme Court unanimously ruled that Virginia's law was unconstitutional. And with that decision, laws against interracial marriage that still existed in 16 states were also deemed unconstitutional.

"In reading the history of this case, what struck me was Richard Loving's reason for initiating the lawsuit. Mr. and Mrs. Loving were simple people. He was a construction worker by trade, they were not rabble-rousers, they were not militants, they were not activists. When asked what he wanted the Supreme Court Justices to know, he replied, 'tell the court I love my wife, and it's just unfair that I can't be with her in Virginia.'

Representative Nishimoto rose to yield his time, and the Chair "so ordered."

Representative Takumi continued, stating:

"Now I know some will say this is about marriage between a man and a woman, and the measure before us today is different. Perhaps. But I will assert that the same concerns that were raised in the Loving case are being raised today. Let me conclude with a personal story, Mr. Speaker. A story not about constitutional amendments, First Amendment rights, immunity from liability, and all the rest of the nuances and subtleties that we've been discussing for the past few weeks.

"Some of you may know that we are blessed with five grandchildren in our family. One of them, Kayla, is a fourth grader at Momilani Elementary School. Yesterday morning I took her to school. And as she was getting ready, she asked if I voted 'yes' on the bill. I was surprised she asked me this because, like most 9-year-olds, she usually asks me about going to Chuck-E-Cheese, and not about contentious social issues.

"I told her that I did vote yes, and she said she heard the vote was 30 to 18 in favor of the bill. I asked her how she knew this, and she said she heard it on the news. So you know, Mr. Speaker, as the Chair of your Education Committee, as I was driving her to school I thought to myself, well maybe this is a teachable moment, the kind of moments that you wait for that you can talk to your children and your grandchildren, and perhaps they can learn something.

"Little did I know, Mr. Speaker, that I would be the student, and Kayla the teacher. I asked her if she thought it was okay if gays got married, and she replied, 'if they love each other.' And I said, 'really?' She looked at me and said, 'grandpa, love is love.' Love is love. It's pretty simple. Kayla gets it, Mr. Speaker, it's time that we get it too. And there's no better time than today, no better time than now. I vote yes."

Representative Takumi's written remarks are as follows:

"Mr. Speaker, I rise in support of SB 1, HD 1. My remarks address the amendments to the exemption for religious organizations located in Section 2 on page 6 of the bill.

"The intent of the amendments is to incorporate aspects of the language passed by the Connecticut Legislature, now codified at Conn. Gen. Stat. Ann. § 46b-35a 'Refusal to provide services or accommodations related to the solemnization or celebration of a marriage on religious grounds.'

"I support these amendments as a reasonable balance to address concerns raised by members of the religious community who were concerned that the original bill did not sufficiently protect their religious freedom. The amendments broadened the exemption proposed in the measure as introduced by exempting both religious organizations and nonprofit organizations that are operated, supervised, or controlled by a religious organization from coverage by the state's public accommodation law in the limited context of marriage solemnizations and celebrations that violate the religious organization's religious beliefs or faith. The amendments also removed the limitation that the religious organization not profit from the use of its facilities for marriages.

"The amended exemption clearly will permit a religious organization to refuse to make its facilities, grounds, goods, or services available for a marriage solemnization or celebration that violates its beliefs or faith. 'Religious organization' is meant generally as an organization with distinct religious beliefs and form of worship, congregants, and an established place of worship such as a church, chapel, temple, shrine, synagogue, mosque, or non-denominational building.

"My intention in supporting the extension of the exemption to 'nonprofit organization[s] operated, supervised, or controlled by [] religious organization[s]' is to provide consistency in the law's application so that a religious organization and any nonprofit entities that it operates, supervises, or controls are both exempt where the provision of facilities, grounds, goods, or services violates the beliefs or faith of the controlling religious organization.

"The exemption is *inapplicable* to nonprofit organizations that are *not* operated, supervised, or controlled by a religious organization, even where the nonprofit is religiously-affiliated or inclined, such as the Young Women's Christian Association. The exemption does not apply to 1) individuals, 2) private businesses, 3) for-profit businesses that are operated, supervised, or controlled by religious organizations, 4) tenants of religious organizations, and 5) subcontractors of religious organizations.

"While the intention of the exemption is to allow a religious organization, such as a church, and its nonprofit affiliates to refuse facilities, grounds, goods, or services for same-sex wedding ceremonies or solemnizations, it does not extend to organizations and businesses where the church does *not* have a controlling interest. In the same way that a private business is not permitted under the exemption to disregard the state's public accommodations law, neither is a church able to exert its beliefs or faith on that private business through the use of restrictive lease or contract terms.

"For example, a church that owns land which includes a shopping center may choose to prohibit businesses which lease space in the shopping center from engaging in certain activities that violate the church's religious beliefs or faith, such as banning the sale of alcohol. However, that church cannot require its lessees to violate the public accommodations law and refuse service for same-sex wedding ceremonies or solemnizations. In the context of a lessee florist company, the church may not restrict the florist from providing flowers for a marriage solemnization or celebration, even where the marriage may violate the church's beliefs or faith. The florist, as a private business, would also not be able to refuse to provide the flowers under the exemption.

"Finally, I note that since 1988, Hawaii has had a robust public accommodations law. It is my intention that Hawaii's long-standing prohibition against discrimination by a place of public accommodation not be altered except as specifically addressed by the exemption in the limited context of solemnization of a marriage and celebration of a marriage by covered religious organizations and nonprofit organizations."

Representative Woodson rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. Very brief comments, if I may, in opposition, respectfully. Mr. Speaker, thank you again. Of course we should afford equal rights to everyone, Mr. Speaker, within reason. That, I think, goes without saying. But we should not be in the business of legislating any

religious document to do so. There are ways in which we can go about pertaining the goals of this bill without being do divisive.

"Mr. Speaker, it has been said that some of us legislators have said harmful things about the homosexual community, and I would suggest, Mr. Speaker, that that assertion is inaccurate, at least as far as public record goes. For to do so, Mr. Speaker, is harmful. It cuts off thought processes, it divides us, it does not bring us together. If a bill potentially induces a flood of litigation, then it is divisive, it does not bring us together. If a bill puts one side against another, Mr. Speaker, it's divisive, it does not bring us together.

"So here we are, Mr. Speaker, in the second week, practicing democracy in all of its messy glory and splendor. But this end product, Mr. Speaker, divides us, it does not bring us together. It does not bring a consensus of the majority on both sides of this issue. And for that reason, Mr. Speaker and others, respectfully, I am voting 'no' to this measure. Thank you."

Representative Thielen rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I'm rising in support of the bill. Thank you. I would like to thank the majority of the members in this Body for allowing me to continue to serve on the Judiciary Committee. I thank you very much for that.

"I listened to the 57 hours of testimony, I've read and responded to thousands of emails on both sides of the issue, and I want to quote from one email from a young person. And I quote:

'I just did something spontaneous... So I was on the bus, on my way home when we passed the state capitol, which was bombarded by picketers of the marriage bill. I was shocked. It made me sad to see how many people are against equal rights. I honestly don't get it. It bothered me so much, I actually got off the bus, called my mom to tell her what was going on, and walked all the way back to the state capitol three bus stops back. There was no question in my mind that I HAD to go and support MY cause for equality.

'I walked through the crowds of traditional marriage supporters and looked for my same-sex people. It took a while, but finally I spotted a little rainbow and followed it. At the end of the rainbow I met a woman with a sign that read "Love is Love". And I found out that the rainbow I was chasing was a light saber that belonged to her young son.

'I tapped her on the shoulder and asked if she was on the other side and she said yes. I smiled and said, "I'm sorry, I have to give you a hug." I thought it was very brave of her to be taking a stand among all these people who were fighting to keep her from sharing the same rights they've had since the beginning of time.

'Seeing her little boy made me think about my mom and all she's had to go through because of her orientation, and that I have had to go through, being a child of a gay parent. I've had people, in person, say all kinds of stuff to me about this subject - "You're going to hell. Your mom's going to hell."

'So growing up and seeing that kind of hatred was not easy, but it taught me something... It taught me that I don't want to be hateful. Having been raised by a gay mom, I've learned to be a more loving and accepting person.'

"And then, Mr. Speaker, this young person concludes:

'Change needed to happen. Let's face it - times have changed! Your denying marriage equality for same-sex couples is denying the rights of love. And you never know who you're affecting. Perhaps the closest person to you is gay, but they just haven't told you yet... They could be your child, your sibling, your parent, your best friend... Do you really want to deny them their rights, deny them their happiness?'

"Well Mr. Speaker, I don't. And so I'm standing in support of Senate Bill 1. Thank you."

Representative Kawakami rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I stand in support. We have engaged in a debate of what seems, at the surface, a myriad of topics in dealing with the definition of marriage. Who does it belong to? And at the base of the debate has brought about two sides of our community. One that holds deeply that marriage is the ultimate expression of love between one man and one woman, and on the other side is the belief that it is a civil marriage, one that has equal rights for people to have the same benefits as every married couple in our state and nation.

"But both, Mr. Speaker, are really about love. Love is what this is all about, and the foundation of my support for this bill has always been about freedom. The ability to recognize that marriage is a legal relationship and a religious relationship. And under the First Amendment we must protect these freedoms so that one religious belief is not imposed on another's.

"We here are tasked with the balancing of all of this, fully recognizing that there are many different religions, and even amongst some of these, there are varying degrees of tolerance that may not be accepted by all. But nonetheless, we must recognize the vast diversity of different religious beliefs, whereas tolerance is limited to execute the protection of freedom for any individual in our country.

"Mr. Speaker, I'd like to go back and recite some words that I offered this Body during my invocation when I was appointed to the House. You see, Mr. Speaker, my mom taught me five things that I try to live by every day. And of course I'm not always successful, but it serves as a part of my moral compass that guides my decision making.

"The first thing she taught me was to always say 'thank you'. So I want to thank everybody for being a part of this process. The second thing she taught me was to never judge, that only God could judge. Number three was to always forgive. This is often the hardest thing to do, but holding in animosity is like slowly poisoning yourself. Four, was to always leave a place or person in a better state than what you found them in. And fifth, and most importantly to me, is that there is only one time when it's okay to look down on somebody. There's only one time when it's okay to look down on somebody, and it's when you're standing over them, picking them up off the ground after they've fallen.

"Mr. Speaker, now after today, now more than ever, we're going to have to work hard and start picking people up off the ground. A lot of people on both sides of this issue have been hurt, and our task as a community is to start the healing process. And I truly believe that through tough times, it can spur the beginning of healing.

"Mr. Speaker, when Kauai went through Hurricane Iniki, our island was devastated. But what was revealed was not the destruction, it was the creation of a bond between neighbors and strangers, friends and enemies, families all coming together to fix things, to rebuild, to heal. And through adversity, unity was born. Thank you, Mr. Speaker."

Representative Coffman rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in strong support. First I would like to thank Governor Neil Abercrombie for calling this special session. Our Governor understands and recognizes the importance of religious freedoms and the importance of equality under the law. The Governor also recognized that a special session would allow us to focus on a very important subject, that if processed during regular session, would be very disruptive to thousands of bills that require our full attention beginning in January.

"Mr. Speaker, regarding process, the House committee took the time to listen and process this piece of legislation. Rarely do I have the time to focus on and study a piece of legislation months in advance of a hearing. Rarely do I have the time to write the Governor and House leadership about my concerns regarding this legislation. Rarely do I have the time to meet with the Judiciary Chair to discuss my concerns in detail. Mr. Speaker, I had the time to do all that.

"Mr. Speaker, I was elected to make decisions to the best of my ability. I do not make decisions based upon a popularity contest or who screams the loudest. I'm always faced with opposition on every piece of legislation. I will never make everyone happy. SB 1, HD 1, provides for marriage equality for all, while ensuring that religious freedoms are granted to the many diverse belief systems embraced here in our state.

"Mr. Speaker, marriage equality policy in SB 1, HD 1, is good legislation and makes Hawaii a better place for everyone. Thank you, Mr. Speaker."

Representative Ing rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in strong support of Senate Bill 1, Relating to Equal Rights. Thank you. A couple days ago I spoke to young, mainstream Christians. Today I have a broader message. In 1998, my parents voted on a constitutional amendment to reserve marriage between one woman and one man. I remember the commercials, 'vote yes for traditional marriage', our family liked that one. And, 'vote no on the constitutional amendment', that one was bad.

"You see, like most 9-year-olds, morality was a very black and white concept. There's right, and then there's wrong. I carried a due-north due-south moral compass oriented primarily on what my incredibly loving parents, hi mom, taught me. And they, along with my church, taught me that being gay was bad. But in October 1998, a few weeks before that vote, something happened that shook and recalibrated my young conscience. Matthew Shepard, a gay teenager going to college in Wyoming, was inhumanely tortured and murdered by straight classmates. A hate crime that made national news.

"He was tied to a fence and beaten with a pistol and left to bleed to death. I remember discussing this with a friend of mine from church, and my friend said, 'good for him, God says he is evil.' But I knew in my young heart that no one deserves this kind of brutality, no one. This is where my convictions began.

"You see, if we want to understand this or any gay rights issue, we need to understand the LGBT experience. Many of us just can't grasp what it will be like. Until college, like many of the testifiers here, I thought being gay was a lifestyle choice that went against nature. But when you actually hear from the LGBT community, as we on your Joint Committee on Finance and Judiciary have witnessed, it is clearly not a choice. In fact, many gay people who testified last week proclaimed that as teenagers, they fought who they are and tried to force themselves straight. Many faced self-loathing and torment because of this, and thank God that unlike the thousands of gay teenagers that take their own lives every year, these brave people persevered and they were able to be here today, in front of a less-than-friendly crowd, to stand up like champions for equal rights for all.

"For those opponents who say this isn't about civil rights, I challenge you to tell that with a clear conscience, to Alan Spector, who had the love of his life deported back to South America because his post-doctorate research funding expired. I challenge you to tell that to Kimberly Allen, who was not allowed to see her life partner in the hospital during the last hours of her life. I challenge you to tell that to Tambry Young, who had to reconsider adoption and delay forming the family she desired because of the cost without the rights and benefits of marriage.

"Tell that to Bart Zobel, a soldier fighting for his freedom, who was called a 'flaming homo-mistake' by a rank and file superior. Tell that to Jeremy White who slipped into depression trying to force and pray himself straight. And I challenge you to tell that to the parents of Matthew Shepard, that the suffering and the tragic death of their own son that they experienced is not sufficient to call this a civil rights issue. Tell these people to hold on until the majority is ready. Tell them they must continue to suffer inequality and hate because other people are not ready to grant them full equality. Can you do that with a clear conscience?

"Some testifiers have spoken about this bill ushering in an onslaught of gay lifestyle. And they challenged your committee members, Mr. Speaker, 'would you wish homosexuality upon your own kids?' So I really thought about this. If the gay lifestyle they speak of pertains to the highly

successful physicians, attorneys, economists, a world-renowned microbiologist and psychologist that we've seen testify, if this gay lifestyle pertains to the inspiringly committed couples who have been together for decades yet are still viewed as strangers in the eyes of their government, if this gay lifestyle that they're referring to pertains to these brave people boldly standing in the face of hate to fight for equal rights of all, if that's what the gay agenda would bring, if that's how my gay children will be like, then hey, sign me up. I'll take three.

"And please, please, don't write scripts for your kids to tell me that children need a mother and a father in order to be raised right. When my father passed away when I was a young child, and just like our junior U.S. Senator, and just like our Hawaii-born President of the United States, I come from a single-parent home. Don't tell me that I, and my brothers and sisters, who are excelling in sports, academics and art, that we are any lesser than your child."

Representative Ohno rose to yield his time, and the Chair "so ordered."

Representative Ing continued, stating:

"Especially in Hawaii, where *hanai* adoptions are enshrined in tradition. Where multi-generational families are valued just as much as our *kupuna* are, and where diversity is the hallmark of our *aloha* spirit. We need to embrace empirical evidence stating that the nuclear family is no better off than other familial structures. Our children need to continue to learn that in Hawaii, we're all equal. No matter your sexual orientation, and no matter how your family is structured.

"You see, I live in Kihei, with one of the largest gay populations in the state, and with the majority of my constituents in support. But for my colleagues who have the majority in their districts in opposition, let me leave you with this. In high school, my friends, just like most kids in high school, we used the word 'gay' kind of as an insult, or as the great philosopher Macklemore said, as 'synonymous with the lesser.' We hurled it at each other as to make fun each other.

"One day, a gay classmate of mine, he was walking to band class, he tripped and he dropped a glass jar full of colorful paper stars. My friends started laughing at him. I felt bad, so I went over there and helped him. That didn't make me really cool, as a matter of fact, every time we walked by that guy later on, my friends would say, 'hey, there goes your boyfriend.' But I did it not because it was the popular thing to do, but because it was the right thing to do. Standing up for this individual did not make me popular, but it was the right thing to do.

"Just because the numerical majority is in one place, it does not mean they're in the right place. We are in a position, right now, that we must lead out state to the right place. Sometimes the right thing to do goes against the popular thing to do.

"While I cannot take my parents' 1998 vote back, the people placed me in a position where I can help correct an injustice here in Hawaii. And I am prepared to face the consequences of my vote.

"To me, this bill is about love and acceptance. In Hawaii we call it *aloha*. One person in the audience stated that it's the wrong love. I don't agree. Again, I agree with Macklemore, it's the same love.

"I have one last question. How many more gay people must God create until we realize that he wants them here? How many more gay people must God create until we realize that he wants them here? Mr. Speaker, let the people decide who they marry."

Representative Rhoads rose to respond, stating:

"Thank you, Mr. Speaker. In support. As I was thinking about what to say here near the end of the debate on legalizing same-sex marriage, I was thinking back on the civil union debate and of the many eloquent speeches that we heard back in 2010. Of all the speeches made during that debate, I've always liked the one that former Representative Barbara Marumoto made best.

"Because I didn't think I could do better myself, I called her yesterday to see if she wouldn't mind if I quoted her. She called back today and graciously agreed to allow me to do so, with a couple of caveats. One, she wasn't talking about marriage in the civil unions debate and unfortunately her life mate that she mentioned in the statement passed away after she made this statement, but I still like it very much and I'm going to read it, it's not very long.

"I think all of us, all Americans believe in the right to life, liberty and the pursuit of happiness. And to me happiness is defined by a loving family and a faithful life partner, and I'm blessed with both. Sad is the person who has none of these. We would have a more contented populace and a better world if everyone had a large family, or at least someone. I don't believe our society will come crashing down if we pass this bill. It hasn't in Canada, and Mexico, and Spain, and other jurisdictions. Nothing is dearer to me, and to many of you here, than our family values. And because I believe we are all God's little children, for this reason I vote to enact civil unions."

"For this reason, I vote 'yes' on this bill, and request permission to insert additional comments. *Mahalo.*"

Representative Rhoads's written remarks are as follows:

"Mr. Speaker, I rise in support of SB 1, HD 1. My remarks address the amendments to the exemption for religious organizations located in Section 2 on page 6 of the bill.

"The intent of the amendments is to incorporate aspects of the language passed by the Connecticut Legislature, now codified at Conn. Gen. Stat. Ann. § 46b-35a 'Refusal to provide services or accommodations related to the solemnization or celebration of a marriage on religious grounds.'

"I support these amendments as a reasonable balance to address concerns raised by members of the religious community who were concerned that the original bill did not sufficiently protect their religious freedom. The amendments broadened the exemption proposed in the measure as introduced by exempting both religious organizations and nonprofit organizations that are operated, supervised, or controlled by a religious organization from coverage by the state's public accommodation law in the limited context of marriage solemnizations and celebrations that violate the religious organization's religious beliefs or faith. The amendments also removed the limitation that the religious organization not profit from the use of its facilities for marriages.

"The amended exemption clearly will permit a religious organization to refuse to make its facilities, grounds, goods, or services available for a marriage solemnization or celebration that violates its beliefs or faith. 'Religious organization' is meant generally as an organization with distinct religious beliefs and form of worship, congregants, and an established place of worship such as a church, chapel, temple, shrine, synagogue, mosque, or non-denominational building.

"My intention in supporting the extension of the exemption to 'nonprofit organization[s] operated, supervised, or controlled by [] religious organization[s]' is to provide consistency in the law's application so that a religious organization and any nonprofit entities that it operates, supervises, or controls are both exempt where the provision of facilities, grounds, goods, or services violates the beliefs or faith of the controlling religious organization.

"The exemption is *inapplicable* to nonprofit organizations that are not operated, supervised, or controlled by a religious organization, even where the nonprofit is religiously-affiliated or inclined, such as the Young Women's Christian Association. The exemption does not apply to 1) individuals, 2) private businesses, 3) for-profit businesses that are operated, supervised, or controlled by religious organizations, 4) tenants of religious organizations, and 5) subcontractors of religious organizations.

"While the intention of the exemption is to allow a religious organization, such as a church, and its nonprofit affiliates to refuse facilities, grounds, goods, or services for same-sex wedding ceremonies or solemnizations, it does not extend to organizations and businesses where

the church does *not* have a controlling interest. In the same way that a private business is not permitted under the exemption to disregard the state's public accommodations law, neither is a church able to exert its beliefs or faith on that private business through the use of restrictive lease or contract terms.

"For example, a church that owns land which includes a shopping center may choose to prohibit businesses which lease space in the shopping center from engaging in certain activities that violate the church's religious beliefs or faith, such as banning the sale of alcohol. However, that church cannot require its lessees to violate the public accommodations law and refuse service for same-sex wedding ceremonies or solemnizations. In the context of a lessee florist company, the church may not restrict the florist from providing flowers for a marriage solemnization or celebration, even where the marriage may violate the church's beliefs or faith. The florist, as a private business, would also not be able to refuse to provide the flowers under the exemption.

"Finally, I note that since 1988, Hawaii has had a robust public accommodations law. It is my intention that Hawaii's long-standing prohibition against discrimination by a place of public accommodation not be altered except as specifically addressed by the exemption in the limited context of solemnization of a marriage and celebration of a marriage by covered religious organizations and nonprofit organizations."

Representative Awana rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition. Should I offend anyone during my speech, I apologize in advance. My intent, although inadvertent, is not to offend, but to simply share my point of view through the eyes of the overwhelming amount of testimony in opposition to this measure.

"Senate Bill 1, House Draft 1, continues to be one of concern. On page 1 of the bill, it states that the federal government does not recognize civil unions, and same-sex couples will not be recognized by the federal law. Why are we having this conversation at the state level? This issue should be taken up at the federal level, Mr. Speaker. We provide rights to civil union couples and those with reciprocal benefits at the state level. Civil unions and reciprocal benefits was the great compromise just a few years ago in 2011.

"We were told that if we provide these options, the GLBT community, they would be satisfied. Have the people of Hawaii not done enough? We gave you your civil unions, we gave you your reciprocal benefits. We don't have signs that say 'straight people only', we don't have signs that say 'GLBT to the rear of the bus', and we don't have separate water fountains for GLBT individuals.

"Have we not already shared our *aloha* spirit with you? Our customs, our culture? Religious rights will be compromised, and I will go over that later. But our *keiki*, our children, our future. Now, in our public school system, it's happening in Hawaii, Mr. Speaker, as mentioned earlier. And it's happened in Canada where same-sex marriage is legal, it's happened in the mainland where same-sex marriage is legal, and now it's in our public school system as we stand here to debate this bill.

"It's masking itself as, quote unquote, 'culturally responsive teen pregnancy and STI prevention program'. And guess who created this program? Our very own University of Hawaii at Manoa Center on Disability Studies. Guess who their partners are? Alu Like, Berkeley Policy Associates, Hawaii Department of Education, Planned Parenthood of Hawaii. And guess where it's currently being taught? On all major islands throughout the state.

"The Department of Education did not provide testimony at the House joint hearings. They're already implementing the programs to indoctrinate our children into believing that homosexual relations are normal and healthy, and heterosexual relationships are abnormal and unhealthy.

"A concerned parent brought this information to our attention. He attended a parents' meeting introducing a new sex-education curriculum for 7th graders being piloted at the university. He and many other parents

were alarmed. It not only teaches hands-on experience on putting a condom on, or something, but also teaching how to have homosexual sex, including oral and anal sex, alluding to the fact that it may even be better than heterosexual sex because you don't have to worry about getting pregnant.

"The module also includes discussions about relationships and three scenarios were given. The two heterosexual scenarios were negative, while the homosexual scenario was painted to be very peaceful and positive. When the parents questioned the presenters why this curriculum promotes homosexual sex as better than heterosexual sex, the answer was, 'because that is how the UH wrote it.'

"Another point, Mr. Speaker. Many have made claims that same-sex marriage is a civil right. I believe the people of Hawaii compromised with the same-sex marriage issue back in 2011 when we passed the civil unions bill. Testimony during that time, in order for the bill's passage, claimed that the GLBT community would stop at civil unions. I did not support civil unions at that time, Mr. Speaker, because I knew this was a slippery slope which would be a nightmare of a bill that we are looking at today in Senate Bill 1, House Draft 1.

"An article by then doctoral student in financial economics, Adam Kolasinski from MIT wrote the following, and I'll just read a few passages.

"The debate over whether the state ought to recognize gay marriages has thus far focused on the issue as one of civil rights. Such a treatment is erroneous because state recognition of marriage is not a universal right. States regulate marriage in many ways besides denying men the right to marry men, and women the right to marry women. Roughly half of all states prohibit first cousins from marrying, and all prohibit marriage of closer blood relatives, even if the individuals being married are sterile."

Representative Cullen rose to yield his time, and the Chair "so ordered."

Representative Awana continued, stating:

"Thank you.

'Roughly half of all states prohibit first cousins from marrying, and all prohibit marriage of closer blood relatives, even if the individuals being married are sterile. In all states, it is illegal to attempt to marry more than one person, or even to pass off more than one person as one's spouse. Some states restrict the marriage of people suffering from syphilis or other venereal diseases. Homosexuals, therefore, are not the only people to be denied the right to marry the person of their choosing.

'I do not claim that all of these other types of couples restricted from marrying are equivalent to homosexual couples. I only bring them up to illustrate that marriage is heavily regulated, and for good reason. When a state recognizes a marriage, it bestows upon the couple certain benefits which are costly to both the state and other individuals. Collecting a deceased spouse's social security, claiming an extra tax exemption for a spouse, and having the right to be covered under a spouse's health insurance policy are just a few examples of the costly benefits associated with marriage. In a sense, a married couple receives a subsidy. Why? Because a marriage between two unrelated heterosexuals is likely to result in a family with children, and propagation of society is a compelling state interest. For this reason, states have, in varying degrees, restricted from marriage couples unlikely to produce children.

'Perhaps it may serve a state interest to recognize gay marriages to make it easier for gay couples to adopt. However, there is ample evidence, see, for example, David Popenoe's 'Life Without Father', that children need both a male and female parent for proper development. Unfortunately, small sample sizes and other methodological problems make it impossible to draw conclusions from studies that directly examine the effects of gay parenting. However, the empirically verified common wisdom about the importance of a mother and father in a child's development should give advocates of gay adoption pause. The differences between men and women extend beyond anatomy, so it is essential for a child to be nurtured by parents of both sexes if a child is to learn to function in a society made up of both sexes. Is it wise to have

a social policy that encourages family arrangements that deny children such essentials? Gays are not necessarily bad parents, nor will they necessarily make their children gay, but they cannot provide a set of parents that includes both a male and a female.'

"The language in relation to accommodations can still be misinterpreted, Mr. Speaker. Few religious organizations have the funds to defend themselves in lengthy lawsuits. The passage of this bill is a lawyer's retirement plan. I can only imagine how many lawsuits will be filed against religious organizations and those of faith.

"It is already happening here in Hawaii. At the end of the day, Mr. Speaker, I would believe we, as legislators, are bound to those that we represent. I've sent out surveys, and 78 percent in my district are in opposition to anything relating to same-sex marriage. We all have friends and family members who are of the GLBT persuasion, myself included, and my vote is a conduit for my constituents, and this vote will not stop me from giving my *aloha* to the GLBT community, the same way that I have in the past.

"I am appalled at how this measure has come before us, the dreadful language that is being used in this bill, and the divisiveness that was caused by the people behind this special session. To the GLBT community, I commit the resources of my office to find a solution. I will work tirelessly to establish equal rights for you so that you may have the respect, dignity and acceptance you deserve.

"By use of an executive order and proclamation, the President may establish policy that grants federal recognition to civil unions, enacted in the states that allow them, and which directs executive branches to implement the directive immediately. Unfortunately, this right is not at the state level, Mr. Speaker, it's at the federal level.

"Political parties are divided, we're divided in the Chamber, and so are the people of Hawaii. I want Hawaii to be preserved as the Hawaii we have known. People save all of their lifetimes to come here and experience our Hawaii. They want to experience the Hawaiian people. That is what makes us special to anywhere in the world, Mr. Speaker.

"Mr. Speaker and members, let's not make a huge mistake that we cannot take back."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, her time is up."

The Chair addressed Representative Awana, stating:

"Time is up."

Representative Awana continued, stating:

"Ten more seconds, please? Generations will have to endure and only wonder how it all came about. Should this bill pass, Mr. Speaker, as a Native Hawaiian born and raised in the islands, I will feel like a stranger in my own homeland. The process and the language in this bill is not *pono* and for the future of Hawaii and the future of the Hawaiian Kingdom that continues to lie dormant. Mr. Speaker, I vote in opposition. Thank you, Mr. Speaker."

Representative Mizuno rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I rise in support of this measure with reservations. When I was elected to the House of Representatives, I swore a solemn oath to protect, serve and represent the people of Hawaii. While there are many voices and strong differences that have polarized the same-sex marriage issues, my role as Representative has never been more clear, or my mission more passionate. I protect, I represent, I serve to ensure that all people of Hawaii are free to exercise their right to freedom of religion, as well as their ability to live a lifestyle of their own choosing.

"Mr. Speaker, the struggle before us as legislators during this special session is to do our utmost to ensure the rights of both sides. Both sides, Mr. Speaker, were protected and honored. I believe this measure protects the freewill and choice of those wishing to love, honor and commit their life in marriage to another regardless of sex.

"Just as important is my belief in the freedom of religion. We have an equal amount of determination and passion to protect the churches, the mosques, synagogues and other places of worship and those that lead them, with exemptions and protections that ensure that their constitutional right to freedom of religion is protected through robust protection exemption language within the new law. Exempting and protecting these religious entities and their leaders from having to conduct services or open their religious facilities, against their will, to those practices that are not congruent with the faith and practices of these churches, mosques, synagogues or other places of worship is vital to ensure that all people, faiths and lifestyles are protected.

"Our amendments ensure that no church in the State of Hawaii will be forced to perform a marriage or a celebration of marriage that is against their sincere religious belief. As a Representative, I cannot side with either group if they take aim to take away the rights of the other. What I can do, what I swore an oath to do, is to protect and represent the rights for all.

"In this special session, Mr. Speaker, it's been an honor to serve with you. It's been an honor to serve with our members. I believe that our colleagues, regardless of their vote on this measure, truly worked to represent, honor and fight for and serve the rights for all.

"Mr. Speaker, as you know, back in 2010 you and I voted 'no' on House Bill 444, the civil unions bill that we all know that then-Governor Lingle vetoed. After my 'no' vote, I was called a hater and a bigot. I was a little perplexed because I'm not a hater or a bigot. In 2011, I voted 'no' again on civil unions. This was Senate Bill 232, which today is our state's civil unions law.

"What I learned, Mr. Speaker, back in 2010 and 2011 is this. To denigrate another person or group, to elevate you or your group, displays patterns of fear and hatred similar to racism. I am concerned with such overacts of hatred and bigotry in our society.

"Mr. Speaker, I can share what happened after the 2011 vote, I won't mention her name, but she shared with me the story, and I quote, she told me this, I confirmed with her to make sure I got her words right. She said to me back in 2011, after I voted 'no' on Senate Bill 232, 'Representative Mizuno, you know it's wrong to stop me from being with the person I love.' And I heard another speaker tonight talk about Tambry Young and her daughter."

Representative Cachola rose to yield his time, and the Chair "so ordered."

Representative Mizuno continued, stating:

"Thank you, Mr. Speaker. I believe the power of love is greater than the love of power. My thoughts on love and our Lord is central to my final decision on this measure. I have to explain this, there's a nexus to my thoughts in how I came to my decision, Mr. Speaker, and I'm going to explain it.

"First, I love my wife, May, more than anyone or anything on this earth. She has been so loyal and supportive, and it hurts her to see all the personal attacks that I have taken for my position on this measure. This is pure love, simple pure love and joy, and I don't know what I would do without my wife. I don't know what I would do, and I don't know how my life would be, if I was not allowed to marry my wife 10 years ago. It's my personal thoughts. Who am I to stand between two people who love each other?

"Mr. Speaker, I want to also talk about how I evolved. I want to share with you, and our members, my love for my personal savior Jesus Christ. The voices of a thousand angels cannot display the love and gratitude I have for my savior, who accepted a sinner like me, a person so flawed. All

that I am, and all that he wants me to be, I owe it all to him. No words can truly describe the love that I have for my savior Jesus.

"The passage of this bill will never change my love for Jesus. Jesus said this, he said, 'You shall love your God with all your heart, and with all your soul, and with all your mind.' His second commandment was, 'You shall love your neighbor as yourself.' Mr. Speaker, I quote this because these are the two greatest commandments from Jesus. And Jesus went on to say, 'I am the way and the truth and the life. No one comes to the Father except through me.' He's talking about salvation.

"Mr. Speaker, my view is different from those in the LGBT and the churches against the same-sex marriage bill. Interestingly enough, they seem to disagree with this, that Jesus was silent on the LGBT community. I disagree and I'll tell you why. Because when Jesus said, 'you shall love your neighbor', Jesus did not say, 'by the way, we have conditions, you should only love your neighbor based on your neighbor's race, sex, age, religion, color, ancestry, disability' or he did not say, 'if your neighbor is in the LGBT community', he never said that.

"I wanted to share my personal testimony about Jesus. Jesus represents complete love. This is what I call faith to change the world. Mr. Speaker, I'm just about ending it. I believe this measure, after we pass, will have hundreds, perhaps thousands, of our sisters and brothers in the LGBT community, who will seek to have a relationship with my savior, with our savior. Who am I to say someone from the LGBT community should not have a relationship with Jesus?

"I believe in Hawaii, I believe in Jesus, I believe we have an awesome God. I also believe in our spirit of *aloha* which has been impressed upon me by the good Representatives from Puna, West Maui, Foster Village, Nanakuli, Waikiki, and you, Mr. Speaker, as well as so many of our colleagues. I believe in one Nation under God, indivisible, with liberty and justice for all. Mr. Speaker, for those foregoing reasons, I'm voting up on this measure. Thank you."

Representative Kobayashi rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support. I'd like to refer to a group of words used in committee hearing, at least a hundred times. One word is 'process'. I would contend that process is never perfect, but in this case, process was fair. We had five days, at least 55 hours of public testimony. Would it have been fair if we had 70 hours? 100 hours? 155 hours? We have no neighbor island hearings, but normally we don't have neighbor island hearings. So if we went to the neighbor islands, should we have a 55 hour neighbor island hearing in each and every location? I'm not sure we could have done that, certainly not in a special session.

"We've heard that people were cut off, they didn't have enough time to talk. In the other Chamber they had one minute, in our Chamber they had two minutes. Did they need three minutes or four minutes? I would note that Lincoln's Gettysburg Address can be recited in two minutes. The Lord's Prayer can be recited in one minute. So what is enough? What is perfect? We will never achieve perfection, but I think we can learn from this episode. We can make the process better. I would suggest that next time there's a hearing on the other side like this, it won't be a one minute cut off. I think they've learned their lesson.

"I know that people in this Body have been talking about neighbor island video testimonies for years, and years, and years. Well, you know, we've got these computers, and we've got Skype, and we've got all kinds of stuff we didn't have 10 years ago. So maybe let's make the process better. Use some of the technology that we've been talking about for so long.

"The other thing about process. If you, and I, and everybody in this room, I think, know that to pass a bill in this Legislature, you need to speak to the head and to the heart. If this process were only speaking to the head, we didn't need 55 hours of testimony. We could have had testimony like in the Senate, or shorter. But speaking to the heart is how you win, how you move bills in this Legislature. Emotions move more than logic. And with this extended committee session of five days and 55 hours, where we saw 100's, over 1000 I'm told, of real human beings, real people

who spoke from their heart, I think that whatever you can say, people were moved. And I think that some of that movement is reflected in this bill.

"So we deal here with the art of the possible. Politics has been called the art of the possible. We were told in the auditorium that the Governor put us in this box. Well, many things put us in this box. The U.S. Supreme Court put us in this box with an unexpected decision. The Governor put us in this box, the Senate put us in this box, our own rules put us in this box, our own normal procedures. But I think we tried to make the process fair with the situation that we had, and we exercised the art of the possible and tried to produce a fair process. Hopefully next time, we can do better."

Representative Nakashima rose to yield his time, and the Chair "so ordered."

Representative Kobayashi continued, stating:

"The other thing I'd like to say is this. We are here today on 'Aloha Friday', with the statue of Father Damien, I should say Saint Damien, dividing people on both sides. Somehow I think it's sort of prophetic and certainly poetic and profound that Father Damien has joined the dividing line. But it is an illustration of the division here between this side and that side. Between this side of the gallery, that side of the gallery. Between the 'yes' votes and the 'no' votes.

"And my contention, the last time I spoke here on Wednesday, was that we've got a terrible situation where we're talking past each other. One of the great distinguished professors and U.S. Senators, Daniel Patrick Moynihan said, 'you are entitled to your opinions, but you are not entitled to your own facts.' We've gone beyond that. We differ on opinions, we differ on facts, and as I said last time, we differ on self-selected, self-reinforcing information. We don't like the information, we denigrate it, dismiss it, deny it, diminish it. No good.

"Well, what do we do around here? One of the other words that we heard over 100 times there was 'God'. Church. Faith. On Wednesday, a woman from Kapahulu came to me and talked about all those things. And I told her, I've got a division of churches in the district, two of the largest churches in my district support, two of the largest churches don't support. The two of the largest Episcopal churches just outside my district support. What am I to do? Denigrate the churches, deny the churches, diminish the churches that don't support my position?

"What do we say to the Methodist churches who are divided on this side and that side? What do we say to the Lutheran churches on this side and that side? What do we say to the Episcopal churches, St. Andrew's Priory and the two Episcopal churches in my neighborhood? 'You don't count at all if you are on the wrong side'. Because the Episcopal Church in statewide conference voted to support same-sex marriage. I'm not about to dismiss and discount the Episcopal Church.

"With this woman from Kapahulu I said, 'what about the other people in the district? The Buddhist, the Jewish, the Shinto church members. I've got lots of them. Do I say, you don't even belong in this discussion because your God is a different God, I can just delete you from my thinking?' We shouldn't be doing that and same what the other questions that we have.

"Another term that we heard over 100 times in that room was 'the voice of the people. The people's voice'. Well as was said, we don't know what the people's voice is by just sitting in that room. We have a lot of polls that show that there are a majority of people in Hawaii, two polls in this calendar year, another third poll that showed a 44 to 44 percent split. We have a Gallup poll nationwide that shows pretty much the same percentage as the two Hawaii polls of 2013, about mid-50's support, about mid-30's oppose. But we don't take polls to base our decision on every issue, and we can't."

Representative McKelvey rose to yield his time, and the Chair "so ordered."

Representative Kobayashi continued, stating:

"I shall try to finish quickly. But when we look at the people who came here, what did we see? We saw a very unusual mix of people. There were more young people in their 20's and 30's in that auditorium than we have probably seen in any public hearing. There were more Hawaiians in that auditorium than we have seen in almost any public hearing. There were more Chinese immigrants there than we have seen ever, I think, in any public hearing. There were some gaps.

"Anyway, there were fewer people over age 50, who probably make up the voting majority. So what's the majority? And how do you pick? You say, 'I'm going to define majority this way, I'm going to define majority that way'. At any rate, I would contend that there is good basis for voting 'yes' on this bill, and I would suggest that we understand that we are at a place where we can no longer, I think, come to some agreement on certain beliefs, certain facts.

"At any rate, what I'm trying to say is that we have come to the point where we need to make a decision. And the decision rests with us. Let all of these good men and women elected by the people decide. We've done it before. Decide what is good and bad, what is belief and fact. What is right and wrong. What is relevant and irrelevant. What is good for the long term. What is good for the people. Thank you."

Representative Tokioka rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I am in opposition to SB 1, HD 1. You know, for the past 12 days we've been dealing with special session, and for the past few days we've been trying to figure out as legislators, as Representatives of the House, what we're going to say to address the concerns of the people that came here, Mr. Speaker.

"As I look around the room and I hear the Floor speeches, everybody's passionate. We've been here for a long time, Mr. Speaker. My speech is kind of long, but I don't know if, in fact I know, nothing I say is going to change anyone's vote, I know that. But what I do want to address are the concerns of the people that came here to testify, and it's unfortunate that an issue like this, which is so personal to the people of Hawaii, feelings get hurt on both sides. And this is what I regret the most, and I hope that no one in this Chamber, Mr. Speaker, at the end of this vote, feels good about what we did.

"Anybody who has to vote, you're going to hurt people on both sides, and that's sad. Because we were forced to come in to special session, Mr. Speaker. My comments were going to address thanking the chairs of the committee because we did what the Senate didn't do, we heard the people that came. And I thank the chairs. Despite a moment when the testimony was going to be cut off, the chairs stood strong, so I thank the chairs for that.

"I wanted to address some of the comments that were made in the testimony because some of it, in fact a lot of it, was very hurtful, and none of us condone any of that. I wanted to address Mr. Ma'afala's comments, I wanted to address Mr. Kukahiko's comments, because I spoke with them after the meeting. But you know what, Mr. Speaker, I know that none of this is going to change anyone's mind.

"So all I want to say for everyone is, the people had two minutes to talk. I'm going over 10 seconds but there was a slight pause in my speech. But the resounding thing that we heard from the people that came here, when that door opens is going to be 'let the people vote'. For those reasons, I'm voting 'no' on SB 1, HD 1. Thank you."

Representative Fukumoto rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. In opposition. Let me first start by respectfully disagreeing with my colleague from Kahala. This process wasn't good enough. These people outside and upstairs, they know that. But just back to my original comments. I started thinking weeks ago about what I was going to say today. And it was my hope that then, that we as a Legislative Body would have listened to all sides involved and come up with a measure that would have satisfied the needs of all parties.

"Unfortunately, this process seems to have divided us even further. I've been told that history is going to look down on my vote. And maybe it will, and maybe it won't, but holding this position was never about me or my legacy. In the end, this broken process made me choose between the rights to benefits and the rights of conscience. And I can't vote for a measure that would further inhibit the free practice of religion, which I know that many of my constituents hold dear.

"Mr. Speaker, it's a rare thing to see two sides of an issue so diametrically opposed that they're unable to reconcile their differences. But that's the point that we seem to have come to, and it's a very sad failure of the democratic process.

"Given more time, Mr. Speaker, we may have been able to come up with more options or found a way to negotiate between the rights to equal benefits and the rights of conscience, but we weren't afforded that time. This isn't an easy vote to take, and it shouldn't be an easy vote for anyone. Anyone who is easily voting 'no' hasn't felt the weight or the pain that their vote will cause the LGBT community who just want equal rights. And anyone who is easily voting 'yes' isn't feeling the full weight of the fear of thousands and thousands of local residents who came to this Legislature concerned that their rights to practice their religion, to teach their beliefs and to raise their children, could be taken away. If not now, 10 or 20 years from now because of what we did here.

"This Body did a disservice to the opponents of this measure, Mr. Speaker. And in my opinion, the deck was stacked against the opponents from the start. We've even seen these opponents maligned and mischaracterized on the Floor today. Perhaps the people reading and watching aren't concerned with this issue, but I would ask them, what if it's your cause next time?

"What we've seen this week is a government that will ignore the masses and tip the scale in favor of its own agenda. Mr. Speaker, I think this is the greatest concern for my generation.

"In the past few weeks, I've heard overwhelming opposition to this measure from my constituents who, like me, just want to ensure that the rights of conscience are protected. It's my duty, Mr. Speaker, to be their Representative in this Body. I wish we could have come up with another solution and I wish we could have had a more full debate, but today I find myself with no choice but to vote no.

"Mr. Speaker, this was a difficult process to be involved in, and this is a painful vote to cast. And as I said, it should be. But as we move forward I know that there are thousands of people that feel disappointed in their government and disenfranchised by this process. This, Mr. Speaker, should be disconcerting to everyone.

"Mr. Speaker, this process is broken, and the measure is flawed because of it. So for these reasons, Mr. Speaker, I'm voting no."

At this time, the Chair stated:

"People in the gallery, I know you have a lot of passion, but please keep your passion to yourself as we move along. We're all very tired, we're all doing the best we can."

Representative Fale rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition. Mr. Speaker, I'm physically, I'm mentally, and I'm emotionally exhausted. It's been a long couple of weeks. But I'll start where I began earlier today. Take a look at the gallery, Mr. Speaker. Here we are, still divided. Those who are for and those who are against. Outside there's two red lines that divide those who are for and those who are against. And yet we talk about *aloha*, Mr. Speaker. Does that look like *aloha* to you? It does not look like *aloha* to me.

"And any measure, I don't care what it is. When I would get into fights with my siblings, my mom and dad would say, 'it doesn't matter who's right, you do what's right, and the division that anything brings between you and a brother or a sister or a family member, is wrong.'

"Here we are. Here we are, Mr. Speaker. Thousands of people will be divided over this issue. You know we could have done better, the Governor knows we could have done better, everybody sitting here knows we could have done better. But why didn't we?

"This morning, Mr. Speaker, I wanted to bring a 70 pound bag of Pedigree Dog Food, a 40 pound bag of apples, and a 40 pound bag of kitty litter. The dog food and the apples were for the dog and pony show we've had the past couple weeks. And the kitty litter is for the smell and the stink that has been caused by this special session.

"Mr. Speaker, I'm a product of a multi-racial marriage. I've been attacked because my mother is white, I've been attacked because my father is not. I've been told I look civilized for a Polynesian. And last year, in January, I was told that my race is athletically inferior. Mr. Speaker, I've actually dealt with worse things from my own brothers. These things, they hit you.

"But, Mr. Speaker, I find it interesting that the people of Hawaii who made *aloha* what it is, somehow this Body feels the need to educate the people of Hawaii on what *aloha* is. The things that have been talked about, all the travesties that have been committed on the mainland, the Jim Crow laws, making it illegal of intermarrying between different races. Let the mainland be the mainland, Mr. Speaker. Let Hawaii be Hawaii.

"Mr. Speaker, on October 27th, 1838, an extermination order was issued by the Governor of Missouri, against those who practiced my religion. It was legal to kill those who believed what I believe. I know what it's like. My family, my ancestor, Heber C. Kimball's best friend, was David Patten Kimball, who was shot and killed because of what he believed, in these very United States. He named, my ancestor, my third-grade grandfather, David Patten Kimball, after him. That legacy of protecting religious freedoms is something that is dear to my heart.

"Mr. Speaker, that executive order to exterminate those of my religious faith wasn't rescinded until 137 years later in 1976. I know a little bit about discrimination, Mr. Speaker. And the thing is, everybody here on this Floor knows something about it. My favorite person, probably, in this building, Mr. Speaker, is the good Representative from Hawaii Island. My brother over there from the 442nd Infantry Battalion. We like to sing and talk together. It is my aspiration to rise to the level of what they were able to accomplish for this great State of Hawaii, Mr. Speaker.

"My culture has been described as intellectually, socially, legally and culturally inferior, Mr. Speaker, because we believe that marriage is between one man and one woman.

"Mr. Speaker, I see my time is up. And if there's something, if there's something that's been wrong without doubt, it's the division that this bill has done to this community. If there's something wrong, if there's something that's unacceptable, it's the failure of leadership to bring the people together instead of dividing them. Mr. Speaker, that was within our power. That was within our power, and the reason why we had to swallow this pill was for financial reasons that the Governor insisted on.

"Mr. Speaker, I'm not even sure if the Governor understands what Hawaii is all about anymore. He talks about a canoe. How can a canoe float in the ocean when the canoe is split in half? Mr. Speaker, this Body, we asked for five days of recess so that we can take this measure..."

Representative Saiki rose to a point of order, stating:

"Mr. Speaker, his time is expired."

The Chair addressed Representative Fale, stating:

"Your time is up."

Representative Fale continued, stating:

"Mr. Speaker, I'll wrap up. We asked for five days to take this measure to our community, just five days, Mr. Speaker. I would hope that this Body would possess the fortitude and the leadership to stand up to a Governor

who is not doing what is right. And with that, Mr. Speaker, and for those reasons, I am opposed to SB 1."

Representative Cullen rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition. First, I would like to thank everyone who has taken the time to participate in the process over the past few weeks. I would like to request, from everyone, that no matter the result of this evening's vote, we as a community, we as a state need to move forward by demonstrating acceptance, tolerance, compassion, humility, love and *aloha* to each other.

"I rise in opposition because the majority of the people in my district have weighed in on this issue at a ratio of 4 to 1 in opposition to Senate Bill 1, House Draft 1. Not because they are against marriage equality, but because they are against the process we, the Legislature, have taken, by not allowing them to vote. They need time to call, to email, and to write letters to my office voicing their concerns about the bill. They even took the time to participate through testimony during our committee hearings.

"Who am I to deny my constituents the opportunity to make an educated, reasonable and compassionate vote on same-sex marriage? A great President by the name of Franklin D. Roosevelt once said, 'Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore, is education.'

"Who are we to rush the process? I am where I am because I was elected by the people I represent, and I have listened. They understand the religious protections, and they understand this is a civil rights issue. But they also understand that under the United States Constitution, we are given the freedom and right to vote. Mr. Speaker, we have heard through the day, 'let the people, let the people vote.' And that is why I am voting no on this measure. Thank you."

Representative Yamane rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition and ask that the record indicate that my community has spoken against the passage of this measure, and I have listened. Mr. Speaker, my office has collected over 630 responses at a ratio of over 3.5 to 1 in opposition. Members and Mr. Speaker, my community has asked that we take this measure slowly and give them the opportunity to voice their concerns by allowing them to cast their vote. We took that away.

"Mr. Speaker, the people that have responded to my office and in my community are not only those of faith. These are social workers, teachers, doctors, parents, office managers, and family, who have expressed both support and objection to this measure. But many, Mr. Speaker, have said, give them an opportunity to vote.

"How do you determine which and whose values are more important? Mr. Speaker, this measure is about equal rights, and it does have an impact on people's ability to practice their freedom of religion. This issue has split people, Mr. Speaker. I have the record, I have verification of people within their own family, within their own household, recording different votes. Mr. Speaker, I have witnessed a husband telling me his vote, and his wife silently says, 'I do not agree.'

"Mr. Speaker, we have had emails, phone calls, letters from a parent, and then receive a letter, email or phone call from their children, with the opposite position. Mr. Speaker, we need to recognize that there are people in our community who have been wronged, bullied and persecuted because of their sexual orientation, and that is not *pono*. We also need to recognize that this measure impacts the core values of people's faith. Their sense of family and their moral values.

"But is this the way? Does this bring healing, Mr. Speaker? Regardless of the vote outcome, I ask that those who have preached for tolerance and equality, that you now have an opportunity to show what tolerance and acceptance is by your tolerance of people who have a different view. And

those who have preached love shall have the opportunity to show how true love of one another's brothers and sisters are, who you do not agree with.

"So, Mr. Speaker, please note that my community voice is in opposition. Thank you."

Representative Johanson rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition. I too want to begin by thanking proponents and opponents of this measure for being an integral part of the government and for making this one of the most vibrant expressions of democracy that I've seen in my time at the Capitol.

"Although it has not been easy for everyone, I think we would have a much better Hawaii if everyone continued this level of engagement. The active practice of democracy that includes maximum public engagement is often harder than we think because we so rarely see it play out on this scale at the Capitol. However, it has been worth it, and I think Hawaii will be all the better for having its citizens involved in the process.

"The concepts and mechanics of democracy have weighed very heavily on me as we've debated this issue. As with many of my colleagues, I was still a child when Hawaii began the debate about same-sex marriage. The 1998 constitutional amendment was on the first ever ballot that I was eligible to cast as an 18-year-old in college.

"I truly wish that we had more time to explore this issue, to answer some of those lingering questions, and more time to deliberate. What has been most difficult for many of us to reconcile is the fundamental question of how to grant benefits to our fellow citizens who are merely looking for equal treatment. I do not necessarily wish to see people in a loving, committed relationship denied tax and other benefits.

"Given the Supreme Court's rulings, which served as a catalyst for extension of federal benefits to individuals in same-sex marriages, I continue to believe that relief can be sought at the federal level to include extension of those federal benefits to those individuals in civil unions and/or other state-recognized equivalence. We have not sufficiently explored many of those avenues because we were called into a special session against our legislative will.

"This bill, in ostensibly seeking to enable the granting of those federal benefits, engenders a whole host of significant and real concerns and issues that truly have yet to be answered and yet to be reconciled. If this bill passes, I still don't know what will happen in the future when a newly created state-sanctioned right of same-sex marriage potentially conflicts with First Amendment constitutional rights of the freedom to practice one's religion.

"I don't know that any of us can answer that with any degree of certainty. There are two competing paradigms here for people who are 'yes' and people who are 'no'. There are two competing values for people who are 'yes' and people who are 'no'. But I ask, again, what happens when they conflict? How will the Legislature and the courts reconcile that conflict? Again, I do not think that anyone here can answer that with certainty. That is why, because I believe we have not sufficiently answered those questions and really addressed what I think is fundamentally at the heart of our debate, that I continue to be in opposition.

"I appreciate very much the broad and religious exemptions in the most current form of the bill. I thank my colleagues for expanding those protections. Unfortunately, I do not think the current version of the bill addresses all of the myriad issues and concerns brought up by so many in the public that so many of them continue to have. We have not sufficiently explored and addressed many of those concerns.

"During this debate over same-sex marriage, the Hawaii State Constitution has come up time and time again. I've spent many of the last few days reading through it, recognizing that it is the foundation upon which our democracy here in the island rests. Article I, Section 1, of the Hawaii State Constitution states, 'All political power of this State is

inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority.'

"We were all duly elected and thus imbued with the authority to cast votes on behalf of our people. I recognize this fact. I also recognize that it is important to respect the will of the people and to honor it in a way that is more than just word. It is important to honor it in action as well. Ordinarily, this level of opposition to a measure would be sufficient to defeat it or certainly to postpone it, yet we are continuing to move forward with this measure.

"In so doing, I think the Legislature is not honoring in action our commitment to government by the people and for the people. I think this measure is moving forward at a pace that is in opposition to the will of the people. Because of all of the many lingering questions and concerns, the issue has yet to be reconciled, and the policy that I think is in opposition to the will of the people, I must respectfully oppose this bill.

"It is my sincere desire, however, that irrespective to the outcome of today's vote, that we leave the Capitol not as proponents or opponents of the bill, not as winners or losers, but as the people of Hawaii. People who may disagree, but fundamentally as the people of Hawaii. Thank you."

Representative Ichiyama rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support of Senate Bill 1. I'd like to sincerely thank all of the community members that took the time to call, email or write to me. We all have busy lives, and I'm grateful for the thoughtful input and comments shared by the residents of the State of Hawaii. I know it isn't always easy to put your views out there, and please know that I took all of the comments to heart.

"Thank you also to the Chairs and the members of the House Judiciary and Finance Committees. They were dedicated and steadfast in their willingness to hear from our community. Thank you for taking the time, over 55 hours in all, to give everyone an opportunity to let their voices be heard. Thank you also to you, Mr. Speaker, for your leadership during this session.

"Mr. Speaker, I support this measure because fundamentally I do not believe that sexual orientation is a choice. Whether it is a function of our DNA, our neurological pathways, or our psyche, we love who we love. Because I believe that sexual orientation is an immutable characteristic, like race or sex, the state cannot discriminate on that basis. I do not support discrimination in our laws because I believe it weakens our community.

"I also support Senate Bill 1 because it reflects a compromise between the free exercise of religion and the protection of civil rights. House Draft 1 incorporates broad protection for religious organizations and non-profits, controlled or supervised by a religious organization.

"We heard the testimony and listened to the request for more protection of religious freedom. Many critics of the bill today have said that these protections do not go far enough. That freedom of conscience is still in danger. Is this the right balance? Is it enough? Does it go too far? What will happen to our society? These are hard questions that will have to be addressed.

"Mr. Speaker, when the United States Congress passed the Thirteenth Amendment to end slavery, one-eighth of the U.S. population were slaves. No one knew where they would go, how they would react, how they would find jobs. Many posed the question, does this go too far? What will happen to our society?

"Change is difficult, it raises difficult and weighty questions. I don't have all the answers, and I don't know that anyone on this Floor has all the answers. As a community, we'll need to come together to help each other find those answers. After this session, we will need to listen, again, and learn from each other. How can we live together with respect and tolerance?

"In our island state, our community cannot remain divided. We must depend on each other, rely on each other, and support each other. Moving

forward on Senate Bill 1 is not the end of the discussion, but the beginning.

"I'd like to close my remarks with a quote from President Lincoln, words that I hope will guide all of us in the months and years to come. 'With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan – to do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with all nations.'

"Thank you very much, Mr. Speaker."

Representative Morikawa rose in support of the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Morikawa's written remarks are as follows:

"This is a historical moment in Hawaii. The passionate testimony from people who value their religious beliefs was overwhelming, but my decision is based on equality. I have received over 14,000 emails, of which there was over a thousand more in support than in opposition. I listened to over 50 hours of testimony and it is unprecedented that we have allowed so many people to express their views through this special session.

"The U.S. Supreme Court ruled that a section of the Defense of Marriage Act (DOMA) was unconstitutional. Prior to that ruling, Hawaii had legalized civil unions, which allowed same-sex couples to get state benefits. In order to get Federal benefits too, each state must recognize same-sex marriage. Even if the people of Hawaii were allowed to vote this issue, a lawsuit would prove the vote to not allow same-sex marriage to be unconstitutional. If we let the courts decide this, the religious groups would lose the exemptions that we are trying to work into the law. These exemptions are meant to protect the churches/clergy etc., from performing marriage ceremonies or celebrations.

"I understand the strong opposition from many people, but we need to find the proper balance between equal rights and religion. We need to pass this bill this year, because these committed couples need to get their benefits now. They've waited long enough and at what point in time, is it time?"

Representative Takayama rose to speak in support of the measure, stating:

"Mr. Speaker, may I use my remaining time? Thank you. I rise in support, and may I ask permission to insert additional written comments.

"I'd like to express my thanks to the Chairs of Judiciary and Finance for their leadership on this measure. I'd also like to thank the thousands who took the time to express their views on both sides of this issue, in writing and in testimony. I'd also like to thank everyone who congratulated me on my 38th wedding anniversary because I mentioned that I spent it last week during one of our marathon hearings here at the Capitol.

"As a product of that marriage, my wife and I are blessed to have 3 wonderful daughters whom we love unconditionally, and for whom we want every opportunity for happiness. And if their pursuit of happiness included marrying someone of the same sex, we would want that for them too.

"That is the wish of many sons and daughters, brothers and sisters throughout Hawaii, and it is time that we as a society remove the legal roadblock that prevents same-sex couples from enjoying the benefits of marriage. Marriage, above all, should be a matter of love, commitment and trust, regardless of gender. I am truly confident that allowing same-sex couples the opportunity to marry will not damage, at all, my traditional marriage, or anyone else's.

"For those reasons, I vote 'yes'. Thank you."

Representative Takayama's written remarks are as follows:

"As a member of the House Finance Committee, I participated in more than 55 hours of hearings over five days during which we heard more than 1,000 persons testify on SB1, Relating to Equal Rights.

"After these hearings, the House amended the bill to include stronger exemptions for both religious organizations and non-profit groups controlled or supported by religious organizations - such as preschools and social service agencies. These protected entities are not required to provide goods, services, facilities or grounds for marriage ceremonies or celebrations if it violates their religious beliefs or faith.

"I sincerely believe that SB1, HD1, is a fair compromise that protects civil rights while also allowing the continued free exercise of religion. And I also believe that our community will learn and heal from this experience, and will be a better place for everyone.

"Thank you, Mr. Speaker."

Representative Jordan rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I contemplated on standing up today, because I stood up on Wednesday. See, three days ago, very few people knew me. And after I stood up on this Floor on Wednesday and spoke, and I can't tell you what I said because I didn't write it down, I just spoke, I became blasted. When you talk about body-blows and coming out with battle wounds and scars, anybody sitting or standing on this Floor is not going to take what I'm going to take.

"But Mr. Speaker, I think I was put on this path for some reason, and I'm not going to ask why. I was approached by two Representatives yesterday, 'Jo, just W/R.' Mr. Speaker, I can't. Because as I've told you on Wednesday, I have to be impeccable with my word, and I can't go back now. I'm sorry to say, with a heavy heart, it's still in opposition.

"I expressed my reasons why on Wednesday, and they still stand firm. I am not comfortable with SB 1, HD 1. It is not balanced legislation in my opinion. I cannot raise benefits with the possibility of eroding religious protections and freedom of conscience.

"You see, Mr. Speaker, again, I'm not held to any specific conviction, but I do have certain beliefs that I hold near and dear. And in this process, I have been shown so much love by a community I thought hated me, and I found so much hate in a community that I thought embraced me.

"See, Mr. Speaker? I have no hate for them. And I thank the people that have sent me emails in great support. I just want to share with you one, from a pastor of a church in Maui, and I think this speaks volumes. He says, 'thank you for helping me to find hope in our government, the process, and humanity. I hope that you will continue to be a bridge between the church and the LGTB community. I believe that there is a great division between the LGTB community and the churches of Hawaii. It may be God's calling on your life to help us to bridge and break down those barriers and preconceived ideas of who gay people are.' Despite my sexual orientation, Mr. Speaker. 'You have displayed courage and integrity. You are breaking down stereotypes, in my mind,' according to this pastor, 'and I just needed to tell you, that I honor, appreciate and respect you.'

"I want to thank that pastor, Mr. Jonavan. And I thank you, Mr. Speaker, for allowing me to take this journey. I thank my community for allowing me to stand here, and the great support, because it was a rough day yesterday, Mr. Speaker."

Representative Awana rose to yield her time, and the Chair "so ordered."

Representative Jordan continued, stating:

"Thank you very much, to the Representative from the 43rd District. Mr. Speaker, I don't know what's going to happen, and frankly, I'm here to do my duty. I will always uphold my duty, and I'm sorry for the GLTB community. I walked in this place three years ago, asking my community,

I don't want to be the poster child. I've become the poster child, and I accept that.

"I ran into a lady in the hall yesterday while I was here, and they just wanted to thank me. I didn't know who she was, she was in those five day hearings, and I've met so many new people. And she told me this one quote, and I wrote it down, and I'm going to end with this quote. 'Character in crises are not made, but revealed.' And I think I'm beginning to understand my character and my integrity, and I will always stand by it. And I appreciate my House members that have stood by me. Thank you, Mr. Speaker."

Representative Aquino rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition to the measure. First, I would like to thank the many who have chosen to be part of the legislative process. The many who sacrificed time, resources, money, and other things to testify and share their support or opposition to SB 1.

"I'd also like to thank the House leadership and the Chairs of the Judiciary and Finance Committees for their patience, hard work and determination throughout the process. *Mahalo*.

"Mr. Speaker, I rise to oppose the said measure for several reasons, but will speak of only two tonight. First, out of the hundreds of emails, phone calls, postcards and letters from constituents from the district that I represent, there was an overwhelming sentiment to have a hand in deciding this issue through a constitutional amendment, while opposing SB 1 for a multitude of reasons. Nearly 80 percent.

"Secondly, while I appreciate the hard work put into this measure, I believe that the protections in the House draft could have been strengthened to further safeguard religious freedoms. There are still some concerns that need to be addressed that may lead to possibilities of litigation in the future. I wish we had more time, in fact, take our time, to address an issue of this magnitude.

"Regardless of what happens tonight, Mr. Speaker, I humbly ask for tolerance and respect moving forward, so we all, as a community, can heal together. For these reasons, Mr. Speaker, and for other reasons, I respectfully oppose this measure. Thank you."

Representative Hashem rose to speak in support of the measure, stating:

"Mr. Speaker, I stand in support. I just would like to share a quote from Desmond Tutu. 'I equate homophobia to the injustice of apartheid, and that's so contrary to the heart of our Lord Jesus Christ. ... I can't for the life of me imagine that God would say, 'I'm going to punish you because you are black, you should have been white. I will punish you because you are a woman, you should have been a man. I punish you because you are homosexual, you ought to have been heterosexual.' I can't, I can't for the life of me believe that that is how God sees things.'

"See, Mr. Speaker, I go to a church that is acceptant of gay couples, and my pastor, Tim Mason, was out here waving signs in support of marriage equality. And I want to thank him for the guidance that he has given me through this very difficult time. The church I attend supports same-sex couples, they accept them. So much so that there is a couple that just had twins, the whole congregation is supportive and is involved in raising their twins. I just pray one day that other churches across the state can do the same thing because nobody in this gallery can deny, kids do not have the choice of their parents.

"Thank you, Mr. Speaker."

Representative Thielen rose in support of the measure and asked that her written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Thielen submitted the following letter:

"From: Marguerite Butler
Sent: Friday, November 08, 2013 1:12 PM

To: All Reps; All Senators
 Subject: Scientific Testimony in Support of SB1 - Endorsed by members of the UHM Biology faculty

Dear Sirs/Madams - Since sending you this testimony yesterday, several of my faculty colleagues have endorsed this testimony (see list at bottom).

Dear Honorable Representatives and Senators,

We are writing to you regarding some of the testimony given on the House second reading of SB1. As Biology faculty at the University of Hawai'i at Manoa, we are troubled by the repeated claims that homosexual behavior was "against nature", "unnatural", or that "humans are the only species" that engage in it. We are writing to clearly state that these statements are false.

It is well documented that homosexual behavior can be found all throughout the animal kingdom, from insects, reptiles, birds, and especially mammals. The fact that it is so widespread across the animal kingdom indicates that this behavior is a basic feature of being an animal. Furthermore, there is no basis in science for the assertion that sexual behavior must be for procreation. Many animals engage in homosexual or non-procreational sex, whether it is to establish dominance hierarchies as in hyenas, pair bonding or social bonding as in dolphins and lions, or even for conflict resolution as in the famous bonobo chimpanzees, our close relatives. It is clear that sexual behavior is as integral a part of establishing social relationships in animals as it is in humans.

There is no basis in science to support the assertion that homosexual behavior is against natural law. What we can conclude is that sexual behavior is incredibly diverse, and all of it is natural.

There is a dangerous precedent for using pseudo-science to support a social policy of oppression, and it is for this reason that it is incredibly important for scientists to speak out. The Eugenics movement of the late 19th and early 20th century sought to "improve" the human race by selective breeding, and was used to justify the oppression of women, homosexuals, and minority racial groups, by such policies as marriage restrictions, forced abortions, compulsory sterilizations, and even genocide. This was the ideology that allowed rationalization of the Nazi program.

Let us be clear. There is no scientific basis to support discrimination of any kind. All humans belong to the same species. The same beautifully diverse species. Therefore, the only logical conclusion is to ensure equal rights for all by protecting the rights of all minorities.

Sincerely,

Dr. Marguerite Butler, Ph.D.
 Associate Professor of Biology, Department of Biology, University of Hawai'i at Manoa

Dr. Paul Nachtigall, Ph.D.
 Director, Marine Mammal Research Program, Hawai'i Institute of Marine Biology, University of Hawai'i at Manoa

Dr. Megan Donahue, Ph.D.
 Associate Researcher, Hawai'i Institute of Marine Biology, University of Hawai'i at Manoa

Dr. Tom Humphreys, Ph.D.
 Professor of Cell and Molecular Biology, Institute of Biogenesis Research, University of Hawai'i at Manoa

Dr. Robert Thomson, Ph.D.
 Assistant Professor of Evolutionary Biology, Department of Biology, University of Hawai'i at Manoa

Dr. Michael Hadfield, Ph.D.

Professor of Biology, Department of Biology and Kewlao Marine Laboratory, University of Hawai'i at Manoa

Dr. Andrew Rossiter, Ph.D.
 Professor of Biology and Director of the Waikiki Aquarium, University of Hawai'i at Manoa

Dr. Butler received her Ph.D. in Evolutionary and Population Biology from Washington University in St. Louis and has studied biodiversity for the past 20 years."

Representative Thielen's written remarks are as follows:

"The Representative from District 40, Ewa, tried to discredit the scientist who explained that 'being gay is not a choice' at the Judiciary and Finance Committee hearing on SB1. However, this scientist's findings were fully endorsed by the National Institutes of Health, which expanded the research and budget. When retiring twenty years later, the scientist was bestowed the rare honor of 'scientist emeritus'."

Representative Nakashima rose in support of the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Nakashima's written remarks are as follows:

"Mr. Speaker, George Santayana once said, *'Those who cannot remember the past are condemned to repeat it.'* As a history teacher, I often quoted this to my 9th grade World History students at Honoka'a High School. It was true philosophically because we find that history often repeats itself and takes great wisdom and political courage to avoid making the same mistakes. This was also true for my students because if they failed my class, they would be condemned to be back repeating the class during the summer.

"In discussing this historic legislation, I believe it is imperative that we consider the history of advancing civil rights in the United States. In reacting to the Civil Rights Bill of 1964, then Senator Strom Thurmond, a democrat from South Carolina, said, 'This so-called Civil Rights Proposals, which the President has sent to Capitol Hill for enactment into law, are unconstitutional, unnecessary, unwise and extend beyond the realm of reason. This is the worst civil-rights package ever presented to the Congress...'

"In listening to much of the opposition on the same-sex marriage legislation, I heard much of the same issues and concerns that were voiced by Senator Thurmond almost 50 years ago. You will remember that much of our society today is built on the foundation of this 1964 landmark legislation that outlawed major forms of discrimination against racial, ethnic, national and religious minorities, and women. It ended unequal application of voter registration requirements and racial segregation in schools, at work, and facilities that served the general public.

"Many argue that same-sex marriage is different, because it is a choice. It is not how you were born, and you can change or hide it if you wanted. However, during the debate, it was also pointed out that religion is also a choice. That the protection of the right is really based on protecting us from mob rule and mob mentality. That fear can be a powerful motivator and that the purpose of the laws is to protect everyone's individual rights and not just those of the majority but also those of the minority. We must also be vigilant to preserve these ideals as we never know when the tables will turn and we will find ourselves on the short end of the stick.

"Religious freedom is an individual civil right that allows you to practice your religious beliefs without interference. This also means that others are also free to practice their religions as they believe without outside interference as well. The issue arises when one religious group feels the need to impose their religious views on the rest of society or a person's individual civil right comes in conflict with another individual's practice of their religion freedom.

"In speaking on religion and society, John F. Kennedy noted, *'I believe in an America where religious intolerance will someday end—where all men and all churches are treated as equal—where every man has the same*

right to attend or not attend the church of his choice—where there is no Catholic vote, no anti-Catholic vote, no bloc voting of any kind—and where Catholics, Protestants and Jews, at both the lay and pastoral level, will refrain from those attitudes of disdain and division which have so often marred their works in the past, and promote instead the American ideal of brotherhood.'

"The same-sex marriage bill as amended by the House tries to strike this balance by providing protections to religious institutions from undue intrusion on its religious beliefs by those seeking to promote their rights to same-sex marriage.

"Finally, Mr. Speaker, the question has been raised regarding the Legislature's authority to take this action. Following the Court's decision in 1996, 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 legislative 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)

"The bill that created the constitutional amendment question for the voters in 1998 specifically left open the possibility that the Legislature should be open to the consideration of changing the marriage law in the future. The legislative intent of the bill is clear and provides the rationale for the legislative action that has occurred."

Representative McKelvey rose to speak in support of the measure, stating:

"Thank you very much, Mr. Speaker. I was going to stand up and say a few words, but I know the hour is getting late, so I'd just like to first adopt the words in support of the Representative from Moanalua. I would like to enter into the record the letter of the Hawaii Civil Rights Commission preferring the original Senate Bill version and decrying that our exemptions in the House Draft 1 are too overboard in our attempt to make sure we can reach this balance.

"Finally, I just want to leave one thing to everybody here who's watching us during the recess when we're mingling with each other. My good friends are the good Representatives from Kahului, from Waianae, and yes, even Kapolei. We disagree on this issue, Mr. Speaker, but they're my good friends. We share laughs and tears and everything together, and they always will be. So I hope that our camaraderie despite our differences will stand as a symbol to the State of Hawaii that we can get along, we can see an understanding. And I always will love them, even though we don't agree. Thank you very much, Mr. Speaker."

Representative McKelvey's written remarks are as follows:

"Today I stand in support of SB1, HD1, not as a model piece of legislation, but rather as a grand compromise between two parties that are, especially on the fringes, diametrically opposed to each other. There have been reports in the media prior to the special session that I was undecided on the issue before us but the reality is that I have had a strong position on the underlying issue of same-sex marriage which was encapsulated in HB7 that was submitted for consideration to this Body. I still firmly believe that the only true end game is to remove the solemnization requirement out of law so that the ceremony of marriage returns back to its sole religious roots while creating a ministerial process for any couple to receive the status of marriage by the state independent of any ceremony or recognition being held by a religious entity.

"Although I firmly support this position, I respect the fact that neither the Body nor the committees chose to take it into consideration and instead have chosen to address this issue through SB1, HD1. What I was

undecided on was how I would vote since no measure had been advanced to the House Floor for consideration by the members. The fact of the matter is that I believe that SB1 in its unamended form created an unbalanced equation vis-à-vis equal protection and First Amendment freedom of religion. What became apparent through the many days of testimony before the Judiciary and Finance Committees was that the majority of those who opposed this measure were not opposed to the state giving benefits to same-sex couples. The major concern of those who opposed SB1 was should the state forward such legislation that those who do not share this belief system would be afforded the right to exempt themselves from this law.

"I believe that HD1 addresses the desire of the population to exclude those who may not share the view that same-sex marriage is acceptable while still creating a mechanism in law to allow same-sex couples to marry and receive numerous federal benefits which the United States Supreme Court has ruled can only be extended to couples through the status of marriage.

"Like the good Representative of Waikiki has noted in his speech, this too was not one of my top legislative agendas. Yet, because of the court's decision on Section 3 of the Defense of Marriage Act and the Governor using his constitutional powers to convene us into special session, then I feel that it is our duty to create a balanced piece of legislation. At the end of the day, our communities must find ways to reconcile and move forward so that our close-knit *ohana* does not remain at war with each other over a very passionate issue. I believe the exemptions that we have legislated are very fair to the faith communities who have expressed their concerns over this bill. We have taken what were the strongest exemptions among the states as embodied by Connecticut and added even more protections. Hawaii will be the only state in the US to currently exempt for-profit corporations under churches from the same-sex wedding law. Every other state, including states that have adopted same-sex marriage through constitutional amendment, do not exempt for-profit entities from their laws.

"There are some who maintained the exemptions in this bill are not strong enough and are still incomplete or weak like the original version of the bill. However, if that is the case then I question why both the sponsoring members of the Senate as well as the numerous progressive entities have expressed concern over the breadth of the exemptions that we are adopting today.

"A recent opinion letter written by the Hawaii Civil Rights Commission Director stated that these exemptions may be overbroad, due to the fact that they suspend a good chunk of the public accommodations law adopted in 2007. According to the Hawaii Civil Rights Commission, under the exemptions of HD1, a church running a for-profit wedding business is exempted from the law. The commission's director also noted that under the law if the church owns a property, develops a resort hotel on it and contracts with the management company to manage hotel operations, someone might argue that the hotel could, on the basis of religious belief or faith, claim the exemption and be free to discriminate against same-sex couples. They could deny the same-sex couples goods, services, and the use of facilities for solemnization or celebration of same-sex marriages, without being subject of public accommodations law's prohibition against discrimination. In fact, the commission also noted that some will now be able to urge an overly broad reading of the term 'celebration' to cover, for example, access to the hotel for a family gathering years after the marriage itself, something the Legislature clearly intended to cover as re-commitment ceremonies were also intended to come under the scope of this exemption. Surely, if these progressive groups have decried the exemptions being too broad that the charges they are weak and fallacious does not stand.

"Some people have stated that we should have adopted stronger exemptions that were proposed in the various floor amendments offered today. However, I must emphasize that none of the proposed expanded exemptions have been enacted by any other state, such as the exemption for all small businesses. The so-called red states that recognize same-sex marriage do not extend this exemption to businesses and for Hawaii to adopt them would probably invite judicial invalidation. Furthermore, there are many unintended consequences within these amendments that would

lead to wholesale discrimination against the very groups that supposedly would benefit from this added language.

"There are also those who have stated that we should just vote against the bill and not move anything in the fervent belief that should this legislation fail that the issue of same-sex marriage would be rendered moot in Hawaii for years to come. Nothing could be further from the truth. If one looks at the United States Supreme Court post Windsor and the rulings of courts in New Jersey, it is pretty evident to see that the courts will be moving to enact same-sex marriage to judicial decree as a matter of constitutional rights whether the Legislature acts on it or not. A famous barrister once said that courts do not legislate exemptions, they only adjudicate rights, and that only the legislature can legislate exemptions. The irony here is that in order for the churches to be exempted from same-sex marriage, we need to move this same-sex marriage measure into law because no court has nor ever will issue a ruling for exemptions while extending the right of marriage benefits to same-sex couples.

"There have been many attorneys from the opposition groups that have protested loudly that they will not triumph in court and that the Jackson versus Abercrombie ruling by the trial judge would be upheld by the Ninth Circuit Court of Appeals. However, anyone who knows the Ninth Circuit Court of Appeals knows that this is not the case. Indeed, a conservative Catholic attorney upon reviewing the Jackson decision felt that given the history of the appeals court that they would readily strike down the trial judges assertion that the courts could not adjudicate same-sex marriage and it could only be done through the legislature or constitutional amendment process. If this is overturned, then same-sex marriage will be the law of the land in the State of Hawaii and the conversation of any exemptions for the faith community would be completely off the table. What assurances will these attorneys give the faith community should they fail with their appeals to the court, especially the one that was filed most recently by the good Representative from Ewa Beach? With all due respect to the attorneys in this case, it is almost hubris to guarantee victory to their clients as a reason why the Legislature should refuse to act on this measure. If one is not willing to roll the dice with the faith community on the assurances of an attorney, especially in light of the historical rulings of the Ninth Circuit Court, the Hawaii State Supreme Court, other state and federal courts and of course the United States Supreme Court post-Windsor. By grounding these broad exemptions into law today we create a statutory balancing act, competing constitutional provisions that would not exist with a judicial ruling which is almost certainly to come.

"There are those in opposition to this measure who say that they truly support same-sex marriage but cannot support the bill because it is not perfect and the process around it somehow did not give enough time for a thorough discussion of the issue. I would like note that in no time in the history of this Legislature has one bill received over five nonstop days of testimony, questioning and review by legislative committee. There are those who say that we should have waited for regular session so that the issue could have been vetted more thoroughly. But I would have to question how such an affectation could be made knowing that within a regular session over 3000 bills are introduced by each respective chamber and have to be acted upon and advanced or disposed of within 60 legislative working days. One of the members in opposition has said, well during the regular session after receiving its five-day hearing in Judiciary the amendments proposed by the committee would then be subject to another five days of review by the next committee which heard the bill in conjunction with the first committee for the special session. Such a statement is completely disingenuous when you figure that no one bill would be allowed to occupy over 10 legislative days out of the 60 day calendar and in any case the second committee would most likely have either waived off on the measure completely or held a very short hearing on it so that they could attend to the other bills in front of it, especially those with major fiscal impacts.

"While the legislative process of this bill may not have started out as engaged and involved as it could have been, once the bill crossed over to the House side, I am proud of the work that colleagues and fellow chairs have done by lengthening the process in order to ensure that all of the members of the public who expressed an interest in testifying on this measure at the capitol were able to do so.

"They say a good piece of legislation is one that leaves both avid supporters and opponents with something but not everything that they sought; and I believe that this piece of legislation does that in trying to balance two diametrically opposing views. I believe this bill with the HD1 now embodies the wish of the silent majority in the middle of this issue who simply want a way to extend couples the rightful federal benefits while giving exemptions to certain faith groups that may not share this belief system. It is my hope that our community can find a way to accept, re-conciliate and move on together on the other issues of great magnitude that unfortunately are not being discussed today, like tax rate relief. As many of you have witnessed during the recess periods throughout this ruling to the Floor session, the members who were in support this measure actively engaged and 'talked story' with those members who are in complete opposition to the measure. If we as legislators with opposing views on this issue, can agree to disagree, work together and maintain our friendships which have been built through our time together in this institution, then I fervently hope that the people of Hawaii will look to their elected Representatives and the demeanor that was shown towards each other as a model of how we can pass our disagreements, rediscover our common bonds and reinvigorate the friendships that we had before this long and arduous process."

Representative McKelvey also submitted the following:

"November 7, 2013

Bill Hoshijo, Executive Director
Hawai'i Civil Rights Commission

RE: Review of S.B. No. 1, H.D.1

Focus of HCRC Review

This review focuses on the scope and coverage of the S.B. No.1, H.D.1, exemption for religious organizations. In particular, we discuss the application and impact of the exemption if enacted.

S.B. No. 1, H.D.1 Exemption for Religious Organizations

S.B. No. 1, H.D.1, provides:

§ 572-E Religious organizations; exemption under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious belief or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

Review and Discussion of § 572-E Exemption

§ 572-E provides an exemption for religious organizations and nonprofit organizations operated, supervised, or controlled by a religious organization.

Exempt organizations are not required to provide goods, services, facilities or grounds for the solemnization or celebration of a marriage that violates its religious beliefs or faith.

The exemption applies to HRS Chapter 489, prohibiting discrimination in public accommodations.

Discussion: Who is Covered

The exemption is narrowly focused, in that it applies only to refusals to provide goods, services, or use of facilities or grounds for the

solemnization or celebration of marriages, when such provision would violate the tenets of the religious organization's religious belief or faith. Essentially, exempt religious organizations (and exempt nonprofits) can refuse, based on their religious beliefs or faith, to provide good, services, or use of their facilities or grounds for weddings and celebrations directly related to weddings, without being subject to the public accommodations law. The House JUD/FIN committee report expresses the intent that the public accommodations law is not altered, except to this express limited extent.

The exemption clearly applies to churches that offer the use of their facilities and grounds for weddings and celebrations of marriages, for the purpose of producing income, including the oft-cited examples of Kawaiaha'o Church and its wedding services for Japanese visitors, or the small church on Moloka'i that sometimes allows its facilities and grounds to be used for weddings for a fee that supports the church.

The exemption also would cover weddings and celebrations appurtenant to weddings (i.e., rehearsal dinners and receptions) at the Kroc Center Hawaii grand ballroom and its self-described largest community center of its kind in Hawai'i, operated by the Salvation Army, a religious organization. The Kroc Center Hawaii in Ewa Beach prominently advertises itself on its website as "the ultimate event location" for events and party rentals, "weddings corporate & social events." Similarly, on a smaller scale, the Salvation Army owns and operates the Waioli Tea Room in Manoa.

Discussion: Questions Regarding the Scope of the Exemption

The HCRC is concerned that the proposed HRS 572-E may leave the scope of the exemption ambiguous.

For example, it is not clear whether churches could impose restrictions on tenants through restrictive lease terms, requiring their tenant to discriminate against same-sex couples seeking marriage-related goods or services.

If, say, a church owns large tracts of land in a community, including a shopping center, it might impose restrictions on certain commercial activities through lease terms. Tenants might be prohibited from engaging in certain activities that violate the church-landlord's religious tenets. The proposed statutory language leaves ambiguous whether, under the exemption, this church could impose discriminatory restrictions that prohibit its tenants who operate places of public accommodations – stores, restaurants, services – from providing goods, services, and facilities for the solemnization or celebration of same-sex marriages. If read broadly, the exemption could allow a church landlord to create a "no same-sex marriage" enclave, at once coercing tenants to discriminate and at the same time allowing tenant vendors to argue that their businesses are covered/bootstrapped under the church landlord's exemption from public accommodations law prohibiting discrimination.

In a second example, if a church owns a property and develops a resort hotel on it, contracting with a management company to manage hotel operations, someone might argue that the hotel could, on the basis of religious belief or faith, claim the exemption and be free to discriminate against same-sex couples, denying them goods, services, and use of facilities or grounds for solemnization or celebration of same-sex marriages, without being subject to the public accommodations law prohibition against discrimination. Some may also urge an overly-broad reading of the term "celebration" to cover, for example, access to the hotel for a family gathering years after the marriage itself.

Third, if a religious nonprofit organization owns and runs a facility, like a YMCA, YWCA, or similar organization, the organization might argue that it could deny a same-sex married couple family-related services, on the grounds that that such services somehow constitute a kind of "celebration" of their marriage. We do not believe that the exemption could fairly be construed in this overly-broad way, but are concerned that some who are hostile to same-sex marriage might attempt to erode existing public accommodations by invoking the exemption in ways the legislature does not intend.

Conclusion

The HCRC has testified that a religious facilities exemption to public accommodations antidiscrimination law is not required by constitutional free exercise protections. At the same time, we recognize the legislature's authority to provide for such exemptions, if it chooses to do so. While we are concerned that any religious exemption beyond that which exempts clergy from solemnizing marriages may erode basic principles of equality and protections against discrimination, we believe these risks are minimized by the narrow tailoring of the exemption.

While the H.D.1 proposed HRS 572-E exemption does not reflect what the HCRC urged, we appreciate that it is narrowly tailored in several respects. First, it applies only to reseals to provide goods, services, or the use of facilities in connection with the solemnizations of a marriage and celebrations directly related to such solemnization of a marriage, and does not apply to discrimination against same-sex married couples in other contexts. Second, the proposed HRS 572-E exemption applies only to religious organizations and nonprofit organizations that are operated, supervised or controlled by a religious organization, and not to individuals, tenants of, or sub-contractors of religious organizations, or to for-profit business entities connected with religious organizations. Third, the exemption applies only where the organization claiming it can demonstrate that its refusal to supply goods, services, or use of facilities is based on its religious tenets relating to marriage. If the Legislature chooses to enact the proposed exemption, the HCRC will enforce it as enacted. In interpretation of the law, it will certainly be helpful that the legislative history reflects the legislature's intent that the exemption be narrowly interpreted, and is not meant to erode existing civil rights protections beyond what is expressly provided in the exemption.

We hope there will be a small number of public accommodations complaints arising out of denial of goods, services, or use of facilities or grounds for same-sex weddings or wedding celebrations by religious organizations. If there are numerous complaints and claims for exemptions under HRS 572-E, based on an overly-broad reading of the exemption provided by S.B. No. 1, H.D.1, the HCRC will certainly bring that to the legislature's attention, and we are confident that the legislature would revisit the exemption issue and consider corrective, clarifying legislation if needed."

Representative Carroll rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I speak in opposition. May I have the words from our great Representative from Mililani as my own? And also, may I have the opportunity to say a few words?

"Thank you, Mr. Speaker. Again, it is with a heavy heart that I oppose this bill. I want better for our people. I am a duly elected Member of this House of Representatives. I represent the citizens of the islands of East Maui, Lanai and Molokai, and of course, Kahoolawe and Molokini. And I am a Native Hawaiian.

"If you look into the gallery, what do you see? A divided community. Last week, our Joint Committee on Judiciary and Finance heard the most contentious bill I've ever seen in my years of service. Hour after hour we heard compelling testimonies expressing how the issue of same-sex marriage would affect our *ohana*, be it our blood relatives and *kama'aina* or *malahini* who have come to the islands to make Hawaii their home.

"We are all one community, one *ohana*, and this bill, like no other, has divided us. The people's expectations were raised when our committees took the unprecedented step of allowing testimony to be received over a five day period. We received the equivalent of more than 30 reams of paper from our people.

"Person after person came forward to speak for just two minutes. And even though they knew they would command just a short amount of our attention, they patiently waited for hours, for days, sitting on the cold granite hallway floors, or standing under the hot sun at the rotunda for the opportunity to say what they could.

"As it was expressed what some had felt no matter what side they were on, it broke my heart because of the criticisms that I have heard from our constituents where some of our colleagues did not treat our citizens with the respect that they deserve, some of our colleagues chose to belittle testifiers for their beliefs or the way they talked, or for what they said. Or many were abruptly interrupted midsentence or told their message was repetitive or was dismissed without being heard.

"Many left humiliated, upset and disturbed, asking themselves, 'was the time worth it? Is anyone listening?' Receiving this feedback from our constituents was heartbreaking to me. I blame the process. And our constituents still came back each day, and they stayed. Some may have even lost their jobs to come and stay. Hundreds upon hundreds came with the hope that their *mana'o* would be considered sincerely.

"But despite letting thousands of people speak for days, the committee came to a decision in just a mere two hours. Two hours. No one could read all that material and consider everything that was said within that amount of time and treat our people's *mana'o* with the *aloha* it deserved. Again, I blame our process.

"*Aloha* was a central theme throughout the public hearing. Persons both in support and in opposition used this term frequently throughout the proceedings. It was used so frequently, its meaning seemed lost to everyone. *Aloha* became the buzz word, and by using it, we were led to think that all the words were *pono*.

"There were two testimonies that stood out for me. The first was from Karla Kelihoomalua Akiona, a *hula kumu* from Mililani, and this is what she quoted in her testimony. 'We Hawaiians have so much taken from us, and just when you think there's nothing more that can be taken, this happens. We don't appreciate people coming into our *hale*, robbing us of our religious freedoms, trying to destroy our families, restricting our voting rights and polluting these spiritual lands by dismantling what God has instituted marriage between one man and one woman.'

"She continued, 'you need to understand what *aloha* is, you have to understand what is, and most people do not know what *aloha* is. *Aloha* is everything that is *pono*, everything that is righteous, correct, and everything that is in the light. Anything else is other, is dark. So if you want to talk about love, kindness and compassion, and all of those things that what it is, *aloha* is the most sacred word in the Hawaiian culture, and it is being frivolously used by people utilizing my culture, my *aloha*, and to pass what we all know is wrong.'

"Mr. Speaker, this brings only sadness to my heart, after hearing Ms. Akiona's testimony. She further, at a later time, expresses that, 'testifying and trying to get your point across in two minutes is very difficult. But being called back up and questioned is much more difficult.'"

Representative Tokioka rose to yield his time, and the Chair "so ordered."

Representative Carroll continued, stating:

"Trying to understand the questions, gathering your thoughts, organizing them in a short amount of time, and delivering your answers in a manner that all can comprehend is quite a challenge. Emotions also begin to arise and at times are hard to control. With that being said, I would now like to address your question. And of how this bill would affect the Hawaiians, I ask you, how would you feel if someone came into your *hale* and robbed you of your culture and lifestyle? If they stripped you of your lands, language, Queen, *hula*, which keeps the history of Hawaii and its people, and other rights, to say the least, how would you feel if your children, relatives and friends, were best and punished at school for speaking their Hawaiian language, or at home by a non-Hawaiian spouse. How about all of the diseases brought to Hawaii killing thousands of Hawaiians. This is just the tip of the iceberg, put yourself in our shoes. I now have a very small 'eke, or bag of rice. Taking my religious freedoms, restricting my voting rights, parents freedom of speech, destroying our families and imposing this bill on our vulnerable children will not have a positive effect on Hawaii. My small 'eke has now become much lighter. I have next to nothing left in my bag, and as was said by another testifier by

the name of Lei, it's like going back to the old days. We're going backwards. Are you feeling sad and down? Is it becoming hard for you to function and continue on? How's your family feeling? We've worked so hard to survive. This bill is a *hana hou* of theft for the Hawaiians. Theft always leaves a horrible impact on its victim. More I became saddened.'

"Mr. Speaker, this process has forced all of us to sometimes show our lack of *aloha*. We do not mean to do that. We promised our people we would listen to them. Do we hear them? Do we see them? All of us feel that we do, but the people feel that we should take this to a vote because they haven't been heard. That the integrity of our process, we have failed them, and the integrity of this institution has been lost.

"The second testimony that I will never forget was from a *tutu* from a neighbor island. Her written testimony is somewhere buried in the blizzard of paper we received. She ended her testimony by singing *Aloha 'Oe*."

Representative Fale rose to yield his time, and the Chair "so ordered."

Representative Carroll continued, stating:

"For Native Hawaiians this song has special meaning. Its lyrics speak of two lovers who share one last embrace before departing. But it serves to remind us of its writer, Queen Liliuokalani. The testifier's message was powerful. When our Queen was deposed in the overthrow of the Hawaiian Kingdom, she also protested through legal means, imploring the United States Government to cease their hostility and restore what was wrongly taken. Our Queen, like many of us today, believed that the great powers would do justice and hear her plea.

"Tragically, her words fell upon deaf ears, and our people have suffered through genocide and indignation under the yolk of foreign aggression. Again, we face aggression from afar that threatens our culture and the very essence of who we are, the ability to determine, as a people, what is *pono*, what is in the light, what is *aloha*. And the people's plea has fallen on deaf ears. *Auwē*.

"Mr. Speaker, I blame the process again. But I would like to take this time to also recognize that even though we were faced with not-so-good situation in our process, I must acknowledge that in the House we made every effort to try and accommodate those who came and testified. Yes, it may not be sufficient time that many may criticize us, but an extra minute did help. And yes, our chairs were open to allowing for more testimony, and it took some discussion among many of us. And yes, our committee members, exhausted and filled with emotion and compassion, and of course just not wanting to really address this issue in the moment, stayed committed to this process that we were forced to do, stayed committed to the people that they served, and did what they did the best that they could do.

"And still, our community is divided. But I would like to say to my colleagues in the House, I commend you, I respect you, and I feel that you are courageous in whatever position that you have decided, because we all have different constituency, and the thing about it is we were forced into this process where I feel if we had taken it up in regular session, the outcome may be a little different. So please know that I support you, and I have no ill feelings towards my colleagues."

Representative Yamane rose to yield his time, and the Chair "so ordered."

Representative Carroll continued, stating:

"Thank you. And I say to all our constituents across the state, this decision was not easy for each and every one of us. No matter what side you took, it was very hard because we all are being criticized. But I want you to know that my 'no' is not because I don't support equality. In fact it's just the opposite, I support equality for all people. And because my district is diverse, I had to look at everything. So I know there are many that are hurt by my decision, and I just want to say I'm sorry and please forgive me, but if you know who I am, and if you understand where I'm coming from, I'm standing 'no' on this process that should have never happened.

"Because if we talk about equality, then why aren't we addressing the reconciliation of our Native Hawaiian people? Why aren't we addressing the many, the many ill issues that are plaguing our communities? Like the homeless, or the drugs that are coming into our homeland, or even our families that need our support? Why aren't we looking at those issues if we're going to do a special session? And that's why, for me, it's about the process. And I feel that this issue, alone, was not enough for us to call because it did not have an urgency or of an emergency nature. But I do support equality, and I hope many of you can understand, but I support all people.

"And yes, this bill needs much more improvement. You have heard so many floor amendments, and they may have come at a later time, but it's because the process didn't allow us the time to be able to go deeply into what we felt was addressing our constituents. So I commend every introducer, and I commend this Body for entertaining it. As exhausting as it has been, I just want to say thank you to all of my colleagues. Because I know that for all of us it's not going to be easy as we go into our homelands.

"I hope that my message tonight, could be after whatever happens after the vote, that we can go home and begin to heal, and to now talk about better things, and not bad things, because this has been hard for each and every one of us. And that you can respect each and every one of our decisions, because we are unique, and we are elected by our different districts.

"But more importantly, when we talk about love, let's show what we truly mean by unconditional love. We've heard so many people talk about it. Now it's time to put it in action. So, Mr. Speaker, I just want to say to you, thank you, because I know you've had a hard task. And I want to say thank you to all the staff, because they've worked really hard.

"But again, this was an experience that we can all learn from. And I hope we never have to go through this again, as painful as it is, because if we do special session, I hope we can work on issues that do matter in all of our districts, that we all can benefit from. Thank you very much."

Representative Har rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I rise in opposition to Senate Bill 1, House Draft 1. Two days ago, on Second Reading, I pointed out to you factual inaccuracies in the committee report. Again, on page 7 of Standing Committee Report Number 4, it clearly states that 'the United States Supreme Court's recent decision in *United States v. Windsor*, held the federal Defense of Marriage Act unconstitutional.'

"Mr. Speaker, again, I submit to you that the Supreme Court's decision in the *Windsor* case only held Section 3 unconstitutional, not the entire Defense of Marriage Act. There was no rebuttal whatsoever to any of the contentions I made regarding this standing committee report, which leads me to only one of two things. Number one, capitulation by the majority. Number two, admission that what I'm saying was correct.

"So, Mr. Speaker, as I continue on going through the committee report, and with all due respect to you, Mr. Speaker, I am offended at what is in this standing committee report. As those of you know, this standing committee report will forever go into the history as our legislative intent. And yet it is replete with factual inaccuracies, misrepresentations and incorrect information.

"First and foremost, Mr. Speaker, on page 3, Public Hearing and Testimony. 'Official public notice of your Committees' public hearing on this measure was posted on October 28, 2013. The text of the Governor's original proposed legislation was first released to the public by the Governor on August 22, 2013.'

"Mr. Speaker, I take great umbrage to that because quite frankly, we all know that this bill that we're voting on, Senate Bill 1, this was not the Governor's bill. Senate Bill 1 was, in fact, posted on October the 22nd at 5 o'clock p.m., five and a half days before the first hearing. No wonder the public doesn't trust us. This committee report is inaccurate and it's misleading. The fact of the matter is there was a bait and switch regarding

the bill that was heard before the public. So I take great umbrage to what is in this committee report.

"Secondly, Mr. Speaker, I have never seen a committee report that goes out of its way to quote one particular testifier. It goes on and on about what Justice Levinson said, and with all due respect to Justice Levinson, he talks about what was actually in the language of House Bill 117, which actually led to the constitutional amendment posed to the voters in 1998. And though I must respectfully disagree with Justice Levinson, there can be no doubt that the language that was in House Bill 117 was not, in fact, the language which was printed in the constitutional amendment and given to the people to vote on in 1998.

"Mr. Speaker, Senator Sakamoto, former State Senator, testified, registration number 2576, submitted testimony making it clear that in House Bill 117, which eventually led to constitutional amendment in 1998, he quoted the language from the two Co-Chairs of the Judiciary Committee in the Senate. Senator Matsunaga claimed, and this is directly from the Journal, quote, 'essentially, it accomplishes what we sought to achieve last year. That is, marriage licenses will be limited to opposite-sex couples. But coupled with the passage of House Bill 118, non-traditional couples will be provided access to substantially similar economic marital rights and benefits,' unquote.

"Senator Chumbley, who was also a Co-Chair, talks about the 1998 amendment. Quote, 'the amendment before us today is as finely tailored as we could accomplish. The people will decide on the simple issue of whether marriage should be limited to couples of the opposite-sex. The courts are not insulted, equal protection is not conditioned, and no religious or social dogma is adopted. Instead, an affirmative expression of our understanding of marriage is incorporated into the supreme law of the land,' unquote.

"Senator Sakamoto states in his written testimony, 'as you will see by reviewing what was said on the Senate Floor in 1997, the constitutional amendment was proclaimed as the vehicle to limit marriage to opposite-sex couples. The people voted with that in mind.' So it is Senator Sakamoto, who was a part of the 1997 Legislature, that again, the language that was voted on was clear to the people.

"It's just been so upsetting, these past couple of days. There's been allegations of people going back and forth. And why are we doing this? Some of my colleagues have said to me, 'well, we're doing this because we have no choice.'"

Representative McDermott rose to yield his time, and the Chair "so ordered."

Representative Har continued, stating:

"Thank you. Some of my colleagues have said, 'we have to do this before the courts do it.' I would submit, Mr. Speaker, let's look at the facts. They're referring to the *Jackson versus Abercrombie* case. Let's look at the facts. The state won in the *Jackson versus Abercrombie* case. And yes, that case is on appeal with the 9th Circuit, but the fact of the matter is, if the state loses, they can still always appeal to the U.S. Supreme Court. And I would remind members of this Body, no court in the United States, including the U.S. Supreme Court, has ever said same-sex marriage is a fundamental right. So quite frankly, Mr. Speaker, I feel quite confident that we shouldn't lie to the public and give off the impression that we're passing this bill on behalf of the churches for the exemptions, because again, how much more can they take?

"Mr. Speaker, I want to get to the hearing very quickly. Many people will say that the Senate was terse, they were cool, that they didn't hear the public. Mr. Speaker, while I absolutely appreciate the fact that we gave the people the opportunity to testify, I would submit that we were masochistic. We listened to 57 hours of testimony, and within two hours we came up with a decision. And again, overwhelmingly, resoundingly, the message that resonated was, 'vote no, kill the bill, let the people decide.' It was not 'amend the bill', that was not the message. And so, again, Mr. Speaker, I feel that a great injustice is occurring today.

"Mr. Speaker, over the past couple of days we've all received hate emails. I've been called everything under the sun. I've received every hate email in the world, every threat in the world. On the first day of the hearing, a well-known member of the LGBT community followed me outside every time and verbally assaulted me, to the point where I had to contact the Sergeants and ask them for protection.

"Mr. Speaker, this issue has brought out the ugly in our society. And I feel that we can no longer, by going in this direction with the process, we have failed the people. Rising tides are supposed to float all boats, but instead, the equality of one minority is balanced on the backs of others. What people saw over the past 12 days is that democracy is democracy in name only. A democracy that only cares what people think when it is convenient for them.

"The people came to speak and were rebuked by what they saw as unsympathetic elected officials. Ones that were called *pilau*. Mr. Speaker, I refuse to believe that this is a democracy in name only. I refuse to believe that government has failed the people, and in fact, we still have a factual situation that exists, Mr. Speaker. House Bill 5, that would allow a constitutional amendment for the people to vote, is still alive. It is still in the Judiciary Committee. It has been referred to the Judiciary Committee and the Finance Committee. We still have the ability to give people a chance to vote on this issue."

Representative Ito rose to yield his time, and the Chair "so ordered."

Representative Har continued, stating.

"Thank you, Representative. So, Mr. Speaker, I refuse to believe that democracy is broken. I want to believe in our government. But what we've displayed over the past 12 days doesn't give people a lot of hope.

"Mr. Speaker, I'm asking you once again, House Bill 5 would give people the right to vote. That has been the chant over the past 12 days. Respectfully, Mr. Speaker, I ask you to prove to these people that democracy is not democracy in name only, that we are a government of the people and by the people. That we listened to the people of the State of Hawaii.

"Mr. Speaker, for these reasons, I once again renew my request to you and the Judiciary Chair and the Finance Chair, to please hear House Bill 5, and let the people vote. Thank you, Mr. Speaker."

Representative Brower rose to respond, stating:

"Thank you, Mr. Speaker. Second time in support of the bill. Thank you. Essentially, Mr. Speaker, this issue is about those who want to provide a privilege to a group of people, and those who want to deny a privilege to a group of people. And the legislators who want to provide a privilege will always have a higher ground in that argument. If legislators have been unfair to the public, it's because not all legislators have been honest about their motives and why they don't favor the bill.

"I'm disappointed with legislators who don't take responsibility for the circumstances they're in, because they need to have the energy and compassion in this room, that same energy and compassion that was on their campaign brochures that they gave to the public. And if this issue has brought out the ugly in some people, it's the ugly that has already existed in some people. Thank you."

Representative Har rose to respond, stating:

"Brief rebuttal, Mr. Speaker. Thank you, Mr. Speaker. I would ask that you respectfully please allow me the latitude that you've allowed to other members. I do realize that it is late, but again, this is a democracy, we have room to debate.

"Thank you very much, Mr. Speaker. I take great umbrage to my colleagues, again, once again calling us names. That's the easy way out. Calling me a bigot, a homophobe, a racist. That's the easy way out. That I haven't evolved? Again, this is about the process, a process that has failed the people of the State of Hawaii.

"As I mentioned on Second Reading, those of us who were all about repealing the Public Land Development Corporation because it was about openness in government, transparency, public engagement, and that was lost in the PLDC, and that's why people wanted to repeal the PLDC. We even had a hearing on a Saturday for our neighbor islanders and those who worked. We couldn't even afford that same luxury for this particular measure because, again, the outcome was preordained. People's minds were already made up.

"So I take great umbrage to one of my colleagues saying that somehow we are any less for what we believe. Again, this is exactly the reason why we need to make Senate Bill 1, House Draft 1, a better bill, because regardless of what you think, your rights to think, your freedom of conscience, is protected. And nobody should be subjected to name-calling because of what they think. Thank you very much, Mr. Speaker."

Representative Oshiro rose to speak in opposition to the measure, stating:

"Thank you, Mr. Speaker. I've been sitting here for several hours now listening to my colleagues, and in some respect I appreciate their comments because I believe that they have been listening to the conversations of the last several weeks, to each other, most importantly to the people. So I appreciate that. But I still can't shake it from me, and I still will leave this special session, whenever it ends, with a terrible and nasty and bad taste in my mouth, as if someone had shoved something vile and putrid and rotten down my throat.

"I think I speak for many out there, who have come to the belief this dog and pony show has wound its way to its final, terrible conclusion. So let me try this one more time, Mr. Speaker. Now that the Governor has called us into special session like prior governors, it is the legislative branch, it is the legislative branch that controls our own destiny. We do not have to move upon this bill. It is our responsibility, it is our decision. And upon that, individually and collectively, will history judge us, Mr. Speaker.

"So I would like to remind my colleagues in the other Chamber that they will have an opportunity to review the record that we have produced for them over the last 50-some odd hours, or five days, of public hearing and testimony, to maybe correct the errors of their ways on their first initial hearing. That they might reconsider their prior decision on passing the bill out unamended, and learn from us in the House of Representatives.

"So there is still time, Mr. Speaker, there is still time. It goes back to what I've been telling the people over the last five, six weeks. What is the rush? What is the rush to do what is right? To do what is *pono* for all people? My friends in the gay community, my friends in the straight community, my friends in the religious community, my friends in the unreligious community. What's the rush? There is no rush, Mr. Speaker.

"Let me talk a little bit about this bill and the grave concerns that I have. One of the things I told people on the road is this. A fear that I have, a grave fear that I have, is that if any of these provisions are struck down and found unconstitutional and it's challenged in court, it is the Governor who can choose not to defend the law. And this Governor has chosen not to defend the law regarding the marriage statute on the books today that was approved by some of my colleagues back in 1994. He has chosen not to. And for me, as a legislator, Mr. Speaker, I have grave fears that anything in this measure here that does not comport to the constitution, may not be defended by our Governor.

"That's why I have been speaking repeatedly, over, and over, and over again, and begging the indulgence of my colleagues and you, Mr. Speaker, to fix this bill. We still have time to fix this bill. There is no need to rush. There is no need to rush. If we don't do this right, Mr. Speaker, how are we going to begin to heal our community? That's a decision we have to make, and that's why we're all here today.

"Mr. Speaker, I've had this poster on my door for several weeks now. Conflicts between same-sex marriage and religious conscience are reasonably foreseeable, and for that very reason are unnecessary when a prudent legislature acts decisively to protect complimentary human values,

liberty and equity, by adopting language that enables both interests to be protected..."

Representative Tsuji rose to yield his time, and the Chair "so ordered."

Representative Oshiro continued, stating:

"Thank you, Representative. By adopting language that enables both interests to be protected realistically. Without such legislative safeguards, many religious individuals will be forced to engage in conduct that violates their deepest religious beliefs. And religious organizations will be forced to engage in conduct that will be constrained in crucial aspects of their exercise of their religion. Hence, the legislature should take care to ensure that the legalization of same-sex marriage does not restrict the inalienable right of religious liberty.

"This is entirely consistent, Mr. Speaker, with the Hawaii State Constitution, that each member of the State Legislature has sworn to uphold and protect. Since its adoption in 1950 and ratification in 1959, the Hawaii Constitution has always protected religious freedom in the strongest terms.

"I've been citing and quoting a lot of the legal experts who have spent their careers and lives on this issue. And I'll give a shout-out right now to a Professor Laycock, who just as recently as two days ago, communicated to me via email on a comment I had regarding the proposed language here on Connecticut. His response to me was that this language is really inadequate, insufficient in what we're trying to do, and may lead to further troubles. But what I found really intriguing to me, as I reflected upon what he was doing, that even before he was going to make it his oral argument on behalf of the Town of Greece case before the United States Supreme Court, he felt this issue for Hawaii was worthy enough to spend some time to get back to me, a nobody, to share his comment. He had his argument the other day. He's representing, Mr. Speaker, just so you know who this man is, an atheist, who does not believe in any religion, before the highest court in the land, to defend our rights to be free from religion and to practice religion.

"The Aloha State can be welcoming both to same-sex couples and to citizens of your state who object to providing goods and services to these couples, not because they are gays, but because of their religious basis for their understanding of marriage. Such persons reached a decision in good conscience for a positive reason, not a negative one. They view marriage as a religious institution, and the wedding ceremony as a religious sacrament.

"Finally, and this is the concern. Once the bill is passed, those opposed to any exemption for religious communities, will give the narrowest possible interpretation to all exemptions. For this reason, Mr. Speaker, the Legislature ought to take enough time to write legislation consonant with President Obama's sage counsel. On an issue as sensitive as this, knowing that Americans hold a wide range of views based on deeply held beliefs, maintaining our nation's commitment to religious freedom is also vital.

"Mr. Speaker, without adequate safeguards for religious liberty of the sort proposed, the recognition of same-sex marriage will lead to socially divisive and entirely unnecessary conflicts between the exercise of rights pursuant to same-sex marriage law, and religious liberty. This is a destructive path leading to needless loss by both sides. A balanced middle way leads to a win-win solution for both sides. The Hawaii State Legislature should avoid both extremes and be wise peace makers.

"May I have permission, Mr. Speaker, to submit further written comments? Thank you."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I am opposed to Senate Bill No. 1, House Draft 1.

"During my review, I have identified problems with the bill that should have resulted in either it being held or significantly redrafted. For Second and Third Readings, twenty-nine floor amendments were offered. Yet, because of the sensitivity of this issue and the hard political lines drawn,

none of these amendments were seriously considered and all failed to be approved.

"But the failure of this House to acknowledge these problems does not alter the fact that these problems indeed exist, and our collective failure to remedy these problems will create a host of others that will harm our people. My findings of the most troublesome provisions are as follows:

"A. Domiciliary Requirement Necessary for Recognition of Divorce Decrees Issued in the State of Hawaii.

"SECTION 10 of House Draft 1, page 17, line 9, through page 19, line 13, would allow any party to a marriage solemnized in the State of Hawaii to access Hawaii courts for the purpose of obtaining an annulment, divorce or separation if neither party is able to pursue an action for annulment, divorce, or separation where the parties are domiciled because both parties are domiciled in a jurisdiction or jurisdictions that do not recognize the marriage. This provision would exempt these parties from the three-month domiciliary requirement to access the courts in the State of Hawaii for purposes of divorce, annulment, or separation. Be certain that this provision would affect both out-of-state and out-of-country marriages and have serious consequences upon child custody, support, visitation and parental rights, without the current due process protections.

"Professor Lynn D. Wardle, a recent panelist at the House of Representatives Informational Briefing, October 23, 2013, and former President of the International Society of Family Law, current President of the International Academy of the Study of the Jurisprudence of the Family, and author and co-author of six books about family law, as well as over one hundred law review articles, mostly about family law, is a full-time law professor having taught family law for thirty-five years. He strongly condemns the amendments to Section 580-1, Hawaii Revised Statutes (HRS), which allows the Hawaii courts to have jurisdiction to grant a divorce to any couple even living outside of Hawaii regardless of where else they are domiciled, where else they live, where else they have their home, own property, or have children or custody of children, if they got married in Hawaii and now live in a state or country that does not recognize their marriage. Professor Wardle has shared with me that there is no state that allows this radical extension of divorce jurisdiction and it is almost certainly unconstitutional under long-established precedents and standards set by the U.S. Supreme Court.

"In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the state. Mere residence will not do but domicile is necessary. The reason for such a high standard is the constitutional requirement of due process of law. In other words, courts of the state in which a party to a marriage is domiciled, just like the state in which land is situated, have the only constitutional authority to issue a court order regarding the 'res' or matter that is the subject of litigation – the marriage in one case, the land in another case.

"By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce, annulment, or separation, it is arguable that the bill, as presently drafted, would jeopardize the validity of any divorce, annulment, or separation decree issued in the State of Hawaii as they are recognized by other states. SECTION 10 of House Draft 1, page 17, line 9, through page 19, line 13, is certain to run afoul of constitutional requirements of due process of law and place a cloud of uncertainty over Hawaii's Family Court decrees and orders.

"B. Recognition of Marriages Contracts From Foreign/Alien Jurisdictions that Do Not Recognize Same-Sex Marriage

"SECTION 4 of the House Draft 1, page 9, lines 5 through 8, states:

"§572-3 Contracted without the State. Marriages between [a man and a woman] two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

"The aforementioned language is seemingly insignificant but prudence suggests that we take pause, obtain clarification, and seek a second opinion before moving to adopt this language.

"First, I read 'contracted without the state' to mean any valid marriage contract outside the State of Hawaii, whether the marriage was solemnized in another state or another country. That covers just about all out-of-state marriages or covers all of them. Both in the United States (currently thirty-four (34) states where same-sex marriage is not legal), and in many foreign countries. In fact, according to United Nations, there are one hundred ninety-three (193) sovereign nations in the world today but only fifteen (15) or less than eight percent (7.8%) have legalized same-sex marriage. And, at least forty-six (46) nations and thirty (30) American states have constitutional provisions limiting marriage to opposite sex couples.

"As written, would this mean that marriages in most of the world and most of the United States would not be recognized as legal in Hawaii?

"Second, the present language reads:

"Marriage between a man and a woman and legal in the country where contracted shall be held legal in the courts of this state."

"This language means a contract is between a man and a woman – one man, and one woman only – without the State of Hawaii that defines marriage as between a man and a woman.

"Third, under the present law, the described marriage of 'one man and one woman' shall be held legal in the courts of the State of Hawaii because Hawaii's law recognizes the marriage of a man and a woman.

"However, with the deletion of 'a man and a woman' and replacement with 'two individuals regardless of gender and legal,' the plain-meaning changes dramatically and requires two conditions for recognition of out-of-state marriage contracts:

- (1) That the marriage be between two individuals regardless of gender (male/male, female/female, male/female); and
- (2) That the parties be legally married in that jurisdiction.

"In other words, the only out-of-state marriages that Hawaii courts will find legal in Hawaii would be those marriages that took place in a jurisdiction where same-sex marriage is legal. This would exacerbate the problem the U.S. Supreme Court sought to correct in United States v. Windsor, 133 S.Ct 2675 (2013), in which the court held that Section 3 of the Defense of Marriage Act had the 'purpose and effect to disparage and to injure those whom the state, but its marriage laws sought to protect.' Windsor, 133 S.Ct at 2694-95.

"It is clear that the State of Hawaii has the exclusive authority to define marriage and specify how the marriage laws are applied. Under a plain reading of the revised definition, the general rule of marriage recognition from other jurisdictions is that a marriage valid in other jurisdictions will be recognized unless it violates public policy of that other state or nation. Here the Hawaii Legislature will establish the policy of only recognizing foreign marriages where same-sex marriages are legal.

"Furthermore, if the language in House Draft 1 amending Section 572-3, HRS, was to be approved, it would ostensibly eliminate all benefits of marriage under the Internal Revenue Code to individuals married in jurisdictions where same-sex marriage is not legal. Not only would that come as an unpleasant surprise, it would affect thousands of households and do so without prior notice or public discussion.

"To reiterate, should the language in SECTION 4 of the bill be approved, it would create undue hardship on any couple (including opposite-sex couples) married outside of Hawaii but domiciled here that was married in a jurisdiction where same-sex marriage is not recognized. These jurisdictions include the states of:

Alabama;
Alaska;
Arizona;

Arkansas;
Colorado;
Florida;
Georgia;
Idaho;
Indiana;
Kansas;
Kentucky;
Louisiana;
Michigan;
Mississippi;
Missouri;
Montana;
Nebraska;
Nevada;
North Carolina;
North Dakota;
Ohio;
Oklahoma;
Oregon;
Pennsylvania;
South Carolina;
South Dakota;
Tennessee;
Texas;
Utah;
Virginia;
West Virginia;
Wisconsin; and
Wyoming.

"In addition, a foreign marriage pursuant to the new definition of marriage may not be recognized as valid and legal in Hawaii. Moreover, these states have already established their own strong public policy of not recognizing same-sex marriage in either state laws or state constitutions. And, where such prohibition is found within a state or nation's constitution, it is more likely that all Hawaii marriages may be impaired or not recognized.

"C. Material Change to Prepaid Health Care Act, Chapter 393, HRS

"The legal recognition of same-sex marriage will require employers to provide certain benefits to employees and their spouses differently in accordance with a statutory change. It is unclear whether the enactment of this bill would constitute a material change to the application of the Prepaid Health Care Act, Chapter 393, HRS. Such a change could possibly result in the State of Hawaii losing its exemption from preemption under the federal Employee Retirement Income Security Act (ERISA) in accordance with 29 U.S.C. §1144(b)(5)(B)(ii).

"Nowhere in the record has there been any indication that the U.S. Department of Labor was consulted by the State of Hawaii to determine whether the enactment of Senate Bill No. 1 would lead to the State of Hawaii losing its ERISA preemption exemption.

"The loss of the preemption exemption could lead to the State of Hawaii not being able to continue to require employers to provide health insurance coverage for full-time employees.

"At the very least, an opinion should be obtained from the federal government regarding whether the enactment of this bill would trigger any loss of the preemption exemption.

"D. Fundamentally Diminishing First Amendment Liberties

"This bill would provide the Hawaii Civil Rights Commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment or subject to the Hawaii Public Accommodations Law, Chapter 489, HRS. Not only will this create a chilling effect that will interfere with religious exercise, but the bill, as presently drafted, would not provide any protections whatsoever for individual religious and conscientious beliefs and small businesses.

"While the House Draft 1 version contains broader religious exemptions seemingly modeled after exemptions from the State of Connecticut's Public Accommodations Law, the language does not take into account the constitutional, statutory, and common law protections embedded in Connecticut state law that was not included with the borrowed language.

"First, Connecticut's Constitution specifically protects religious and conscientious beliefs. Article Seven states:

"It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the State. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship."

"Second, the State of Connecticut has enacted the Religious Freedom Restoration Act (RFRA) of 1993, Section 52-571b, General Statutes of Connecticut, which establishes the compelling interest test as the standard applicable by the courts in all cases where free exercise of religion is substantially burdened. This law also establishes a claim or defense to persons whose religious exercise is substantially burdened by government.

"Until 1990, the courts interpreted the Free Exercise Clause as mandating an exemption from a general applicable statute, ordinance, or regulation which burdened the free exercise of religion unless the law was supported by a government interest of the highest order which was affected by a legislative program that had the least possible burden on the free exercise of religion. See, e.g., Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972). However, in 1990, the U.S. Supreme Court diminished Free Exercise Clause exemptions from generally applicable laws. See, Employment Division v. Smith, 494 U.S. 872 (1990). In Smith, once a compelling state interest is found and is of general applicability, not targeting any religion, it will be found to not infringe upon the free exercise of religion no matter how onerous or substantive. Justice Antonin Scalia penned that:

"The accommodation of religion should be left 'to the political process' where government officials and political majorities may abridge the rights of free exercise of religion."

"Congress responded by enacting the federal RFRA, Pub. L. No. 103-141, 107 Stat. 1488 (1993), to reinstitute the compelling interest test for cases where the free exercise of religion is substantially burdened by government action.

"The Connecticut RFRA was modeled after the federal RFRA, which was approved by Congress almost unanimously. Hawaii's entire congressional delegation – Senators Daniel Inouye and Daniel Akaka, and Congress members Patsy Mink and Neil Abercrombie – all voted in support of this legislation. Additionally, a broad coalition of religious and civil liberties groups including People for the American Way, the National Association of Evangelicals, the Southern Baptists' Ethics Religious Liberty Commission, and the ACLU, urged Congress to reinstate the Sherbert test. Two Democrat Senators and one Republican Senator voted against the bill (D – Byrd, WV; R – Helms, NC; D – Mathews, TN).

"In 1997, the U.S. Supreme Court held in City of Boerne v. Flores, 521 U.S. 507 (1997), that Congress exceeded its legislative authority in applying the federal RFRA to state law. The State of Hawaii currently does not have the RFRA in its statutes. Unless these provisions are enacted into Hawaii law, the compelling interest test might not necessarily apply.

"During the debate on numerous floor amendments proposing the insertion of a RFRA into House Draft 1, concerns were raised that such a provision would allow anyone to discriminate so long as it was done so because of a 'sincerely held religious belief'. Preposterous. The courts have long dealt with these issues.

"By establishing an affirmative defense, the burden of showing beyond a reasonable doubt that the 'sincerely held religious belief' was unconstitutionally infringed upon by the statute **is placed upon the person asserting the defense**. See, State of Hawaii v. Jonathan H. Adler, Slip Op. 25224, 118 P.3d. 652 (2005). Only after that was found would the state then have to justify the statute by compelling government interest, and show that the statute was narrowly tailored to minimize the effect on the person's religious exercise. Thus, it only arises where there is a 'violation' of 'sincere' beliefs that are 'religious' and not to situations that merely make religious people uncomfortable, nor to insincere beliefs asserted as a pretext for discrimination, nor to non-religious moral beliefs.

"Without the inclusion of specific protections for conscientious objections such as the RFRA, the enactment of House Draft 1 will force religious organizations, businesses and individuals to compromise their deeply held beliefs to comply with the law. Again, these are constituents who have no objection to providing services to same-sex couples, but object to facilitating the marriage of a same-sex couple. As Justice William Brennan wrote in Sherbert:

"To condition the availability of benefits upon this appellant's willingness to violate a cardinal principal of her religious faith effectively penalizes the free exercise of her constitutional liberties."

"The same principle applies here.

"Moreover, this concern is not a mere hypothetical or without any merit when one examines the thoughtful and intentional language found on page 6, of the 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', which states in relevant part:

"The State of Hawaii has a compelling state interest in eliminating discrimination in public accommodations. Our public accommodation law is a law of general applicability that serves a compelling state interest and does not target any religion." [Emphasis Added.]

"Clearly, Mr. Hoshijo understands the import of his language and choice of words so to make clear that unless he is instructed otherwise, he will apply the Public Accommodations Law under the current U.S. Supreme Court standard found in the Smith Decision.

"Thus, if this is the standard by which the Hawaii Civil Rights Commission will conduct its analysis and application of Chapter 489, HRS, in the situation where there is a conflict between an individuals' liberty right under Section 489-3, HRS (Discriminatory practice prohibition), and another individual's First Amendment religious freedom right, without the balanced approach of the Sherbert test, as would be established in the 'little' Religious Freedom Restoration Act, found on pages 6, line 22, through page 8, line 10 of House Bill No. 6, the outcome will be a substantial and certainly abridge of one's First Amendment religious freedom right.

"This approach would not be consistent with our unique culture and history and place one civil right (equal protection) over another (religious exercise) with a subjectivity and rigidity that reveals a prejudice and biases anathema to the Commission's mission and purpose. It would be as if the Commission would adopt the philosophy and belief noted by Professor Chai Feldblum, Georgetown University Law Center:

"My primary argument is that we gain something as a society if we acknowledge that a law requiring individuals to act in a certain way might burden some individuals' belief liberty. Such an acknowledgment is necessary if we wish to be respectful of the whole person. Protecting one group's identity liberty may, at times, and requires that we burden others' belief liberty." (See, Feldblum, Chai R.; "Moral Conflict and Liberty: Gay Rights and Religion"; Georgetown University Law Center, 2006; p. 123).

"We must avoid this foreseeable and possible irreversible wedge between our religious institutions and our brothers and sisters in the Gay Lesbian Bisexual Transgender (GLBT) community. We should not leave

unprotected the individual with no animus toward same-sex couples but instead hold a 'positive' conviction of the wedding ceremony as a religious sacrament. The failure to protect these individuals puts them to a cruel choice – their conscience or their livelihood. And making martyrs of them to be exploited on the evening news and in the daily newspapers only will inflame the militant fringe on both sides of the discussion. We should be peacemakers instead.

"E. Hawaii As the Fifteenth (15th) State to Legalize Same-Sex Marriage Has the Weakest Religious Protections in America"

"Mr. Speaker, House Draft 1 does not fair very well when compared to the other fourteen (14) states where same-sex marriage is legal, despite all the talk, bluster, news flash, and rhetoric. As our former Majority Leader, Rep. Blake Oshiro would remind us, 'read the bill' and then decide how it stands up against other states. In fact, I'm not sure whether House Draft 1 can even stand up against itself due to its internal ambiguity and lack of clarity.

"First, House Draft 1 seemingly exempts clergy from requirements to solemnize or celebrate a marriage like it does in ten (10) other jurisdictions - **Connecticut**, Delaware, Maryland, Minnesota, New Hampshire, New York, Rhode Island, Vermont, Washington, and the District of Columbia.

"I say, 'seemingly' because of the clear warnings made by the Hawaii Civil Rights Commission on the term, 'religious organization' used in the House Draft 1 that I'll discuss later in Section G, *supra*.

"But, even if we could pretend that House Draft 1 is legally square on its face and sufficient to withstand constitutional challenge, it pales in comparison to the other religious exemptions approved by fourteen (14) other jurisdictions. It makes Hawaii's Legislature appear careless at best or unbalanced at worse regarding how poorly this bill falls short in providing real protections for the exercise of individual religious beliefs. Hawaii, as the youngest state in the nation, should have produced something more progressive reflecting our unique culture, history, and Democratic Party legacy.

"Specifically, House Draft 1 fails to provide any protections in the following situations:

- Religious objectors, including religious affiliated non-profit organizations, from being 'penalized' by the government for such refusals through loss of government grants, privileges, leases, uses, etc. (See, **Connecticut**, the District of Columbia, Maryland, Minnesota, New Hampshire, New York, Rhode Island, and Washington);
- Religious organizations from 'the promotion of same-sex marriage' through religious programs, counseling, courses, or retreats, that is in violation of the religious society's beliefs. (See, Maryland, New Hampshire, Rhode Island, and the District of Columbia);
- Religious objectors from private law suit. (See, **Connecticut**, Maryland, Minnesota, New Hampshire, New York, Rhode Island, Washington, and the District of Columbia);
- Individual employees 'being managed, directed, or supervised by or in conjunction with' a covered entity from celebrating same-sex marriage if doing so would violate 'religious beliefs and faith'. (See, Maryland, New Hampshire, and New York); and
- A religious organization's affiliated group's (including an affiliated non-profit) refusal to 'provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of marriage'. (See, **Connecticut**, the District of Columbia, Maryland, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington.)

"Please take notice that while House Draft 1 appears to be quite similar to Connecticut's law (as advocates have suggested that for all intents and purposes, it is identical) – **IT IS NOT THE SAME**. In fact, House Draft 1 omits the following 'bolded' terms from the present draft – 'provide services, **accommodations, advantages, facilities, goods, or privileges**

from the solemnization or celebration of marriage', and thereby does intentionally and purposely limit the scope of coverage by design and affect.

"Is this what the House of Representatives intends, Mr. Speaker? Has anyone brought this to the members' attention? Do they realize what they are doing?

"What happens if one is deemed a 'discriminator' under state or county law and thereby faces adverse decisions by state agencies and local governments such as the withdrawal or cancellation of government contacts or the use of government facilities?

"For example:

- A religious day care center, counseling center, meeting hall, or similar service provider could be sued under public accommodations laws for refusing to offer their facilities or services to members of a same-sex marriage. (See, Bernstein v. Ocean Grove Camp Meeting Ass'n, Num. OAL Dkt. No CRT 6145-09 (Off. of Admin. Law decision issued January 12, 2012));
- A religious college, hospital, or social service organization that refuses to provide same-sex spousal benefits can be denied access to government contracts and government facilities on the grounds that it is engaging in discrimination. (See, Catholic Charities of Maine v. City of Portland, 304 F. Supp.2d 77 (D. Me. 2004) (Loss of all city housing and community development funds.));
- A religious charity or fraternal organization that opposes same-sex marriage can be denied access to government facilities, such as a lease on government property or participation in government-sponsored employee charitable campaign. (See, Evans v. City of Berkeley of Berkeley, 38 Cal4th 1 (Cal. App. 2006) (Revocation of boat birth subsidy); and Boy Scouts of America v. Wyman, 335 F.3d 80 (2d Cir. 2003) (Exclusion from state workplace charitable contribution campaign.));
- Doctors, psychologist, social workers, counselors, and other professionals who conscientiously object to same-sex marriage can have their licenses revoked. (See, Same-Sex Marriage and the Churches; Marc D. Stern, Chapter One, 'Same-Sex Marriage and Religious Liberty: Emerging Conflicts', Douglas Laycock, Anthony R. Picarello, Jr. & Robin Wilson, eds. 1-57, (Rowland and Littlefield 2008)); and
- Religious fraternal organizations or other nonprofits that object to same-sex marriage can be denied food service licenses, child care licenses, or liquor licenses on the grounds that they are engaging in unlawful discrimination. (See, Haw. Atty. Gen. Opinion No. 91-01 (January 3, 1991, WL 489765)).

"So, let's compare the Connecticut statute with House Draft 1 below. As you can see with the naked eye, there are several features of the Constitution State's Public Accommodations Law absent in House Draft 1. Let's review what is missing and what import it may have.

"Text from Connecticut Statute"

"Sec 17, (NEW) (Effective from passage) Notwithstanding any other provision of law, a religious organization association or society, or any non profit institution or organization operated, supervised, or controlled by or in conjunction with a religious organizations, association or society, shall not be required to provide services, accommodations, advantages, facilities, goods or privileges is related to the solemnization of a marriage or celebration of a marriage and such solemnization or celebration is in violation of their religious beliefs and faith. [Bolded terms are the ONLY terms included in the exemption provisions of House Draft 1.]

"Any refusal to provide services, accommodations, advantages, facilities, goods or privileges in accordance with this section shall not create any civil claim or cause of action, or result in any state action to penalize or withhold benefits from such religious organization,

association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society." [Emphasis Added.]

"Text from House Draft 1

"572-D. Refusal to solemnize a marriage. (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

"(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any **fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.**" [Emphasis Added.]

"572-E Religious organizations; exemptions under certain circumstances. (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide **goods, services, or its facilities or grounds** for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith. [Emphasis Added.]

"(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that pursuant to this section, fails or refuses to provide **goods, services, or its facilities or grounds** for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal." [Emphasis Added.]

"As you compare the language, please take heed of the following:

- (1) The Connecticut statute pertaining to religious exemptions includes **accommodations, advantages, or privileges** as related to the solemnization of a marriage but such terms are NOT included in House Draft 1;
- (2) Under the Hawaii Public Accommodations Law, 'Place of public accommodation' means 'a business accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whose goods, services, facilities, **privileges, advantages, or accommodations** are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors.';
- (3) Because House Draft 1, does not contain all of the language found in the Connecticut law regarding exemptions – **privileges, advantages, and accommodations**, all three (3) terms are that are NOT covered under Section 572-E.;
- (4) Additionally, because these three (3) terms – **privileges, advantages, and accommodations**, found in Hawaii Public Accommodations Law, are not included in House Draft 1, they are NOT exempt from the jurisdiction of the Hawaii Civil Rights Commission;
- (5) The term 'grounds' is not defined in the new section and will probably run afoul of normal rules of statutory construction as repeatedly pointed out by the Hawaii Civil Rights Commission;
- (6) By not including all of the relevant language from the Connecticut law, the House Draft 1 provides only that the Respondent/Defendant is 'immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal', but it does NOT protect the same from a **civil claim or cause of action**, or any **state action**, which can be both threatening, time-consuming, and expensive (i.e. The initial filing of a complaint, initial investigation, preliminary review, formal

inquiry, initial contact and communication, further investigation, administrative review, etc. in preparing the case for formal charges or claim or state action); and

- (7) The House Draft 1 does not protect the religious organization or nonprofit from any adverse result that would result in any '**state action** to penalize' or 'withhold benefits' from such religious organization, which could include, among other things, licenses, permits, certifications, tax benefits, tax preferences, tax credits, not-for-profit tax status, access to state facilities, use or rental of facilities, contracts, or grants in aide, to name a few.

"In sum, not only does House Draft 1 fail to provide any of the protections members of the House and the general public think are there, the bill is so incomplete and disjointed from any comprehensive statutory system that the deliberate exclusions of key words and phrases actually creates greater liability and exposure to the unwary or unsophisticated.

"Repeatedly, the Hawaii Civil Rights Commission Chair Linda Krieger advised, '[c]larification is needed to avoid vagueness, ambiguity, and confusion.' (See, Ms. Krieger's testimony of October 28, 2013, to the Senate Committee, p. 7.) Certainly, I am sure the Connecticut Legislature would cringe at any reference thereof for they would hardly recognize their own handiwork in House Draft 1. And, to add insult to injury, House Draft 1 ensures the oversight by the Hawaii Civil Rights Commission of even the marriage celebration by cleverly omitting the key words – **privileges, advantages, and accommodations**, in Section 572-E.

"Finally, insofar as this same ill-conceived statutory scheme is now to be applied to the existing civil unions statute, the same affect will befall the unwary and instead of being the peacemakers, we have chosen to be the war-makers. We have seemingly decided to take the advice and counsel of our Attorney General to 'let the courts decide'.

"F. Religious Exemption Covers Only Marriage Service

"As currently drafted, House Draft 1 would seemingly provide immunity solely for the refusal of 'solemnization or celebration of marriage' that is typically conducted by a clergy, minister, priest, rabbi, or officer in a religious society not having clergy but providing solemnization that is authorized, when such action would violate 'religious beliefs'.

"However, the bill does not cover non-religious solemnizers like judges. Interestingly, even the Governor's initial draft, 8.22.13, did contain a limited exemption and credit is given for that acknowledgement. But, without such a provision here, it essentially means that if you have a sincerely held religious belief and it may be against your belief to conduct a same-sex marriage, you may have to choose another vocation or at least not seek employment as a State Judge. Can you imagine that? That in 2013, we would consider essentially disqualifying many qualified and learned practitioners in both civil and criminal practices in both federal and state jurisdictions because he or she may have a sincerely held religious belief or faith? That is simply astounding and again symptomatic of this new orthodoxy that will allow no accommodation for sincerely held religious beliefs among our public servants.

"Moreover, this very limited religious exemption only deals with the marriage or solemnization service itself and none of the other services provided by most clergy or religious officials. For example, the religious exemption would not immunize the clergy, minister, priest, or rabbi, from civil liability for performing the following services for the same-sex couple:

Weekly Services;
Worship Services;
Baptism Services;
Communion Services;
Funeral Services;
Addiction Counseling Services;
Baby Dedication Services;
Ground Breaking Services;
Building Dedication Services;
Spiritual Counseling Services;

Premarital Counseling; or
Marriage Counseling.

"And, where these services are provided to non-members, it will probably be found to be a public accommodation under Section 489-2, HRS. (See, definition of 'Place of public accommodation' – means 'accommodation, . . . goods, services, facilities, privileges, advantages, or accommodations, are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. . . .') [Emphasis Added.] (See also, 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', page 4, Paragraph 4, which reads:

"Thus, in any particular case, the inquiry will be two-fold: Is this a place of public accommodation? And, is there prohibited discrimination based on race, sex (including gender identity or expression), sexual orientation, color, religion, ancestry, or disability? This is the inquiry under the existing public accommodations law. The proposed marriage equality law does not change the analysis." [Emphasis Added.]

"As such, it appears more likely than not that even on a case-by-case basis, the services not explicitly provided an exemption will fall under the inquiry and analysis of the Hawaii Civil Rights Commission. Unless, however, such religious organization operates as a private membership club and does not provide goods, services, facilities, to the general public. (e.g. the Pacific Club, Elks Club, Outrigger Canoe Club, etc.). (See, 'Response To Inquiries Memorandum, Dated October 17, 2013, Bill Hoshijo, Executive Director, Hawaii Civil Rights Commission, re: Marriage Equality, Religious Organizations and Facilities, and Public Accommodations Law', page 3, last paragraph, through page 4, first paragraph.)

"Of course, most religious organizations are not members only and I know of none that limit access of the general public to their religious services. Obviously, most religious organizations or practitioners routinely seek out and invite the general public into their facilities for the purposes of providing a service, be it philosophical in nature or more spiritual and dealing with the ecclesiastical matters. And, most religious organizations probably hope to make converts of these visitors or at the very least win over their sympathies and toleration.

"House Draft 1 leaves many religious organizations exposed and vulnerable to charges of discrimination and it will most likely chill the present day practice of welcoming in the general public. The bill will also most definitely curtail useful and important services that these organizations provide with and without government subsidization to the community at large.

"Some of the services or facilities that are made available to the general public that may be curtailed or eliminated include:

Non-Government Organization (NGO) Meetings;
Sports Clubs meetings and Practice;
Corporate Training;
Fundraising and Non-profit Benefit Events;
Civil Defense Training;
DOE Regional and Department Meetings;
Alcoholics Anonymous and Drug Rehabilitation Support Group;
Domestic Abuse Support Group; and
Teen Drug and Alcohol Support Group.

"Before we approve this measure on Third Reading, perhaps we should pause and ask ourselves some important questions collectively and individually:

"Are we willing to accept this likely scenario of chilling the religious freedoms of citizens in our communities?

"Do we understand the concerns they have raised?

"Are we sure that we will not inadvertently cause our community service partners to pull back on their community services or resources to the general public in order to protect their religious beliefs and practices?

"Is this a risk worth taking?

"G. Grave Fears and Concerns Raised Because of a Lack of Statutory Definitions for 'Religious Organization' and 'Religious Facility' in Senate Bill No. 1, House Draft 1

"Mr. Speaker, in meetings with communities throughout the state from Wahiawa to Kauai, Kona, and Mililani prior to the convening of this Special Session, that were held between October 3, 2013 through October 27, 2013, I gave various power point presentations to citizens on the Governor's Special Session Proclamation and same-sex marriage bill drafts – AG 8.22.13 and AG 9.9.13. One of the slides that drew a lot of interest and questions was the one that arose from a document prepared by the Governor to answer 'Frequently Asked Questions' on the bill. Question No. 7 from that document asked what would happen if a lawsuit is filed after the bill is enacted.

"I provided the Governor's response verbatim and encourage the audience to do independent research and reference the original text at the Governor's website. I then added my own commentary and observations. I told citizens that I was deeply concerned and bothered about a lawsuit being filed against any religious exemption after the bill becomes law for the following reasons:

- (1) If a lawsuit is filed, the Governor might not defend the religious exemption provisions as Governor Abercrombie chose NOT to defend our marriage law as requiring marriage to be between a man and a woman in the CURRENT Jackson case;
- (2) Ironically, the religious exemption provisions will likely be challenged by the same supporters of the Governor's bill;
- (3) If the religious exemptions are stricken, churches or mosques or temples might not have any protection from refusing to marry a same-sex couple;
- (4) If the religious exemptions are stricken, churches or mosques or temples might be forced to rent out their facilities to a same-sex couple;
- (5) If the religious exemptions are stricken, a priest or pastor or minister or rabbi may be forced into having to decide whether to follow the most basic religious principles or be subject to a charge of discrimination by the Hawaii Civil Rights Commission or private suit that could hurt a local parish, church, or temple; and
- (6) This might ultimately lead to government eventually favoring one sect or denomination or religion over another, in law or de facto and therein violating the establishment clause and infringing upon an individual's free exercise of religion.

"From where I am this day, I can only review what was published and filed on-line and available to the general public and that was available to all members of the House of Representative since I do not sit on either the Judiciary or Finance Committees, nor am I privy to 'leadership' discussions, decisions, and communications. From the public record, I am deeply concerned that my worst fears may become our worse failures. Let me explain:

"For one, in both the Senate and House public hearings, the key members of the Governor's cabinet to submit substantive written testimony and be available for questions of the respective Committee members were:

- (1) The Hawaii State Attorney General;
- (2) The Hawaii State Director of Health; and
- (3) The Chair, Hawaii Civil Rights Commission.

"The Governor went so far to even express the key role the three had in the drafting, lobbying for, and execution of the bill in both his Senate and House testimony that reads as follows:

"I will defer to the State Attorney General, Hawaii Department of Health, and Hawaii Civil Rights Commission regarding legal issues, implementation issues, and details relating to public accommodations." [Emphasis Added. (Same testimony to both the House and Senate.)]

"In other words, the Governor, as was the practice of other governors in the past, has correctly deferred most questions besides the obvious policy ones to the three mentioned above, namely: Attorney General Louie; State Health Director Fuddy; and Mr. William Hoshijo, Executive Director, Hawaii Civil Rights Commission. But, in my review of both Senate public hearing on October 28, 2013, and House public hearing on October 31, 2013, not much discussion or dialogue arose between the Senate committee member apart from those queries with Attorney General Louie and most of it centered around the meaning and import of the Defense of Marriage Act, or the Windsor Decision, or the Attorney General's memorandum regarding Article I, Section 23, and the Legislature's inherent power to amend the marriage laws to include same-sex couples. Likewise, the discussion in the House was similarly focused on the opinion of Attorney General Louie regarding similar constitutional questions of the 1998 Amendment, the scope of the Windsor Decision, the effect of the Hollingsworth Decision, and the scope of coverage of the religious exemption found within the proposed Sections 572-D and 572-E, HRS. Overall, there were little if any posed questions and answers received from Executive Director Hoshijo, or Ms. Linda Krieger, Chair, Hawaii Civil Rights Commission.

"Of course, I readily admit I could have missed his testimony and further dialogue or conversation with the respective Senate and House committee members. But, even if he did testify and engage in a public exchange over the legal issues surrounding the implementation of this bill, as well as possible details regarding public accommodations, I am still bothered by the current language found in the draft presently before us. Certainly, one cannot overlook the stern warning of Ms. Linda Krieger, Chair, Hawaii Civil Rights Commission, in her written testimony to the Senate Committee on Judiciary and Labor, dated October 28, 2013, and her unambiguous warning and request to the Legislature to amend and define the term of 'religious organizations', and 'religious facilities' contained within her written testimony to the House Joint Committee on Judiciary and Finance, dated October 31, 2013.

"First, Ms. Krieger's testimony of October 28, 2013, to the Senate committee states in pertinent part:

"There is no definition of 'religious organizations'. The statutory language could be interpreted to include what might be considered "churches" in a generic sense – places of worship including, for example, mosques, synagogues, and temples – as well as "religious organizations" generically, which could include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principle purpose is the study of advancement of religion. Such interpretation would be consistent with a known standard, as developed in interpretation of the Internal Revenue Code. In [Senate Bill No.] 1, the exemption is narrowly drawn, because it only applies to refusal to solemnize any marriage, but the lack of "religious organization" leaves it unclear whether the exemption extends to facilities that are owned, controlled, or operated by a religious organization (e.g. the YMCA, YWCA, Salvation Army, Catholic Diocese, etc.), and confusion could open the door to other entities asserting claims to the exemption. If the scope of the exemption is meant only to cover "churches", as in places of worship, that should be clarified." [Emphasis Added.]

"But, instead of heeding Ms. Krieger's advice and making the requested clarifying change, the Senate merely acknowledged her advice and summarily dismissed it. The Senate Standing Committee Report No. 1 reads in pertinent part:

"Second, the Commission also urged the clarification of the scope of the exemption language to narrow its focus and avoid claims of broad applicability that may impact the protections against discrimination in public accommodations pursuant to state law. Accordingly, the Commission stated in its testimony that the terms 'religious organization' and 'for a profit' should be defined in order to avoid misinterpretation." [Emphasis Added.]

"Your Committee believes that these terms have common meanings and it is your Committee's intent that these terms in this measure be applied according to their common meaning. Your Committee also notes that state and federal case law and regulation align with these common meanings. Furthermore, with respect to the term 'religious organization', your Committee requested the commission to submit language that defines 'religious organizations'. Your Committee notes that the proposed definition that the Commission later submitted instead focused on the definition of 'religious facilities'. As such, your Committee believes that the common meaning for 'religious organization' is sufficient." [Emphasis Added.]

"As astounding as it may appear, that is what was written in the Senate Standing Committee Report issued by the Senate Committee on Judiciary and Labor. In other words, the Senate Committee on Judiciary and Labor:

- (1) Acknowledged the Hawaii Civil Rights Commission's clear recommendation to define 'religious organization' to avoid misinterpretation;
- (2) Requested a definition from the Hawaii Civil Rights Commission;
- (3) Received a response from the Hawaii Civil Rights Commission but the response pertained to a definition of 'religious facilities'; and
- (4) The Senate Committee on Judiciary and Labor concludes that common meaning for 'religious organization is sufficient'.

"Pretzel logic, one might say. An exaggeration, one might offer. But, that was the decision of the Senate Committee on Judiciary and Labor and that is what was approved by Senators, 20-4, on Wednesday, October 30, 2013.

"But, rather than flag the unmistakable plea of the Hawaii Civil Rights Commission to fix the problematic and deficient drafting error, it was not picked up by the Attorney General at the House Joint Committee on Judiciary and Finance at the public hearing held on October 31, 2013, through November 5, 2013. Unbelievably, the Attorney General advises the Joint House Committee that:

"In the Departments view, no amendments are necessary for the bill to accomplish the bills stated intent and purpose". [Emphasis Added.]

"As was the case before the Senate, Ms. Krieger, in written testimony before the Joint House Committee, again cited to Section 572-F Religious organizations and facilities; liability exemption under certain circumstances, writing:

"The scope of the exemption is unclear. The statutory language could be interpreted to include what might be considered "churches" in a generic sense – places of worship including for example, mosques, synagogues, and temples – as well as 'religious organizations' generically, if the scope of the exemption is meant only to cover 'churches', as places of worship that should be clarified. . . .

"Suggested draft language:

'For the purposes of this section, a religious organization's 'religious facility' means a place of worship, including, for example, a church, mosque, synagogue, or temple, and its facilities and grounds.'" [Emphasis Added.]

"Notwithstanding the twice-repeated warning and requests, the Joint Committee on Judiciary and Finance did not acknowledge the requested amendment nor did the Committee define the terms 'religious organization' or 'religious facility' as requested by the state agency that

will decide these legal issues, implementation issues, and the application of the Public Accommodations Law and policies. As such, House Draft 1 does not have a definition of '**religious organization**' nor '**religious facility**' despite the clear and unambiguous request from the Hawaii Civil Rights Commission for legislative clarity to avoid misinterpretation. The same concern was raised regarding the meaning of '**facilities and grounds**'. One can only wonder what the committee chairs did understand from the clear warning of '[c]larification is needed to avoid vagueness, ambiguity, and confusion', that Ms. Krieger repeatedly made.

"So, what does this mean you may ask? It means that even the narrow religious protections may be challenged on the basis of being vague, ambiguous, and confusing. And, if they are challenged and ruled null and void or unconstitutional, there will be no protections for the religious organizations whatsoever regarding the use of their facilities and grounds apart from the general application of a claim or defense under the State and Federal Constitutions. Thus, all this talk about religious exemptions and scope of protections and compromise language has been all for naught.

"Ironically, House Bill No. 6, and related floor amendments contained provisions that provided a definition of 'religious organization'.

"Mr. Speaker, if this was drafting oversight or a scrivener's error, I could make amends. But, this is serious public policy work and not for the unschooled or neophyte. This is substantive public policy that will affect our churches, temples, and other places where religious practices are conducted. This will affect how they choose to practice their religion and faith. This will impact the private and public lives of tens of thousands of innocent and unsuspecting constituents who have sincerely held religious beliefs and convictions. I am embarrassed by how low our standards have become when we can turn a blind-eye to such callous indifference and applaud such poor workmanship. This House should do better. The people we serve deserve better.

**"H. Religious Exemption in Public Accommodations
(House Bill No. 6 and Numerous Floor Amendments)"**

"As currently drafted, House Draft 1 only covers the refusal of 'solemnization or celebration of marriage'. In other words, it is a very narrow exemption that does not reflect the reality nor practice of most religious organizations that provide many more services than those relating to the marriage or the solemnization thereof.

"As discussed in Section E, above, Religious Exemption Only Covers Marriage Service, it is only the solemnization or celebration of marriage that is exempt under this bill and the same narrow limitation applies to the 'facilities and grounds' of the religious organization. In other words, for all of the other services that are not considered part of the solemnization or celebration of a marriage, the 'facilities and grounds' that are made available to the general public shall also be made available to all same-sex couples. This means that even the 'facilities and grounds' including the area used for worship, baptism, blessings, communion, etc. may be accessed and used as there is no exemption from the oversight of the Hawaii Civil Rights Commission and its two-part analysis. On the other hand, this discussion may be moot if the provisions pertaining to 'facilities and goods' are found to be 'vague, ambiguous, or confusing', as pointed out by the Chair of the Hawaii Civil Rights Commission. Should that occur, the religious organizations will have larger issues to contend with.

"Certainly, many religious organizations would have concerns with this unbridled access to what some may consider 'holy' or 'sacred' based on sincerely held religious beliefs. But, this could occur under the current draft and current laws regarding the Hawaii Civil Rights Commission and its present inclination to operate under the unbalanced Smith doctrine where the compelling state interest will always trump First Amendment religious rights and liberties. (See, Section D., above, Fundamentally Diminishing First Amendment Liberties)

"So, how will we explain this unfortunate circumstance to our constituent or religious leaders in the community? Will we be comfortable enough to explain that this was the intent of the law and the religious exemption? And, how will we explain to our constituents that this foreseeable imposition upon their sincerely held religious beliefs must be

subordinate to civil rights for same-sex marriage couples? These are not easy questions to proffer a response and Frequently Asked Question pamphlets and sound bites will only go so far. Hawaii's Legislature can do better. We should reconsider our present desire to end this debacle and hold ourselves to a higher standard for all our people. Adjourn and do not harm. Or, remain in session and produce a bill worthy of this Chamber.

"I. Religious Exemption Does Not Protect Individuals and Small Business (House Bill No. 6 and Numerous Floor Amendments)"

"House Draft 1 does not provide any religious protection for the individual believer, but only the clergy, minister, priest, rabbi, and officer of any religious organization. As such, it does not protect any of the thousands of constituents with sincerely held religious beliefs when they leave the privacy of their homes and enter the public space of commerce or business as employer or employee. But, I don't know of anyone who has a genuine and authentic religious belief that can be flipped on or off just as any homosexual cannot turn his or her sexual orientation on or off, in public and private spaces. No one can expect a person to do this and it should not be the policy of Hawaii to mandate a person to do so.

"As I have repeatedly stated, the current provisions in House Draft 1 do NOT provide any protection for any individual who provides services to help plan or celebrate the marriage ceremony. (i.e., planner, baker, florist, musician, singer, photographer, tailor, web-designer, etc.) This may be a one-person business that bakes beautiful cakes in her home kitchen or a musician who composes and produces songs from her own bedroom. But, whether the person is a 'mom and pop' or solo-entrepreneur, their creative skills and talents are not protected. This is an obvious omission that will impose much hardship upon religious minorities under the new orthodoxy while conferring very little benefit upon same-sex couples. Again, there are instances that an accommodation for the conscientious objector must fail against the hardship imposed upon the same-sex couple, but those instances will be the exception and not the rule. In Hawaii, it will be a rare instance where a suitable and cheerful merchant will not be happy to provide such marital-related services. I have heard that the GLBT Caucus of the Democrat Party of Hawaii is working on a listing of same-sex marriage friendly businesses. That is terrific! We should know which business does or does not align with our personal beliefs and spend our dollars accordingly. As Professor Laycock cautions us:

"Refusing exemptions to such religious dissenters will politically empower the least reconcilable opponents of same sex marriage. It will ensure that the issue remains alive, bitter, and deeply divisive".

"But, under the current draft, that is the affect it will have upon many of our constituents. And, it may force them to choose between their sincerely held belief or face demotion or termination for being a conscientious objector. This has occurred in other states and it is a foreseeable consequence of legalizing same-sex marriage without protections of individual religious freedom rights. We do not need to have a win or lose policy choice between two essential constitutional values – religious freedoms and equal protection.

"For a practical solution to many of our government workers (i.e. HSTA, HGEA, UPW, etc.) I draw your attention to House Bill No. 6, SECTION 4, pages 26-29, with particular attention to page 27, line 21:

"No Individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief"; and

"Page 28, lines 11-19, and page 28, lines 11-19:

"(b) This section shall not apply if either: In the case of an individual, another government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay" [Emphasis Added.]

"In other words, only in the instance where another co-worker is available and willing to provide the service will a person's sincerely held

belief allow for this exemption to provide service to a customer or public member. This may also help ameliorate the foreseeable tension of the conscientious objector who as a teacher who would not be able to teach certain topics regarding same-sex relationships because doing so would substantially burden his or her sincerely held religious beliefs when a cohort or colleague is readily available to provide such teaching service without interruption or inconvenience. This 'hardship exemption' is premised upon the belief that accommodation is a two-way street and only available when there is no other less restrictive alternative to provision of the service. This can work quite well in Hawaii with its foundational Hawaiian-based cultural tendency of toleration and coexistence.

"House Draft 1 does not provide for this practical accommodation for our public workers who will face hard choices whether they serve the public as a counselor, teacher, psychologist, or social worker, among those occupations involving personalized skills and talents. Simply deeming public servants with sincerely held religious beliefs as unqualified or ineligible to serve will take us back to a dark time in our Nation's history where Catholics and Jews were deemed unfit for public service based upon their religious beliefs. Certainly, no one would condone such a policy today, but that will be the foreseeable de facto policy of the State of Hawaii should we not approve such limited and practical protections for our public workers.

"Finally, it is well established that once same-sex marriage is legalized, those opposed to any exemptions for religious conscientious objectors will give the narrowest possible interpretation to all exemptions until it is meaningless and void of any regard for the religious freedom under the First Amendment. A similar unsympathetic application of non-discrimination policies against religious freedoms and conscience from our courts and administrative agencies is also foreseeable without clear guidelines. The slow, whittling-away of our First Amendment Rights will not be done in the broad daylight in a public hearing but in small and discrete administrative hearings where agency rules will be adopted outside of the Hawaii State Legislature's oversight and review. In a nutshell, this will be a defining moment. A once-in-a-lifetime opportunity. For this Special Session will be the only time that the negotiating power of both proponents and opponents of the religious exemptions will allow for a practical balancing of interest. Once we allow for same-sex marriage, the power will shift dramatically and if history holds true it will be difficult if not impossible to provide greater protections for religious institutions, individuals, and conscientious objectors.

"The New Mexico photography case, Elane Photography v. Willock, 2013-NMSC-040, 309 P.3d 53 (2013), should give every advocate of freedom of expression and free exercise of religion and association pause. When government begins to tell us 'how we must speak', or 'what we must photograph', or 'what we must create', the practitioners of the expressive or creative arts, including but not limited to journalism, poetry, music, painting, drawing, design, and even the culinary arts cease to be masters of their own subject matter, and freedom of expression ceases to exist. How many of our members understand this concept? Can they grasp the principle and liberty interest at stake? Can you imagine our fledgling intellectual property industry and its innovators being forced to use their creative talents against their deeply held religious beliefs? Can one begin to imagine 'Big Brother' telling us not only how to act, but also what we can say, and forcing us to say it? We can do better for ourselves and for our constituents and their religious and First Amendment freedoms.

"J. Conclusion

"To close, leading experts in this developing area of public policy and law have repeatedly stressed the importance of ensuring that individual religious liberties and freedom of conscience found in our National and State Constitutions should not be sacrificed in order to establish same-sex marriage in the Aloha State. Indeed, they had repeatedly admonished us saying:

"Conflicts between same-sex marriage and religious conscience are reasonably foreseeable and thus avoidable. But, dubious battles of this sort can be avoided only when a prudent Legislature acts decisively to protect complimentary human values – liberty and equality – by adopting language that enables both interest to be

protected realistically. Without such legislative safeguards, many religious individuals will be forced to engage in conduct that violates their deepest religious beliefs, and religious organizations will be constrained in crucial aspects of their religious exercise."

"Indeed, it is with a heavy heart and with deep disappointment that the statement of Professors Bassett, Berg, Destro, Esbeck, Falinger, Gaffney, Garnett, McConnel, and Robin Wilson, on Religious Freedom Implications of Proposed Hawaii Marriage Equality Act of 2013, and their individual and collective wise counsel therein was so carelessly disregarded and set aside. That the sage counsel and advice of Professor Douglas Laycock would fall on deaf ears is nothing short of sheer arrogance.

"The Gaffney group's analysis was the basis for House Bill No. 6, introduced by the brave and conscientious Representative from 'God's Country' of Waianae, Makaha, Makua and Maili, and was based upon that group's analysis of potential legal conflicts and what other states have enacted to reconcile same-sex marriage with religious liberty. As drafted, House Bill No. 6, and most specifically SECTIONS 4 and 5 of that bill, was derived from language that was refined over the years in light of debates in other states. Moreover, it anticipates the range of issues likely to arise and addresses them with care, balance, and attention to the essential rights and needs of both same-sex couples and religious conscientious objectors. Certainly, it would not prevent even one same-sex marriage; it would not make same-sex marriage difficult to celebrate or sustain.

"The introducer of this bill understood all of this and put her 'John Hancock' to its introduction and public record. For that I will forever be grateful. For she is truly a most remarkable woman and although only a sophomore House Member, she has the fortitude, intelligence, compassion, integrity, and wisdom of many more senior in both age and tenure in the Hawaii State Legislature. I wish her well in all her future endeavors.

"That we could so readily and cavalierly set aside their collective wisdom and expertise and settle for our own limited and cursory knowledge is emblematic of this entire Special Session, where the sheer arrogance of the Governor and his administration never diverted from getting the 'votes' and his and others true Machiavellian nature revealed itself as the 'ends would justify the means'.

"In reflecting upon these past two weeks, I return to my Wahiawa roots. For there in an old plantation town is where I come from and where I live today. Growing up in Wahiawa, I was taught that anything worth doing is worth doing well. Whether it was mowing the lawn, cleaning the toilet, sweeping the patio, building a tree house, or fixing a meal, my mother and father taught me that anything worth doing was worth doing well. This value has always been with me and remains to this day and I hope it never leaves me. But, I need to mention it here, so that my colleagues and others, proponents and opponents, may come to understand my intentions and actions during this Special Session and these interesting times in which we live. I did not mean any offense to anyone and to whom I may have offended; I offer my explanation and apology.

"But, I would be remiss and leave this interesting chapter of my public life incomplete if I did not put down for posterity my deep appreciation for the generous and heartfelt assistance of a dear friend whose talents with the electronic pen proves it is mightier than the sword and whose substantial research skills is no less than I would expect from any professional researcher or attorney or legal scholar. His analysis of some of the most complex and complicated legal and social issues has been creative and impressive and useful and he has been a constant companion late into the wee hours of the morning and a work horse from sun up to sun down. Not only has he provided me with a constant encouragement but has been a sounding board for both tactical and strategic decisions throughout these several weeks. For there were cold days when all friends seemed intolerant and nowhere to be found. His role as the 'devil's advocate' has only served to sharpen my thinking and approach to both internal and external discussions on this important matter. But, for his unyielding passion and ever present interest in the welfare of my God-daughter, who is still a young child full of all the hopes and promises of life, I am so appreciative. It is for these extrinsic and most human of interest and desires that we most often derive and exceed our best efforts and go far beyond past achievements and more often than not reap our most enriching

and life affirming experiences. That has certainly been the case here. For me at least and I hope for him too. As such, let these remarks stand as testament to and in acknowledgement of the great public service and good work of Mr. Erik Abe.

"Likewise, I must also pay due regard for someone whose assistance in my office cannot be overstated or underappreciated. For without his soft but firm touch with the general public, we would have been unable to do our work. He was a master in settling our internal disagreements and his sensitivity to and of the pressure and siege upon our office belies this calm and self-effacing demeanor. What he lacks in some office skills he makes up ten times in his strong work ethic and loyalty to cause of public service. Were it not for his strong but quiet presence and calm disposition, we would have certainly lost our way, our moral compass, and even our cause on behalf of all the people of Hawaii we serve. Certainly, his quiet private counsel and advice probably kept me and 'Mr. Poncho' from any mutual affray and combat. For this unwavering devotion to duty and public service, entrustment to my decisions and inconsistent requests, and his continuous renewing of an old friendship, I herein acknowledge and honor Mr. William Gillispie.

"So, as we move ahead into this new day and break new ground let us consider the observations and advice of the esteemed Professors Douglas Laycock and Thomas C. Berg:

"Sexual minorities and religious minorities make essentially parallel claims on the larger society, and the strongest features of the case for same-sex marriage make an equally strong case for protecting the religious liberty of dissenters. These parallels have been elaborated by scholars who work principally on religious liberty, and also by scholars who work principally on sexual orientation.

"First, both same-sex couples and committed religious believers argue that some aspects of human identity are so fundamental that they should be left to each individual, free from all nonessential regulations, even when manifested in conduct. For same-sex couples, the conduct at issue is to join personal commitment and sexual expression in a multifaceted intimate relationship the person they love. For religious believers, the conduct at issue is to live and act consistently with the demands made by the Being that they believe made us all and holds the whole world together.

"No person who wants to enter a same-sex marriage can change his sexual orientation by any act of will, and no religious believer can change his understanding of divine command by any act of will. Religious beliefs can change over time; far less commonly, sexual orientation can change over time. But, these things do not change because government says they must, or because the individual decides they should. Same-sex partners cannot change their sexual orientation, and the religious believer cannot change God's mind.

"In finding rights to same-sex civil marriage, state courts have rejected a distinction between sexual orientation and sexual conduct because, they have correctly found, both the orientation and the conduct that follows from that orientation are central to a person's identity. Religious believers also face attempts to dismiss their claims as involving mere conduct, outside the scope of any constitutional right and subject to any and all state regulation. This is the premise of denying judicial review to religiously burdensome laws that are truly generally applicable. But believers cannot fail to act on God's will, and it is no more reasonable for the state to demand that they do so than for the state to demand celibacy of all gays and lesbians. Both religious believers and same-sex couples feel compelled to act on those things constitutive of their identity.

"Both same-sex couples and religious dissenters also seek to live out their identities in public. Same-sex couples claim a right beyond private behavior in the bedroom: they claim the right to participate in the social institution of civil marriage. Religious believers likewise claim a right to follow their faith not just in worship services, but also in the charitable services provided through their religious organizations and in their daily lives.

"Finally, both same-sex couples and religious dissenters face the problem that what they experience as among the highest virtues is condemned by others as grave evil. Where same-sex couples see loving commitments of mutual care and support, many religious believers see disordered conduct that violates natural law and scriptural command. And where those religious believers see obedience to a loving God who undoubtedly knows best when He lays down rules for human conduct, many supporters of gay rights see intolerance, bigotry, and hate. Because gays and lesbians, and religious conservatives, are each viewed as evil by a substantial portion of the population, each is subject to substantial risk of intolerant and unjustifiably burdensome regulation". (Douglas Laycock and Thomas C. Berg, "Protecting Same-Sex Marriage and Religious Liberty", Virginia Law Review Online, Vol. 99, April 2013, Num. 1).

"Finally, regardless of where we as legislators have stood on this issue, it looks quite certain; unless the proverbial 'act of God' arises, same-sex marriage will be legal in Hawaii come Monday, December 2, 2013. As required, I will uphold my sacred oath of office and uphold and defend the law granting same-sex marriage in Hawaii as I remain ever diligent and mindful of all other constitutional rights and liberties under the U.S. and Hawaii Constitutions.

"For the foregoing reasons, as expressed in and through all previous floor amendments bearing my signature and my remarks thereto, I vote no."

Representative Evans rose to speak in support of the measure, stating:

"Thank you, Mr. Speaker. I rise in support. I assume that the chanting will start shortly because someone just went upstairs. So anyway, if I start shouting loudly everybody, I apologize, but I want to be heard.

"Mr. Speaker, and to everyone here, I really honor everyone. There isn't anybody that's wrong, I think everybody has their truth. The truth comes from your own experience, your own values probably taught by your parents, maybe by your teacher, maybe by your church. But you grow up and you come to have strong values. I think what we honor today is the value of each and every one of our colleagues and what they say is their truth. I honor that truth.

"But I want people to know that when I came here, knowing that I was called into special session, I changed all my plans, my personal life plans because I was called and I felt it was my duty to be here. So I came here with that open-mindedness, let's see what's before us.

"Now I happen to have been here 11 years, and I'm a chair of a committee, and normally people bring ideas and they present them in front of you. You get those ideas and then you go, 'well what's in the bill, what are we trying to achieve here?' And from the very beginning, after I read it, I went, 'well I can't support this bill the way it's written.' And when people would call me up and say, 'well, how are you going to vote?' My answer always was, 'well, if it stays in its current form, I'm voting no, but if we can find a way to protect religious freedom, I'm going to vote yes.'

"So I had to go in the paper as undecided. And why did I have to do that? Because I found out very quickly if I told a person I was going to go 'no' on Senate Bill 1, they were running out, telling everybody I was going to vote 'no'. And I go, no, no, no, they don't get it, I want balance.

"Now that fairness and balance came from my upbringing. My upbringing, in the early 1970s, in 1971 my cousin married a black man. It was the first interracial marriage in the community, in the family, and everybody freaked out. They just didn't know how to handle it. But as time went on and they got to know them, they got over that, and they didn't see color anymore. They just saw them as good citizens, caring, not hurting other people, and really living a good life.

"So, my values, what I brought to the table, is no different than anybody else here today. We brought what comes from within us. For me, I want to go on the record saying I was always wanting to try the balance, because I

believe that government should not go into people's homes and tell them what their value and belief system is.

"So, thank you. Anyway, I'm glad everybody came, I'm glad everybody shared, and I wish everybody *aloha*."

Representative Ward rose to respond, stating:

"Mr. Speaker, one second, please. Second time, in opposition. I entirely agree with the previous speaker who said, the government should not be going into people's homes and telling them what to believe or what to do. But Mr. Speaker, the government should not be going into the churches and telling those people what to believe. Thank you."

Representative Ito rose in opposition to the measure and asked that his written remarks be inserted in the Journal, and the Chair "so ordered."

Representative Ito's written remarks are as follows:

"Mr. Speaker, I rise in opposition to Special Session SB1, HD1. Mr. Speaker, I oppose this measure for the following reasons.

"The two weeks of this Special Session to hear and make a decision on such a delicate and controversial topic as 'same-sex marriage' has been too short and too compressed. Additionally, why was this measure assigned to only two House Committees, Judiciary and Finance? More importantly, this measure should have been brought before the Legislature for consideration during the 2014 Regular Session in order to provide legislators ample time to hear from their constituents and to weigh the pros/cons on same-sex marriage and for constituents and testifiers to better express their views. Why such a big rush, so Hawaii can be considered as part of the fore-front of states enacting same-sex marriage legislation.

"Mr. Speaker, it is my understanding that when the US Supreme Court overturned DOMA, 'Defense Of Marriage Act', they collectively agreed that 'The issue of same-sex marriage should be up to the people of each state to decide what they want for their state.'

"A vast majority of our constituents, not just mine but the constituents of all of us in this Chamber, have cried out 'Let the people decide.' Their cry is loud and clear and I agree with them. On such a delicate and controversial measure, we the members of this Chamber should not be making the decision for our constituents. This decision should be left to the residents of the State of Hawaii through a constitutional amendment and we should abide by this decision. There are some in this Chamber who say that the courts will overturn such a decision. To this I say 'Let the courts decide and we the residents of the State of Hawaii abide by the courts decision.' Additionally, who is to say whether Hawaii's residents will decide for or against same-sex marriage. Now we will never know.

"Within the period of this Special Session there should have been a period when each legislator would go back to their various communities to discuss with their constituents this delicate and controversial measure. Because this was not permitted, throughout the process all I got was hundreds upon hundreds of e-mail daily from my constituents as well as from residents throughout the State of Hawaii and beyond, expressing their views. I am sure that the rest of the members of this Chamber received likewise. I would have definitely appreciated going out to the community and listening to my constituents.

"Mr. Speaker, for these reasons I am in opposition to Special Session SB1, HD1, and ask my colleagues to oppose this measure."

Representative Say rose to speak in support of the measure with reservations, stating:

"Mr. Speaker, will I be the last person to speak on this particular measure, since I am the quietest one and the most silent one from this side of the Chamber?

"Mr. Speaker and Members of the House, this evening I am in support with reservations. With reservations as far as what has been said on the Floor of the House in regards to the process.

"I truly believe that at the start of this special session, I don't know how, sincerely and honestly, how the House leadership determined that we were going to use a Senate vehicle. Any time you go into a special session, you have to have that bill in final form to meet that five days. That was the agreement with the leadership telling the caucus we were going to do it in five days as far as a special session.

"It did not occur that way, and I can respect the Chair of Judiciary and the Chair of Finance for doing an excellent job of the 57 hours of public deliberation. The concern now is this. There was a group here on this Floor that had proposed floor amendments in strengthening the House Draft 1. The warning that you have heard this evening is a very honest, committed warning, in not seeing that this state, that we all love, would be divided as we leave these Chambers.

"Mr. Speaker, I am in support with reservations because I believe that my brothers and sisters who are gays and lesbians should be given the same opportunity as a local Chinese-American who has been discriminated against on the mainland. I believe that we did not go far enough on the floor amendments that were on Wednesday, in the religious protection, which I told the Neighborhood Boards of Palolo, St. Louis Heights, and Kaimuki Neighborhood Board.

"I truly believe and dream, that whatever happens with this particular measure to the Senate, that the Senate may consider going into conference and maybe strengthening it. Or has a deal been done with House Draft 1? If there are lawsuits that come before the courts in the out years, we did not fulfill our obligation, and the reason why is that we in the Legislative Body have deferred it to the courts. That is why the former Majority Leader tried his best in proposing the floor amendments on Wednesday. And that is the reason why I am with reservations, and I do support Senate Bill 1, House Draft 1, because to some degree, a small degree, they have accommodated me on the religious freedom provisions.

"I also have a speech, if you don't mind, I wanted to read to all of you in closing. It was developed by one of my very good friends who is a pastor. And this is how it goes. 'Although we hold to separation of church and state in this country, today I wish to speak to the Christian community, for it is within this community that much of the most vocal debate has occurred around this time and this issue. There are Christians who have vehemently opposed Senate Bill 1, House Draft 1, and there are Christians who are equally as passionate in their support of Senate Bill 1, House Draft 1.'

"As you know, I am in support with reservations. Every society has its own particular rules and regulations about what is acceptable and expected of its members. This is also true during the time of Jesus. They are rules and norms that determine such things as social status, business practices, relationships between people, and religious obligations. Many of those are different from the rules and norms of today.

"What remains consistent for all of us, and which Jesus' entire ministry proclaimed, is a higher law of love. He summed up the commandments very simply, yet very profoundly. 'Love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind, and love your neighbor as yourself.' That's Luke 10:27, Matthew 22:37, and Mark 12:30.

"This law of love, Mr. Speaker, is what enabled Jesus to do many things that were against the rules and norms of the day. He broke the rules of the Sabbath, healing and allowing his disciples to pluck the grain to feed themselves. He reached out to women considered unclean. He opposed the tyranny of misguided church leaders. He honored those, of what we all here are doing, of the low social status, and those relegated to the fringes of society. And also healing them, sitting at table with them, and even calling them to be his disciples. He really saw them and he loved them."

Representative Tokioka rose to yield his time, and the Chair "so ordered."

Representative Say continued, stating:

"The rules which were kept then, separate a part different within society, were not binding for Jesus. Following Jesus's death and resurrection, the belief in Jesus began to spread. And one of the first major controversies occurred amongst believers within the Jewish community. Since you folks should all know that Jesus was after all, a Jew. As were all of his disciples.

"Concerning the Gentiles, the non-Jews, who also saw in Jesus the way of life for their future and their hope and for their disciples. In the tenth chapter of Acts, God goes to great trouble to prepare both the hearts of Peter and Cornelius, a Gentile Centurion, to receive one another.

"As a good and law abiding Jew, Peter would never have entertained the idea of eating at the table with Cornelius, nor would Cornelius have entertained the idea of inviting himself in. After several visions from Heaven, however, not only does Cornelius feel led to invite Peter into his home, and Peter felt led to eat at the table with Cornelius, but Peter also baptizes him and his entire household. This is what caused a controversy at that period in time.

"Increasingly, Gentiles were being led to the faith. A council was held in Jerusalem. Some staunchly held that Gentiles, God fearers, as they were called, needed to be circumcised and needed to uphold the purity and dietary laws of the community. Others pointed out that this was hard even for them as Jews. Why would they put this yolk upon non-Jews as followers of Jesus? In the end, this later argument prevailed, and today Christians are not bound by purity and dietary laws, nor do boys need to be circumcised."

Representative McKelvey rose to yield his time, and the Chair "so ordered."

Representative Say continued, stating:

"Thank you very much, Representative. That was a very seismic shift in understanding. What prevailed were not the rules and norms of the religious community of the day, but God's love, as revealed in Jesus Christ.

"Today we are faced with another seismic shift in understanding. We too need to act in love. As Saint Paul stated in his first letter to the Corinthians, 'faith, hope, and love abide, these three; and the greatest of these is love.' I also stand firmly in the belief that we must love one another, even as we disagree, that our language must not hurt, and it must not include name-calling, insulting actions, or hateful rhetoric.

"As a people, especially those of us who are Christian people, we must speak in love even though we may disagree. What I've said to all of you on this Floor may not change your opinion regarding Senate Bill 1, House Draft 1, but I hope it makes us think about the way we talk, the way we act, the way we debate this bill, and at the end of the day, that we remain committed to loving one another, just as Jesus taught us. Thank you very much."

Representative Mizuno rose in support of the measure with reservations and asked that the remarks of Representative Say be entered into the Journal as his own, and the Chair "so ordered." (By reference only.)

Representative Saiki rose to speak in support of the measure, stating:

"Mr. Speaker, I rise in support of Senate Bill 1, House Draft 1. I just have some brief comments, I wanted to make some acknowledgements. First, as other members have already stated, thank you to the public for its involvement in one of our state's most significant public policy issues in recent history. Second, thank you to the staff and volunteers who assisted us, I know that the Finance Chair mentioned some staff members, I also wanted to mention, in particular, the Printshop and the Legislative Reference Bureau for their assistance.

"Third, thank you to the Senate. Normally in a special session, the House and Senate agree upon the final version of the legislation before the session begins. In this case, there was no agreement. All that was agreed upon was that we would collaborate to reach a resolution on this issue. In particular, thank you to Judiciary Committee Chair Clayton Hee, for his

leadership. He is one of the strongest civil rights proponents in the Legislature, and he has left a definite imprint on this legislation.

"Fourth, thank you to the 30 members of the House Judiciary and Finance Committees, who sat through one of the most extraordinary public hearings in the history of the Legislature. Thank you also to their Co-Chairs for their steadfast and reasonable approach throughout this session.

"Fifth, I would like to thank and acknowledge someone who has received little public recognition for the role that he has played in this issue. When the Hawaii Supreme Court made its initial ruling in Baehr versus Lewin in 1993, it remanded the case to the circuit court so that a trial could be held to determine whether our marriage statute met the constitutional standard. The Judge who presided over the trial was Circuit Court Judge Kevin Chang, who now serves as a federal magistrate.

"The trial ran for six weeks and was subject to intense public scrutiny. At the conclusion, Judge Chang ruled that based upon the evidence, the state did not meet its burden, and that the statute was therefore unconstitutional. It was Judge Chang who categorically ruled that our marriage statute was unconstitutional. His findings and conclusions are still relevant to the arguments raised today, and I request permission to insert his written opinion into the Journal.

"Mr. Speaker, in conclusion, I just wanted to say that this issue has been a rite of passage for each member of this Body. I appreciated that the members heeded your request at the outset that we be civil and respectful of differing opinions. All of us, and particularly the advocates, must continue to be respectful, because true equality will be attained not simply by changing laws, but by changing people's perceptions and opinions.

"Because everyone has spoken, I would like to call for the question, but please permit members to submit written comments. Thank you."

Representative Saiki submitted the following:

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H

Fact and Conclusions of Law.

Circuit Court of Hawai'i.
Ninia BAEHR, Genora Dancel, Tammy Rodrigues, Antoinette Pregil, Pat Lagon, and Joseph Melillo, Plaintiffs,
v.
Lawrence H. MIKE, in his official capacity as Director of the Department of Health, State of Hawaii, Defendant.

CIV. No. 91-1394.
Dec. 3, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CHANG, Judge.

*1 This case came on for trial before the Honorable Kevin S.C. Chang on September 10, 1996. Plaintiffs Ninia Baehr, Genora Dancel, Tammy Rodrigues, Antoinette Pregil, Pat Lagon, and Joseph Melillo were represented by attorneys Daniel R. Foley, Evan Wolfson and Kirk H. Cashmere. Defendant Lawrence H. Mike was represented by Deputy Attorney Generals Rick J. Eichor and Lawrence Goya. The Court having reviewed all the evidence admitted at the trial and having considered the arguments and other written submissions of counsel for the parties and the briefs filed by the *amicus curiae*, hereby makes the following Findings of

FINDINGS OF FACTS

I. THE PARTIES

1. At all times relevant herein, Plaintiffs Ninia Baehr, Genora Dancel, Tammy Rodrigues, Antoinette Pregil, Pat Lagon and Joseph Melillo (hereinafter collectively referred to as "Plaintiffs") were or are residents of the City and County of Honolulu, State of Hawaii.

2. Defendant Lawrence H. Mike ("Defendant") is a resident of the City and County of Honolulu, State of Hawaii. Defendant Mike is sued in his official capacity as Director of Department of Health, State of Hawaii. [When this lawsuit was commenced, John Lewin was the Director of Department of Health, State of Hawaii. Thereafter, pursuant to Rule 43(c) of the Hawaii Rules of Appellate Procedure, Defendant Mike was automatically substituted for Defendant Lewin when he assumed the position of the Director of Department of Health, State of Hawaii. A Notice of Substitution of Parties was also filed by defense counsel on April 23, 1996.]

II. RELEVANT PROCEDURAL HISTORY

3. Plaintiffs filed their Complaint for Injunctive and Declaratory Relief ("Com-

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plaint") on May 1, 1991.

4. In pertinent part, Plaintiffs' Complaint alleges that on or about December 17, 1990, Defendant and his agent denied the applications for marriage licenses presented by Plaintiffs Baehr and Dancel, Plaintiffs Rodrigues and Pregil and Plaintiffs Lagon and Melillo, respectively, solely on the ground that the couples are of the same sex. Plaintiffs sought a judicial declaration that the construction and application of *Hawaii Revised Statutes ("HRS") § 572-1* to deny an application for a license to marry because an applicant couple is of the same sex is unconstitutional.

5. Defendant filed an Amended Answer to Complaint on June 7, 1991. In pertinent part, Defendant admitted that Plaintiffs Baehr and Dancel, Plaintiffs Rodrigues and Pregil and Plaintiffs Lagon and Melillo applied for marriage licenses on December 17, 1990, and that the couples' applications for marriage licenses were denied by Defendant through his agent on the ground that the couples are of the same sex.

6. On July 9, 1991, Defendant filed a Motion For Judgment on the Pleading which sought a dismissal of the lawsuit. Defendant asserted, in pertinent part, that Plaintiffs in their Complaint had failed to state a claim against Defendant upon which relief could be granted.

*2 7. A hearing was held on Defendant's Motion for Judgment on the Pleadings on September 3, 1991.

8. An Order Granting Defendant's Motion for Judgment on the Pleading was filed on October 1, 1991. A Judgment in favor of Defendant and against Plaintiffs was also filed on October 1, 1991.

9. Plaintiffs filed their Notice of Appeal to the Supreme Court of the State of Hawaii on October 17, 1991.

10. In *Baehr v. Lewin*, 74 Haw. 530, 852 P.2d 44 (1993), the Hawaii Supreme Court vacated the circuit court's order and judgment in favor of Defendant and remanded the case to the circuit court for further proceedings. In pertinent part, the Hawaii Supreme Court directed the following.

On remand, in accordance with the "strict scrutiny" standard, the burden will rest on [Defendant] to overcome the presumption that *HRS § 572-1* is unconstitutional by demonstrating that it furthers compelling state interests and is narrowly drawn to avoid unnecessary abridgments of constitutional rights.

Id., 74 Haw. at 583 (citations omitted).

11. On May 17, 1993, Defendant filed a

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motion for reconsideration or clarification to the Hawaii Supreme Court.

12. On May 27, 1993, the Hawaii Supreme Court granted Defendant's motion for reconsideration, or, in the alternative, for clarification in part, and clarified the mandate on remand as follows.

Because, for the reasons stated in the plurality opinion filed in the above-captioned matter on May 5, 1993, the circuit court erroneously granted Lewin's motion for judgment on the pleadings and dismissed the plaintiffs' complaint, the circuit court's order and judgment are vacated and the matter is remanded for further proceedings consistent with the plurality opinion. On remand, in accordance with the "strict scrutiny" standard, the burden will rest on [Defendant] to overcome the presumption that *HRS § 572-1* is unconstitutional by demonstrating that it furthers compelling state interests and is narrowly drawn to avoid unnecessary abridgments of constitutional rights.

Baehr v. Lewin, 74 Haw. 530, 852 P.2d 44 (1993), reconsideration and clarification granted in part, 74 Haw. 645, 852 P.2d 74 (1993) (citations omitted).

13. An Order of Early Assignment to Trial Judge was filed on May 5, 1995.

14. On July 13, 1995, Defendant Director of Health's Motion for Reservation of Questions to the Supreme Court of Hawaii and for Stay Pending Appeal, or, in the alternative for Stay Pending the Action of The Commission on Sexual Orientation and the Law and of The Eighteenth Legislature filed on July 5, 1995, was granted in part, and the trial in the above-captioned case was rescheduled from September 25, 1995 to July 15, 1996. See Order Denying Defendant Director of Health's Motion for Reservation of Questions to the Supreme Court of Hawaii and for Stay Pending Appeal, and Granting Alternative Motion for Stay of Trial Pending the Action of The Commission on Sexual Orientation and the Law and of The Eighteenth Legislature filed on September 7, 1995.

*3 15. A Notice of Change of Responsible Deputy was filed on April 18, 1996, which stated that responsibility for handling of the case on behalf of the Defendant had been changed to Deputy Attorney General Rick J. Eichor.

16. Following a status conference with counsel on April 19, 1996, a Stipulation to Continue Trial Date and Order was filed on May 9, 1996. As a result, the trial in the above-captioned case was continued from the week of August 1, 1996 to September 10, 1996.

III. DEFENDANT'S POSITION

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17. The directive of the Hawaii Supreme Court is clear. Pursuant to the mandate of the Supreme Court, Defendant has the burden of proof in this case. *Id.*

18. Defendant's First Amended Pretrial Statement was filed on May 13, 1996. In pertinent part, Defendant stated the following.

[A]ll that remains is for the State to show that there is a compelling State interest to deny Plaintiff marriage licenses because they are of the same sex and that this compelling interest is narrowly drawn to avoid unnecessary abridgments of constitutional rights.

The following substantial and compelling state interests will be shown:

a. That the State has a compelling interest in protecting the health and welfare of children and other persons....

b. That the State has a compelling interest in fostering procreation within a marital setting....

c. That the State has a compelling interest in securing or assuring recognition of Hawaii marriages in other jurisdictions....

d. That the State has a compelling interest in protecting the State's public fisc from the

reasonably foreseeable effects of State approval of same-sex marriage in the laws of Hawaii....

e. That the State has a compelling state interest in protecting civil liberties, including the reasonably foreseeable effects of State approval of same-sex marriages, on its citizens.

Defendant's First Amended Pretrial Statement at pages 2-4.

19. Defendant's Pre-Trial Memorandum was filed on September 6, 1996. In pertinent part, Defendant asserted the following.

The State of Hawaii has a compelling interest to promote the optimal development of children.... It is the State of Hawaii's position that, all things being equal, it is best for a child that it be raised in a single home by its parents, or at least by a married male and female....

The marriage law furthers the compelling state interest of securing or assuring recognition of Hawaii marriages in other jurisdictions....

The marriage law furthers the compelling state interest in protecting the public fisc from the reasonably foreseeable effects of approval of same-sex marriage.

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Defendant's Pre-Trial Memorandum at pages 1, 2 and 4.

20. Defense counsel acknowledged Defendant's burden of proof and, in pertinent part, stated the following in his Opening Statement. "The State has a compelling interest in promoting the optimal development of children.... It is the State's policy to pursue the optimal development of children, to unite children with their mothers and fathers, and to have mothers and fathers take responsibility for their children." Trial Transcript ("Tr.") 9/10/96, pages 4-5.

IV. DEFENDANT'S WITNESSES

*4 21. Defendant presented testimony from the following expert witnesses: (1) Kyle D. Pruett, M.D.; (2) David Eggebeen, Ph.D.; (3) Richard Williams, Ph.D.; and (4) Thomas S. Merrill, Ph.D.

22. Dr. Kyle Pruett is an expert in the field of psychiatry, specializing in child development. Beginning in 1981 and continuing for a ten-year period, Dr. Pruett conducted a longitudinal study of fifteen families with young children with regard to the developmental competence of children raised primarily by their fathers in intact families. At the end of his study, Dr. Pruett found that children raised by families with primarily paternal care in the early months and years of life are competent and robust in their development, and are not sources of clinical con-

cern.

23. In pertinent part, Dr. Pruett found that there were unique paternal contributions made by a father which had a positive effect on the following: (1) a child's self-esteem and feelings of being loved and important to the family; (2) a child's ability to cope with frustration and discouragement; (3) a child's interest in generative or creative matters; and (4) a child's gender flexibility.

24. However, Dr. Pruett also stated that the unique or non-replicable contributions offered by a father (and the unique contributions offered by a mother) are "small", in comparison to the contributions that parents make together to their children. Tr. 9/10/96, page 84. Dr. Pruett conceded that the beneficial results described above are not essential to being a happy, healthy and well-adjusted child. Tr. 9/10/96, pages 86-87.

25. Dr. Pruett testified that biological parents have a predisposition which helps them in parenting children. The predisposition is based upon the following factors: (1) chromosomal or genetic contributions; (2) the parents' choice and timing of conception or procreation; (3) the physical changes to the mother's body and the father's observations and interaction with those changes; (4) immediate bonding upon the child's birth; and (5) a predisposition to sacrifice and make one's self secondary to the needs of the child.

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26. Dr. Pruett also expressed his belief that children which are adopted or are the result of assisted reproduction live in a "burden[ed] system." Tr. 9/10/96, pages 58, 62.

27. Dr. Pruett stated that same-sex relationships do not provide the same type of learning model or experience for children as does male-female parenting, because there is an overabundance of information about one gender and little information about the other gender. Tr. 9/10/96, page 63.

28. Nevertheless, Dr. Pruett also stated that same-sex parents can, and do, produce children with a clear sense of gender identity. Tr. 9/10/96, pages 106.

29. Dr. Pruett stated the following with respect to raising children in a same-sex marriage environment.

Q. And in comparing same sex parenting with opposite sex parenting, which is more likely to pose greater developmental difficulties for children?

*5 A. In terms of probability, same-sex marriages are more likely to provide a more burdened nurturing domain.

Tr. 9/10/96, page 63.

30. It is Dr. Pruett's opinion that most children are more likely to reach their optimal development being raised in an intact family by their mother and father. According to Dr. Pruett, this family configuration presents the fewest burdens on child development. Tr. 9/10/96, page 63.

31. However, Dr. Pruett also stated that single parents, gay fathers, lesbian mothers and same-sex couples have the potential to, and often do, raise children that are happy, healthy and well-adjusted. Tr. 9/10/96, page 69.

32. Dr. Pruett testified that single parents, gay fathers, lesbian mothers, adoptive parents, foster parents and same-sex couples can be, and do become, good parents. Tr. 9/10/96, page 71. Significantly, Dr. Pruett knows the foregoing to be true based on his clinical experience. Tr. 9/10/96, page 72.

33. More specifically, Dr. Pruett stated that parents' sexual orientation does not disqualify them from being good, fit, loving or successful parents. Tr. 9/10/96, page 72.

34. Dr. Pruett agreed that, in general, gay and lesbian parents are as fit and loving parents as non-gay persons and couples. Tr. 9/10/96, page 73.

35. Same-sex couples have the same capability as different-sex couples to manifest

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the qualities conducive to good parenting. Tr. 9/10/96, page 75.

Dr. Pruett testified as follows.

Q. And you've seen same-sex couples that have those qualities [to being good parents]?

A. Yes.

Q. And have made good parents?

A. And have made good parents, yes.

Q. And good parents as a couple?

A. Yes.

Tr. 9/10/96, page 75.

36. Dr. Pruett also agreed that same-sex couples should be allowed to adopt children, provide foster care and to take children in and raise and care for them. Tr. 9/10/96, page 73.

37. Importantly, Dr. Pruett testified that the quality of the nurturing relationship between parent and child could, and would, outweigh any limitation or burden imposed on the child as a result of having same-sex parents. Tr. 9/10/96, page 79.

38. Finally, when questioned regarding research performed by Charlotte Patterson

regarding children raised by same-sex couples, Dr. Pruett expressed his agreement with the general conclusions reached by Dr. Patterson. Tr. 9/10/96, pages 132-133.

More specifically, Dr. Pruett agreed with the following conclusions, that gay and lesbian parents "are doing a good job" and that "the kids are turning out just fine." Tr. 9/10/96, pages 133-134.

Dr. Pruett was not surprised by Dr. Patterson's conclusions. In fact, they are what he expected to see, and although Dr. Pruett questions Dr. Patterson's research methodology, he is not aware of any data, research or literature which disputes Dr. Patterson's findings and conclusions. Tr. 9/10/96, pages 132-134.

*6 39. Dr. David Eggebeen is an expert in the field of sociology with a special emphasis in demographics related to family and children.

40. In pertinent part, Dr. Eggebeen testified regarding changes or trends which have occurred in partnering, child bearing and labor force behavior in the United States. For example, Dr. Eggebeen testified regarding the following facts: (1) the marriage rate in the U.S. population has declined over the past twenty years; (2) the median age of marriage for women in the U.S. population has risen over the past twenty years; (3) the

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annual divorce rate in the U.S. population has increased over the past approximate thirty years; (4) the number of young adults currently cohabiting has increased over the past eight years; (5) the birth rate for women in the U.S. population has decreased over the past twenty years; (6) the number of proportionate births to non-married women in certain racial groups has increased over the past thirty years; and (7) the number of women in the labor force in the U.S. population and the number of working mothers with children under the age of six has increased dramatically over the past thirty years.

41. Based on his studies of the changes referred to above, Dr. Eggebeen testified as follows.

[C]hildren are going through fundamental changes in the structure of childhood and what we're seeing today is children today are living in very different circumstances than was evident or the case in the past. It's common today to find children in single parent families. It's common today to find children in single parent families. It's common today to find children living with a mother who never married. It's common today to find children in remarried families. It's common today to find children in dual earner families where both parents participate in the type of work. It is common or getting common to find children whose parents never married and they're cohabit-

ing.

Tr. 9/11/96, pages 32-33.

42. However, Dr. Eggebeen also testified that, as of 1990, almost six out of ten children in the United States are living in families where their parents are married and both of the parents are biological parents of the child.

43. Dr. Eggebeen explained further that "... children have gone through substantial changes in their lives ... [T]here is greater diversity in living arrangements and family-in families that children live today in the '90s. However, a substantial percentage of children remain or will spend their childhood in ... traditional kinds of family structures." Tr. 9/11/96, page 38.

44. Based on his research, Dr. Eggebeen concluded that marriage is a "gateway to becoming a parent," and marriage is synonymous with having children. Tr. 9/11/96, page 42.

45. However, Dr. Eggebeen also testified that individuals get married without intending to have children, or marry and are biologically unable to have children. Further, the absence of the intent or the ability to have children does not weaken the institution of marriage.

*7 In fact, Dr. Eggebeen recognized that

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people marry and want to get married for reasons other than having children; that those reasons are valuable and important; and that regardless of children, it is beneficial to society for adults to marry. Dr. Eggebeen testified that individuals should not be prohibited from marriage simply because they cannot have children. Tr. 9/11/96, pages 55-57.

46. Dr. Eggebeen testified that children raised in a single parent home are at a "heightened risk", as compared to children raised in a married couple family. Tr. 9/11/96, page 43. According to Dr. Eggebeen, children in a single parent family are at greater risk for the following: (1) poverty or economic hardship; (2) poor academic performance; (3) behavior problems and conduct disorders; and (4) premarital or teenage birth for girls.

47. Dr. Eggebeen stated that remarriage or cohabiting with a step-parent does not lessen or eliminate the risks to children from single parent families. "[C]hildren in a remarriage family ... do not seem to perform any differently than children who remain in single parent families and therefore their performance or the risk of poor outcomes is about the same as is for children in single parent families." Tr. 9/11/96, page 46.

48. Dr. Eggebeen suggested that the lack of improvement in risk factors in remarriage

or step-parent families may be attributable to "the role ambiguity of step parent relationships," characteristics which a step-parent brings to the family and which adversely affect the children or the absence of a biological relationship with the children. Tr. 9/11/96, pages 46-48. With respect to the latter, Dr. Eggebeen related the story of Cinderella and her evil stepmother. Tr. 9/11/96, page 48.

49. Dr. Eggebeen equates a same-sex couple with children to a step-parent situation with all of the above-described risk factors. Specifically, Dr. Eggebeen testified that "same-sex marriages where children [are] involved is by definition a step parent relationship," because there is one parent who is not the biological parent of the child. Tr. 9/11/96, pages 49.

50. However, Dr. Eggebeen conceded that there are some situations involving a same-sex couple which would not fit the classic step-parent scenario. For example, a situation involving a same-sex couple that sought and received reproductive assistance and in which the non-biological parent was fully involved from the beginning of the planning process, was present throughout the nine month period and at birth, and thereafter, raised the child as though they were the biological parents of the child. Tr. 9/11/96, pages 114-115.

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51. Dr. Eggebeen also testified that single parents, adoptive parents, lesbian mothers, gay fathers and same-sex couples can create stable family environments and raise healthy and well-adjusted children. Tr. 9/11/96, page 82.

52. It is Dr. Eggebeen's opinion that gay and lesbian couples can, and do, make excellent parents and that they are capable of raising a healthy child. Tr. 9/11/96, page 83.

*8 53. Dr. Eggebeen agrees that gay and lesbian parents should be allowed to adopt children and serve as foster parents. Tr. 9/11/96, page 85.

54. Dr. Eggebeen testified that cohabiting same-sex couples are less stable than married couples. However, the sole basis for Dr. Eggebeen's conclusion is a chart taken from the book entitled *American Couples*, co-authored by Pepper Schwartz, Ph.D. The chart which summarizes approximately twenty year old information is Defendant's Exhibit Q, and depicts a comparison of the percentages of married, gay and lesbian couples, respectively, which had stayed together or broken up over periods of time.

Dr. Eggebeen testified that Exhibit Q is the best data that he could find which proves that gay and lesbian couples have substantially higher break up rates over time than married different sex couples. Tr. 9/11/96,

pages 73-74. Dr. Eggebeen admitted that he has done limited research on the subject of same-sex couples and gay and lesbian parenting, and agrees that Charlotte Patterson and Pepper Schwartz are experts in the fields. Tr. 9/11/96, pages 131-132.

55. Finally, and importantly, Dr. Eggebeen stated that children of same-sex couples would be helped if their families had access to or were able to receive the following benefits of marriage: (1) state income tax advantages; (2) public assistance; (3) enforcement of child support, alimony or other support orders; (4) inheritance rights; and (5) the ability to prosecute wrongful death actions. Dr. Eggebeen also agreed that children of same-sex couples would be helped if their families received the social status derived from marriage. Tr. 9/11/96, pages 89-92.

56. Dr. Richard Williams is an expert in the field of psychology with special expertise in qualitative and quantitative research and research methods, statistical analysis and construction of research studies.

57. Dr. Williams was asked by defense counsel to review and analyze studies of children raised by gay and lesbian parents. He reviewed approximately twenty to thirty studies, and eventually selected nine studies to critique.

58. At trial, Dr. Williams presented

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commentary regarding nine research studies which defense counsel anticipated that Plaintiffs' expert witnesses would rely upon for their testimony and opinions in this case.

Dr. Williams' general criticism of the nine studies included the following: (1) there was non-representative sampling of heterosexual, gay and lesbian parents; (2) inadequate sample size was employed; and (3) comparison groups used in the studies were not comparable in terms of household make up. Dr. Williams also presented specific criticism as to each of the nine referenced studies.

59. The testimony of Dr. Williams is not persuasive or believable because of his expressed bias against the social sciences, which include the fields of psychology and sociology.

For example, Dr. Williams believes that a majority of the studies in the social sciences have theoretical or methodological flaws. Tr. 9/12/96, pages 71-72. According to Dr. Williams, modern psychology is so flawed that no fix, reconciliation or overhaul can correct it. Tr. 9/12/96, page 70.

*9 60. Further, even assuming that research studies are conducted properly, Dr. Williams still doubts the ultimate value of psychology and other social sciences. Tr. 9/12/96, page 73.

61. At times, Dr. Williams expressed severe views. For example, Dr. Williams believes that there is no scientific proof that evolution occurred. Tr. 9/12/96, page 80.

62. Finally, Dr. Williams admitted that his critique of studies regarding gay and lesbian parenting is a minority position. Tr. 9/12/96, pages 74-75.

63. Defendant's last witness was Thomas Merrill, Ph.D. Dr. Merrill is an expert in the field of psychology, including the areas of human development, gender development and relationships relative to children and their development.

64. Dr. Merrill is a psychologist in private practice in Honolulu, Hawaii. His clinical experience with families involving one or two gay or lesbian parents is limited. Dr. Merrill has not testified as an expert in Family Court cases which involved the sexual orientation of a parent or a same-sex couple and the custody of a child. He has not participated in or conducted any study which focused on the children of gay and lesbian parents. Tr. 9/13/96, page 36.

65. Dr. Merrill examined the issue of same-sex versus opposite sex parent and child development for the first time as a result of his retention in this case. Tr. 9/13/96, page 35.

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66. In pertinent part, Dr. Merrill testified that the parental relationship is an important learning model for children and that it is significant to have opposite sex parents for a child's learning. Tr. 9/13/96, pages 12-13.

67. Dr. Merrill stated that different-sex parents are important because both parents serve as models and as objects for a child's learning and development. Dr. Merrill explained as follows:

We interact with-and when I say identify, we measure and develop ourself in relationship to our same gender parent. We also identify our relationship with our opposite sex parents and there are different developmental stages where that relationship with the opposite sex parent is equal to or more important than our development-our relationship at the moment with the same gender parent.

Tr. 9/13/96, page 13.

68. According to Dr. Merrill, although replacement of a biological parent is certainly possible, as in the case of remarriage and adoption, it would result in the presence of a different influence on the child and the child's developmental outcome may be different. Tr. 9/13/96, pages 20-21.

69. Dr. Merrill testified that same-sex

parents do provide a learning experience for a child. However, Dr. Merrill stated that there is insufficient information regarding the effects of being raised by gay or lesbian parents on the development of a child. Tr. 9/13/96, page 22.

As a result, Dr. Merrill has no opinion regarding the development of children in a family with same-sex parents. Specifically, he cannot say whether or not children raised in a same-sex family environment will develop to be healthy, well-adjusted adults. Tr. 9/13/96, page 38.

*10 70. At the close of his direct examination, Dr. Merrill presented the following opinions.

Q. In your opinion, to a reasonable degree of psychological probability, in what family structure are children most likely to reach their optimal development?

A. Children are most apt to reach their optimal level of development as exhibited in terms of their adjustment as adults in a family in which there is a limited amount of strife, a maximum amount of nurturing, a maximum amount of support, a maximum amount of guidance, a maximum amount of leadership, and a very strong and intimate bond between parents and child.

Q. And does the presence of the mother

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and father improve the likelihood that there will be a strong bond?

A. That would be a significant part of the maximum optimum environment in which to raise a child, yes.

Tr. 9/13/96, pages 32-33.

71. Dr. Merrill testified that the sexual orientation of a parent is not an indication of parental fitness. Tr. 9/13/96, page 46.

72. Dr. Merrill also agreed that gay and lesbian couples with children do have successful relationships. Tr. 9/13/96, page 46.

73. On one occasion, Dr. Merrill was retained by two attorneys to do a custody evaluation in a case involving a same-sex relationship on the mother's side. In part, he was asked to address children's development issues. Dr. Merrill testified that the fact that there was a same-sex relationship on the mother's side was not an issue and did not affect his evaluation in the case. Tr. 9/13/96, page 34.

74. Finally, and in pertinent part, Dr. Merrill testified as follows.

Q. Now, doctor, do you think the children, regardless of whether they have a mother and a father, male-female parents, single parents, adoptive parents, gay and

lesbian parents, same gender parents, should have the same opportunity in society to reach their optimum development, each child?

A. Yes, I do.

Tr. 9/13/96, page 45.

Dr. Merrill further stated that children should not be denied benefits, such as health care, education and housing based on the status of their parents. Opposite-sex, same-sex, single and adoptive parent status should not be a basis to deny benefits to children. Tr. 9/13/96, page 46.

V. PLAINTIFFS' WITNESSES

75. Although Plaintiffs do not have the burden of proof in this case, they nevertheless presented testimony from the following expert witnesses: (1) Pepper Schwartz, Ph.D; (2) Charlotte Patterson, Ph.D.; (3) David Brodzinsky, Ph.D; and (4) Robert Bidwell, M.D.

76. The court found the testimony of Dr. Schwartz and Dr. Brodzinsky to be especially credible.

Dr. Schwartz and Dr. Brodzinsky are well-qualified individuals. See Plaintiffs' Exhibits 1 and 2, respectively.

At trial, each of them testified in a

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(Cite as: 1996 WL 694235 (Hawai'i Cir.Ct.)) knowledgeable, informative and straightforward manner worthy of belief. In general, the expert opinions of Dr. Schwartz and Dr. Brodzinsky appear to be well-founded based on their significant research and analysis, and their clinical and professional experience, respectively.

*11 77. Dr. Schwartz is an expert in sociology and interdisciplinary studies of sexuality with a special expertise in gender and human sexuality, marriage and the family, and same-sex relations in parenting and research. She testified, in pertinent part, to the following.

78. Initially, Dr. Schwartz discussed her book, *American Couples*. Dr. Schwartz specifically addressed a chart taken from the book and relied upon by Defendant. According to Dr. Schwartz, the data contained in Defendant's Exhibit Q represents the following: (1) that there is a substantially higher break up rate for all three kinds of couples (gay men, lesbian and cohabitators) than there is for married couples; and (2) married couples have an advantage that keeps them together longer than other kinds of couples. Tr. 9/16/96, pages 47-48.

79. Dr. Schwartz noted that the data presented in *American Couples* was collected in the late '70s and up until 1980 or 1981. Since that time, there have been significant changes in society. For example, the entry of

AIDS into gay male life and society, has made people more cautious and less likely to have multiple partners and more desirous of settling down. Gay men, in particular, have been hardest hit by the disease and it has made monogamy and couplehood more attractive.

Additionally, there is now a trend in which people contemplate and want to be more serious, to make families and to engage in long-term committed relationships. This is a large change from the attitudes of the late '70s and early '80s. Tr. 9/16/96, pages 54-56.

80. Dr. Schwartz testified that heterosexual and homosexual people want to get married. Tr. 9/16/96, pages 58-59, 65. The doctor stated specifically:

[T]hey want companionship, they want love, they want trust, they want someone who will be with them through thick and thin. They're looking for a live and a love partner.... [I]n our own [culture] it's an aspiration for-for intimacy and security. And that is the definition of marriage as people first and primarily think of it."

Tr. 9/16/96, page 59.

81. Dr. Schwartz stated that same-sex couples can, and do, have successful, loving and committed relationships. Tr. 9/16/96, page 129.

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82. Dr. Schwartz also identified practical, economic, legal, social and psychological benefits of marriage and reasons for people to marry. Tr. 9/16/96, pages 59-65.

83. Dr. Schwartz testified that the sexual orientation of parents is not an indicator of parental fitness. Tr. 9/16/96, page 128.

84. Dr. Schwartz also testified that gay and lesbian parents and same-sex couples are as fit and loving parents, as non-gay persons and different-sex couples. Tr. 9/16/96, page 127.

85. Dr. Schwartz believes that the primary quality of parenting is not the parenting structure, or biology, but is the nurturing relationship between parent and child. Tr. 9/16/96, page 129.

86. Dr. Schwartz also believes that children should not be denied benefits and protections because of the status of their parents. Tr. 9/16/96, pages 129-130.

*12 87. Dr. Schwartz has the following opinions.

First, there is no reason related to the promotion of the optimal development of children why same-sex couples should not be permitted to marry. Tr. 9/16/96, page 130.

Second, allowing same-sex couples to marry would not have a negative impact on society or the institution of marriage. Dr. Schwartz testified, "[T]here would be no dishonor and no ultimate fragility to the institution [of marriage] by including gays and lesbians." Tr. 9/16/96, pages 130-131.

Third, allowing same-sex couples to marry would have a positive impact on society and the institution of marriage. Dr. Schwartz stated the following.

I think that marriage is really a high state of hope and effort for people. I think when we deny it to people we say that-that there's some other location for love and raising children and that we're not as concerned about these kids' welfare or in some ways we don't think it would be good for them to be in a married home. It's not that those children don't exist, it's not that those families don't exist, they do.

To me, I think that most Americans believe in marriage strongly. I believe by taking other people into the fold and asking that they behave as responsible to their children to give them support to have both rituals to enter into their relationships and legal complications by exiting them, that we shore up how important we think marriage is. I think it-I think it in no way undermines it and I think it strengthens it by our insistence about how important it is and

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(Cite as: 1996 WL 694235 (Hawai'i Cir.Ct.)) why we hope this will be available for all families.

Tr. 9/16/96, pages 131-132.

88. Dr. Charlotte Patterson is an expert in the field of psychology of child development with a special expertise in lesbian and gay parenting and the development of children of lesbian and gay parents. She testified, in pertinent part, to the following.

89. Dr. Patterson is a professor at the University of Virginia. She has completed two studies regarding the children of lesbian and gay parents.

90. The first study is known as the Bay Area Family Study. The study involved thirty-seven families, all of which had at least one child between the ages of four and nine. In every case, the children had either been born to women who identified themselves as lesbian at the time of the study, or who adopted children early in life. Data in the Bay Area Family Study was collected in 1990 and 1991.

91. According to Dr. Patterson, the main result of the Bay Area Family Study was a conclusion that the particular group of children, when compared to available norms, appeared to be developing in a normal fashion. Tr. 9/17/96, pages 23-24.

However, Dr. Patterson also noted a finding that the children of the lesbian mothers sample were more likely to express that they felt (within a normal range) symptoms of stress in their lives, as compared to children in the normal sample. The children who described symptoms of stress also said that they felt an overall sense of well-being about themselves in their lives. Although she has two plausible explanations, Dr. Patterson does not have a definitive interpretation or explanation for the above finding. Tr. 9/17/96, page 25.

*13 Dr. Patterson agreed that the sample group of lesbian mothers in the Bay Area Family Study, when considering ethnic background, education, income, and other socioeconomic factors is not representative of women and all mothers in America. Tr. 9/17/96, pages 81-84.

92. Dr. Patterson's second study is known as the Contemporary Family Study. The study involved eighty families who conceived a child using the resources of the Sperm Bank of California, and all of which had at least one child that was at least five years old at the time of the study. Fifty-five of the families were headed by lesbian mothers. The remaining twenty-five families were headed by heterosexual parents. Most of the data for this study was collected in 1994 and 1995.

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93. The three main conclusions of the Contemporary Family Study are as follows: (1) as a group, the children born as a result of donor insemination were developing normally; (2) sexual orientation of the parents was not a good predictor of how well children do in terms of a child's well-being and adjustment; and (3) irrespective of their parents' sexual orientation, children who live in a harmonious family environment had better reports from parents and teachers. Tr. 9/17/96, pages 36-37.

94. Based on her studies and review of other research, Dr. Patterson testified as follows. A biological relationship between parent and child is not essential to raising a healthy child. The quality of parenting which a child receives is more important than a biological connection or the gender of a parent. Tr. 9/17/96, pages 42-43.

95. According to Dr. Patterson, there is no data or research which establishes that gay fathers and lesbian mothers are less capable of being good parents than non-gay people and which supports denying gay people the ability to adopt and raise children. Tr. 9/17/96, page 52.

96. Dr. Patterson believes that gay and lesbian people and same-sex couples are as fit and loving parents as non-gay people and different-sex couples. Further, sexual orientation is not an indicator of parental fitness.

Tr. 9/17/96, pages 53-54.

97. Dr. Patterson testified that same-sex couples can, and do, have successful, loving and committed relationships. Tr. 9/17/96, pages 54.

98. Dr. Patterson presented the following opinion. There is no reason related to the promotion of the development of children why same-sex couples should not be permitted to marry. Tr. 9/17/96, page 55.

99. Dr. David Brodzinsky is an expert in the fields of psychology and child development with a special expertise in adoption and other forms of nonbiological parenting and the development of children raised by non-biological parents.

100. Dr. Brodzinsky counsels children and families in a clinical setting and also has an academic appointment at Rutgers University. In the academic setting, Dr. Brodzinsky does research, teaches, directs a program on counseling foster children and does clinical supervision. He has been at Rutgers University since 1974.

*14 Dr. Brodzinsky serves as a consultant to several adoption agencies in New Jersey and New York and is a founding director of the Adoption Institute, a newly formed nonprofit organization, whose mission is to provide information and education and

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(Cite as: 1996 WL 694235 (Hawaii Cir.Ct.)) promote research regarding adoption and adoption practices. In the past ten to fifteen years, he has conducted research and written extensively on the psychology of adoption, foster care, stress and coping in children.

101. In his clinical practice, Dr. Brodzinsky has worked with gay and lesbian parents. He has provided counseling over the years to approximately forty families headed by same-sex parents and same-sex couples. In pertinent part, Dr. Brodzinsky testified as follows.

102. Dr. Brodzinsky stated the following with respect to the following question: "Are there advantages to being raised by one's biological parents?"

The issue is not the structural variable, biological versus nonbiological, one parent versus two parent. Those are kind of they hide, I think, really what is going on. The issue is really the process variables, how children are cared for, is the child provided warmth, is the child provided consistency of care, is the child provided a stimulated environment, is the child given support. Those are the factors we can call, for lack of a better way of saying it, sensitive care-giving which transcend whether you're a single parent, two parent, biological, nonbiological. The research shows that-those are the factors that carry the biggest weight. And when you take a look

at structural variables, there's not all that much support that structural variable in and of themselves are all that important.

Tr. 9/18/96, page 42.

103. Dr. Brodzinsky noted that same-sex parent adoptions occur and it is his opinion that same-sex parent adoptions should be allowed. Tr. 9/18/96, page 49. Dr. Brodzinsky explained as follows.

Q. As an expert in adoption and as a psychologist, do you believe that gay men and lesbians, same-sex couples, should be continue to be allowed to adopt children?

A. Absolutely.

Q. Why?

A. Because they are able to provide, like heterosexual couples or single parents, warm and loving environments. They're-they're adopting children now. They're doing a good job of it. Obviously, you know, when we-when a person seeks to adopt, there is an evaluation. It would be the same kind of an evaluation. We would exclude a gay or lesbian individual for the same reason that we would exclude a heterosexual individual. That is, if they had a significant emotional problems or some other kind of factor that we felt, as-as, you know, agency consultants, you know,

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Tr. 9/18/96, pages 56-57.

104. Dr. Brodzinsky testified that the research shows that same-sex couples and different-sex couples can be highly competent care-givers. The sexual orientation of parents is not an indicator of parental fitness. Tr. 9/18/96, page 50.

*15 105. According to Dr. Brodzinsky, the primary quality of good parenting is not the particular structure of the family or biology, but is the nurturing relationship between parent and child. Tr. 9/18/96, page 63.

106. Dr. Brodzinsky believes that children adopted by same-sex couples are not at any increased risk for behavioral or psychological problems. Tr. 9/18/96, page 50.

107. Dr. Brodzinsky expressed his strong view regarding the issue of whether there is a best family environment to raise children.

Q. Now, the State's arguments seem to suggest that we somehow need to identify a best family for children, or as between mothers and fathers, we have to pick a best parent. What's your position on that?

A. I find that offensive truthfully. I find it offensive because it tends to suggest that

there's only one way of being a parent. It excludes all nonbiological parenting which would be adoptive parenting, stepparenting, foster parenting, parenting by gay and lesbians. It suggests that if there are some additional issues that come with some of these nontraditional families that should be reason for excluding rather than taking that information and using it not in a punitive way but in a proactive, kind of supportive way to help families deal with the inevitable issues that come up in life. And there are going to be some unique issues in varying forms of family. But to talk about one form of family that is best, I find that, you know, truthfully offensive and a distortion of the research literature. And that's really why I'm here, you know, to make sure that message comes across.

Tr. 9/18/96, pages 58-59.

108. Finally, it is Dr. Brodzinsky's opinion that there is no reason related to the promotion of the development of children why same-sex couples should not be permitted to marry. Tr. 9/18/96, page 63.

109. Dr. Robert Bidwell is an expert in pediatrics with a subspecialty in adolescent medicine. Dr. Bidwell is the Director of Adolescent Medicine at Kapiolani Medical Center and is also employed at the University of Hawaii Department of Pediatrics with the John A. Burns School of Medicine. Dr.

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(Cite as: 1996 WL 694235 (Hawaii Cir.Ct.)) Bidwell teaches medical students and pediatric residents in training, provides patient care, and practices adolescent medicine and general pediatrics at Kapiolani Medical Center.

110. In his clinical practice, Dr. Bidwell has treated children of same-sex parents. He has provided medical services to hundreds of children with families which included a single gay or lesbian parent or same-sex parents. In pertinent part, Dr. Bidwell testified as follows.

111. Dr. Bidwell described the best environment to raise a healthy, well-adjusted child or adolescent as being one in which "there's all those things that we associate with family, which is love and nurturance and guidance, protection, safety." Tr. 9/19/96, pages 27-28.

112. According to Dr. Bidwell, gay and lesbian parents and same-sex couples can, and do, provide an environment for their children. Tr. 9/19/96, page 29.

*16 113. Dr. Bidwell testified that gay and lesbian parents and same-sex couples raise children that are just as healthy and well-adjusted as those raised by different-sex couples. Tr. 9/19/96, page 38.

114. Dr. Bidwell conceded that he has worked with adolescents and teen-aged

children living in a same-sex family environment that have experienced embarrassment, distress or a "difficult time" because their family "is not the same as the majority of families that surround them." However, the doctor also described the situation as a phase in the child's development. He said the following.

What's been reassuring to me is that-that this has been a phase in their development, that I do not know of any teenager who has not gotten through this phase intact as a healthy adolescent. And, yes, I think there was pain. I think that there may have been tears from time to time, wishing that things were different. But I think it's-I mean it's what we call growing up. I mean there are many different kinds of families. And all of our parents are different in some way from what we would like to see....

So I think my experience has been for the same-has been the same for the children of gay and lesbian parents, is that they may go through a rough time. And not all of them do. Remarkably, most of them, they make their accommodations. They find ways to deal with it. But they get through these periods. And if anything, I think they grow stronger through that experience. They learn about life. They learn about diversity. And the research-and although I'm not a heavy-duty research person, I do look at the research. The research confirms that-that

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(Cite as: 1996 WL 694235 (Hawaii Cir.Ct.)) teenagers get through this period.

But I guess to get back to your question, yes, there is a special experience for these young people, and sometimes it's painful. But it doesn't do developmental damage to these kids. If anything, it creates strength and promotes growth.

Tr. 9/19/96, pages 30-32.

115. Finally, Dr. Bidwell believes that children of same-sex parents would benefit, with respect to their health, development and adjustment, if their parents were married. Tr. 9/19/96, page 38.

VI. SPECIFIC FINDINGS

116. The following are specific findings of fact for this case based on the credible evidence presented at trial.

117. Defendant presented insufficient evidence and failed to establish or prove any adverse consequences to the public fisc resulting from same-sex marriage.

118. Defendant presented insufficient evidence and failed to establish or prove any adverse impacts to the State of Hawaii or its citizens resulting from the refusal of other jurisdictions to recognize Hawaii same-sex marriages or from application of the federal constitutional provision which requires other jurisdictions to give full faith and credit

recognition to Hawaii same-sex marriages. See [Article IV, Section 1 of the U.S. Constitution](#) (The Full Faith and Credit Clause).

*17 119. Defendant presented insufficient evidence and failed to establish or prove the legal significance of the institution of traditional marriage and the need to protect traditional marriage as a fundamental structure in society.

120. There is a public interest in the rights and well-being of children and families. See *H.R.S.* Chapters 571 and 577.

121. A father and a mother can, and do, provide his or her child with unique paternal and maternal contributions which are important, though not essential, to the development of a happy, healthy and well-adjusted child.

122. Further, an intact family environment consisting of a child and his or her mother and father presents a less burdened environment for the development of a happy, healthy and well-adjusted child.

There certainly is a benefit to children which comes from being raised by their mother and father in an intact and relatively stress free home.

123. However, there is diversity in the structure and configuration of families. In

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Hawaii, and elsewhere, children are being raised by their natural parents, single parents, step-parents, grandparents, adopted parents, hana'i parents, foster parents, gay and lesbian parents, and same-sex couples.

124. There are also families in Hawaii, and elsewhere, which do not have children as family members.

125. The evidence presented by Plaintiffs and Defendant establishes that the single most important factor in the development of a happy, healthy and well-adjusted child is the nurturing relationship between parent and child.

More specifically, it is the quality of parenting or the "sensitive care-giving" described by David Brodzinsky, which is the most significant factor that affects the development of a child.

126. The sexual orientation of parents is not in and of itself an indicator of parental fitness.

127. The sexual orientation of parents does not automatically disqualify them from being good, fit, loving or successful parents.

128. The sexual orientation of parents is not in and of itself an indicator of the overall adjustment and development of children.

129. Gay and lesbian parents and same-sex couples have the potential to raise children that are happy, healthy and well-adjusted.

130. Gay and lesbian parents and same-sex couples can provide children with a nurturing relationship and a nurturing environment which is conducive to the development of happy, healthy and well-adjusted children.

131. Gay and lesbian parents and same-sex couples can provide children with a nurturing relationship and a nurturing environment which is conducive to the development of happy, healthy and well-adjusted children.

132. Gay and lesbian parents and same-sex couples can be as fit and loving parents, as non-gay men and women and different-sex couples.

133. While children of gay and lesbian parents and same-sex couples may experience symptoms of stress and other issues related to their non-traditional family structure, the available scientific data, studies and clinical experience presented at trial suggests that children of gay and lesbian parents and same-sex couples tend to adjust and do develop in a normal fashion.

*18 134. Significantly, Defendant has failed to establish a causal link between allowing same-sex marriage and adverse ef-

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fects upon the optimal development of children.

135. As noted herein, there is a benefit to children which comes from being raised by their mother and father in an intact and relatively stress-free home.

However, in this case, Defendant has not proved that allowing same-sex marriage will probably result in significant differences in the development or outcomes of children raised by gay or lesbian parents and same-sex couples, as compared to children raised by different-sex couples or their biological parents.

In fact, Defendant's expert, Kenneth Pruett, agreed, in pertinent part, that gay and lesbian parents "are doing a good job" raising children and, most importantly, "the kids are turning out just fine."

136. Contrary to Defendant's assertions, if same-sex marriage is allowed, the children being raised by gay or lesbian parents and same-sex couples may be assisted, because they may obtain certain protections and benefits that come with or become available as a result of marriage. See *Baehr v. Lewin*, 74 Haw. 530, 560-561, 852 P.2d 44, 59 (1993), for a list of noteworthy marital rights and benefits.

137. In Hawaii, and elsewhere, same-sex

couples can, and do, have successful, loving and committed relationships.

138. In Hawaii, and elsewhere, people marry for a variety of reasons including, but not limited to the following: (1) having or raising children; (2) stability and commitment; (3) emotional closeness; (4) intimacy and monogamy; (5) the establishment of a framework for a long-term relationship; (6) personal significance; (7) recognition by society; and (8) certain legal and economic protections, benefits and obligations. See *Baehr v. Lewin*, 74 Haw. 530, 560-561, 852 P.2d 44, 59 (1993) for a list of noteworthy marital rights and benefits.

In Hawaii, and elsewhere, gay men and lesbian women share this same mix of reasons for wanting to be able to marry.

139. Simply put, Defendant has failed to establish or prove that the public interest in the well-being of children and families, or the optimal development of children will be adversely affected by same-sex marriage.

140. If any of the above findings of fact shall be deemed conclusions of law, the Court intends that every such finding shall be construed as a conclusion of law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and the parties to this action.

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Venue is proper in the First Circuit Court. *HRS* §§ 603-21.5 and 603-36.

2. The trier of fact determines the credibility of a witness and the weight to be given to his or her testimony. In pertinent part, the trier of fact may consider the witness' demeanor and manner while on the stand, the character of his or her testimony as being probable or improbable, inconsistencies, patent omissions and discrepancies in his or her testimony or between the testimony of other witnesses, contradictory testimony or evidence, his or her interest in the outcome to the case and other factors bearing upon the truthfulness or untruthfulness of the witness' testimony. *Young Ah Chor v. Dulles*, 270 F.2d 338, 341 (9th Cir., 1959); and *Nani Koolau Co. v. Komo Construction, Inc.*, 5 Haw.App. 137, 139-140, 681 P.2d 580, 584 (1984). In a non-jury trial, the credibility of a witness is a matter for the trial court to determine and the court can accept or reject the testimony of a witness in whole or in part. *Lee v. Kimura*, 2 Haw.App. 538, 544, 634 P.2d 1043, 1047-1048 (1981).

*19 3. Defendant's burden in this case is to "overcome the presumption that *HRS* § 572-1 is unconstitutional by demonstrating that it furthers a compelling state interest and is narrowly drawn to avoid unnecessary abridgements of constitutional rights." *Baehr*, 74 Haw. 530, 583, 852 P.2d 44, 74 (1993) citing *Nagle v. Board of Education*,

63 Haw. 389, 392, 629 P.2d 109, 111 (1987) and *Holdman v. Olim*, 59 Haw. 346, 349, 581 P.2d 1164, 1167 (1978).

4. There is no fundamental right to marriage for same-sex couples under article I, section 6 of the Hawaii Constitution. Marriage is a state-conferred legal status which gives rise to certain rights and benefits. *Baehr v. Lewin*, 74 Haw. 530, 557 and 560-561, 852 P.2d 44, 57 (1993).

5. The Department of Health, State of Hawaii, has the exclusive authority to issue licenses to marriage applicants. *Baehr v. Lewin*, 74 Haw. 530, 560, 852 P.2d 44, 59 (1993).

6. There are certain rights and benefits which accompany the state-conferred legal status of marriage. See *Baehr v. Lewin*, 74 Haw. 530, 560-561, 852 P.2d 44, 59 (1993) for a list of noteworthy marital rights and benefits.

7. If Plaintiffs, and other same-sex couples, were allowed the state-conferred legal status of marriage, they would be conferred with these and other marital rights and benefits.

8. *HRS* § 572-1, on its face and as applied, regulates access to the status of marriage and its concomitant rights and benefits on the basis of the applicants' sex. As such,

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HRS § 572-1 establishes a sex-based classification. *Baehr v. Lewin*, 74 Haw. 530, 572, 852 P.2d 44, 64 (1993).

9. Sex is a "suspect category" for purposes of equal protection analysis under article I, section 5 of the Hawaii Constitution. Consequently, *HRS* § 572-1 is subject to the "strict scrutiny" test. *Baehr v. Lewin*, 74 Haw. 530, 580, 852 P.2d 44, 67 (1993).

10. Defendant, rather than Plaintiffs, carries a heavy burden of justification. *Nachwey v. Doi*, 59 Haw. 430, 435, 583 P.2d 955, 959 (1978) citing *San Antonio School District v. Rodriguez*, 411 U.S. 1, 16-17, 93 S.Ct. 1278, 1288, 36 L.Ed.2d 16, 33 (1973).

11. Specifically, *HRS* § 572-1 is presumed to be unconstitutional and the burden is on Defendant to show that the statute's sex-based classification is justified by compelling state interests and the statute is narrowly drawn to avoid unnecessary abridgements of constitutional rights. *Baehr v. Lewin*, 74 Haw. 530, 583, 852 P.2d 44, 67 (1993), reconsideration and clarification granted in part, 74 Haw. 645, 646, 852 P.2d 74 (1993).

12. Article IV, section 1 of the U.S. Constitution provides, in pertinent part, that all states must recognize the "public acts, records and judicial proceedings of every other state."

Whether other states will recognize or avoid recognizing same-sex marriages which take place in Hawaii and the consequences to Hawaii residents of other states' recognition or non-recognition of same-sex marriage (and all of the rights and benefits associated with marriage) is an important issue.

*20 However, except for asking the court to take judicial notice of the Defense of Marriage Act, P.L. 104-199 ("DOMA"), Defendant introduced little or no other evidence with regard to this significant issue of comity and same-sex marriage, conflict-of-laws, and/or the effects, if any, of the Full Faith and Credit Clause of the U.S. Constitution.

13. Except for the affidavit testimony of Kenneth K.M. Ling and Michael L. Meaney, which provided statistical, budgetary and operational information regarding the Family Court of the First Circuit Court and the Child Support Enforcement Agency, State of Hawaii, respectively, Defendant presented little or no other evidence which addressed how same-sex marriage would adversely affect the public fisc. Defendant did not offer any testimony which explained the significance of the above and Defendant did not specifically explain or establish how same-sex marriage would adversely impact the Family Court or the Child Support Enforcement Agency.

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14. Defendant presented meager evidence with regard to the importance of the institution of traditional marriage, the benefits which that relationship provides to the community and, most importantly, the adverse effects, if any, which same-sex marriage would have on the institution of traditional marriage and how those adverse effects would impact on the community and society. The evidentiary record in this case is inadequate to thoughtfully examine and decide these significant issues.

15. Finally, Defendant's argument that legalized prostitution, incest and polygamy will occur if same-sex marriage is allowed disregards existing statutes and established precedent [for example, *State v. Mueller*, 66 Haw. 616, 671 P.2d 1351 (1983) (upholding ban on prostitution)] and the Supreme Court's acknowledgment of compelling reasons to prevent and prohibit marriage under circumstances such as incest. *Baehr v. Lewin*, 74 Haw. 530, 562 n. 19, 852 P.2d 44, 59 n. 19 (1993).

16. In *Dean v. District of Columbia*, 653 A.2d 307 (D.C.App.1995), two homosexual males filed a complaint against the District of Columbia which sought an injunction to require the Clerk of the Superior Court to issue them a marriage license. The trial court granted summary judgment in favor of the District of Columbia. On appeal, the District

of Columbia Court of Appeals affirmed the trial court's order granting summary judgment.

In the *Dean* case, Judge Ferren wrote a lengthy opinion concurring in part and dissenting in part, and in which the majority joined in part.

Judge Ferren would have reversed summary judgment and remanded the case for trial to decide (1) the level of scrutiny constitutionally required, and (2) whether the District of Columbia has demonstrated a compelling or substantial enough governmental interest to justify refusing plaintiffs a marriage license. The portion of Judge Ferren's opinion which deals with the question of whether the District of Columbia could demonstrate at trial a substantial or compelling state interest is useful and informative. In pertinent part, Judge Ferren wrote the following.

*21 [I]f the government cannot cite actual prejudice to the public majority from a change in the law to allow same-sex marriages ... then the public majority will not have a sound basis for claiming a compelling, or even a substantial, state interest in withholding the marriage statute from same-sex couples; a mere feeling of distaste or even revulsion at what someone else is or does, simply because it offends majority values without causing concrete

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harm, cannot justify inherently discriminatory legislation against members of a constitutionally protected class-as the history of constitutional rulings against racially discriminatory legislation makes clear.

Suppose, on the other hand, that scientifically credible "deterrence" evidence were forthcoming at trial, so that either the heterosexual majority or the homosexual minority would be prejudiced in some concrete way, depending on whether the marriage statute was, or was not, available to homosexual couples. In that case, the ultimate question of whose values should be enforced, framed in terms of what a substantial or compelling state interest really is, would pose the hardest possible question for the court as majority and minority interests resoundingly clash.

Dean at 653 A.2d at 355-356 (1995) (footnotes omitted).

17. In this case, the evidence presented by Defendant does not establish or prove that same-sex marriage will result in prejudice or harm to an important public or governmental interest.

18. Defendant has not demonstrated a basis for his claim of the existence of compelling state interests sufficient to justify withholding the legal status of marriage from

Plaintiffs.

As discussed hereinabove, Defendant has failed to present sufficient credible evidence which demonstrates that the public interest in the well-being of children and families, or the optimal development of children would be adversely affected by same-sex marriage. Nor has Defendant demonstrated how same-sex marriage would adversely affect the public fisc, the state interest in assuring recognition of Hawaii marriages in other states, the institution of traditional marriage, or any other important public or governmental interest.

The evidentiary record presented in this case does not justify the sex-based classification of *HRS § 572-1*.

Therefore, the court specifically finds and concludes, as a matter of law, that Defendant has failed to sustain his burden to overcome the presumption that *HRS § 572-1* is unconstitutional by demonstrating or proving that the statute furthers a compelling state interest.

19. Further, even assuming *arguendo* that Defendant was able to demonstrate that the sex-based classification of *HRS § 572-1* is justified because it furthers a compelling state interest, Defendant has failed to establish that *HRS § 572-1* is narrowly tailored to avoid unnecessary abridgments of constitu-

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tional rights. *Nachtwey v. Doi*, 59 Haw. 430, 435, 583 P.2d 955, 958 (1978) (citations omitted) (quoting *San Antonio School District v. Rodriguez*, 411 U.S. 1, 16-17, 93 S.Ct. 1278, 1288, 36 L.Ed.2d 16, 33 (1973)).

*22 20. If any of the above conclusions of law shall be deemed findings of fact, the court intends that each such conclusion be construed as a finding of fact.

21. Based on the foregoing, in accordance with the mandate of the Hawaii Supreme Court, and applying the law to the evidence presented at trial, judgment shall be entered in favor of Plaintiffs Ninia Baehr, Genora Dancel, Tammy Rodrigues, Antoinette Pregil, Pat Lagon and Joseph Melillo as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The sex-based classification in *HRS § 572-1*, on its face and as applied, is unconstitutional and in violation of the equal protection clause of article I, section 5 of the Hawaii Constitution.

2. Defendant Lawrence H. Miike, as Director of Department of Health, State of Hawaii, and his agents, and any person in acting in concert with Defendant or claiming by or through him, is enjoined from denying an application for a marriage license solely

because the applicants are of the same sex.

3. To the extent permitted by law, costs shall be imposed against Defendant and awarded in favor of Plaintiffs.

Hawaii Cir.Ct., 1996.
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END OF DOCUMENT

At this time, Representative Saiki called for the previous question.

At 9:59 o'clock p.m., Representative Takai requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:02 o'clock p.m.

At 10:02 o'clock p.m., Representative Mizuno requested a recess and the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 10:03 o'clock p.m.

At this time, the Chair stated:

"A roll call vote has been requested. Would those members please raise your right hand to see if you have the required votes for a roll call. Mr. Clerk, would you count them."

The request for roll call was put to vote by the Chair and upon a show of hands, the request was granted.

Roll call having been approved, the motion that S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," pass Third Reading, was put to vote by the Chair and carried, on the following show of ayes and noes:

Ayes, 30: Belatti, Brower, Coffman, Evans, Hanohano, Hashem, Ichiyama, Ing, Kawakami, Kobayashi, Lee, Lowen, Luke, McKelvey, Mizuno, Morikawa, Nakashima, Nishimoto, Ohno, Onishi, Rhoads, Saiki, Say, Souki, Takai, Takayama, Takumi, Thielen, Wooley and Yamashita.

Noes, 19: Aquino, Awana, Cachola, Carroll, Cullen, Fale, Fukumoto, Har, Ito, Johanson, Jordan, Matsumoto, McDermott, Oshiro, Tokioka, Tsuji, Ward, Woodson and Yamane.

Excused, 2: Cabanilla and Choy.

At 10:07 o'clock p.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 1, HD 1

ANNOUNCEMENTS

Representative Fale: "Mr. Speaker, at this time, our brothers and sisters in the Philippines are being blasted by a hurricane right now, Mr. Speaker. For those who are in need, for those who are facing devastation and loss of life, Mr. Speaker, I ask that our Body remember those who are hurting right now."

At this time, the Members of the House of Representatives stood for a moment of silence in honor of the victims of Typhoon Haiyan in the Philippines.

Representative Takai: "Thank you, Mr. Speaker. On this coming Monday we are going to celebrate Veterans Day, and I'd like to, at this time, acknowledge all of the veterans. I'd like to, on behalf of all of us here, take a moment to recognize all the veterans throughout this great state, and also throughout this nation. We are going to be celebrating Veterans Day on Monday, and I think it's important for us to acknowledge the service paid by our veterans. So thank you, Mr. Speaker."

ADJOURNMENT

At 10:10 o'clock p.m., on motion by Representative Saiki, seconded by Representative Fukumoto and carried, the House of Representatives adjourned until 10:30 o'clock a.m., Tuesday, November 12, 2013. (Representatives Cabanilla, Choy, Fale and Oshiro were excused.)

ELEVENTH DAY

Tuesday, November 12, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, convened at 10:37 o'clock a.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Representative Faye P. Hanohano, after which the Roll was called showing all Members present with the exception of Representatives Cachola, Carroll, Ing, McDermott, Oshiro and Takai, who were excused.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Tenth Day was deferred.

INTRODUCTIONS

The following introduction was made to the Members of the House:

Representative Fale introduced Pastor Ron Yoshida.

At 10:41 o'clock a.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 1:08 o'clock p.m., with Speaker Souki presiding.

ORDER OF THE DAY

INTRODUCTION OF RESOLUTIONS

The following resolutions (H.R. Nos. 8 through 10) were announced by the Clerk and the following action taken:

H.R. No. 8, entitled: "HOUSE RESOLUTION AUTHORIZING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO APPROVE THE JOURNAL OF THIS HOUSE OF ANY LEGISLATIVE DAY BEING COMPILED AS OF THE 11TH LEGISLATIVE DAY," was jointly offered by Representatives Saiki and Johanson.

On motion by Representative Saiki, seconded by Representative Johanson and carried, H.R. No. 8 was adopted, with Representatives Carroll, Choy, Fale, Har, Ito, Jordan, Lee, Matsumoto, McDermott, Morikawa, Oshiro, Rhoads, Say, Takai and Ward being excused.

H.R. No. 9, entitled: "HOUSE RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JOURNAL TO COMPILE AND PRINT THE JOURNAL OF THE HOUSE OF REPRESENTATIVES, SECOND SPECIAL SESSION OF 2013, PURSUANT TO RULE 18 OF THE RULES OF THE HOUSE OF REPRESENTATIVES," was jointly offered by Representatives Saiki and Johanson.

On motion by Representative Saiki, seconded by Representative Johanson and carried, H.R. No. 9 was adopted, with Representatives Carroll, Choy, Fale, Har, Ito, Jordan, Matsumoto, McDermott, Morikawa, Oshiro, Rhoads, Say, Takai and Ward being excused.

H.R. No. 10, entitled: "HOUSE RESOLUTION INFORMING THE SENATE AND THE GOVERNOR THAT THE HOUSE OF REPRESENTATIVES IS READY TO ADJOURN SINE DIE," was jointly offered by Representatives Souki and Saiki.

On motion by Representative Saiki, seconded by Representative Johanson and carried, H.R. No. 10 was adopted, with Representatives Carroll, Choy, Fale, Har, Ito, Jordan, Matsumoto, McDermott, Morikawa, Oshiro, Rhoads, Say, Takai and Ward being excused.

At this time, the Chair recognized the Clerk who announced:

"I have been informed by a representative of the President of the Senate that Senate Bill 1, House Draft 1, Relating to Equality, was agreed upon in the Senate and has passed Final Reading in the Senate."

ANNOUNCEMENTS

Representative Saiki gave his closing remarks on behalf of the Majority as follows:

"Thank you, Mr. Speaker. I just have a brief comment. I just wanted to note that although this special session is over, an important task for House Members, advocates, and religious leaders lies ahead. That task is to work to unify our community. We knew that this would be a polarizing time.

"The test that remains is to determine how to mend things. I hope that we will all find a way to alleviate differences so that Hawaii can move forward. Thank you very much."

Representative Johanson gave his closing remarks on behalf of the Minority as follows:

"Thank you, Mr. Speaker. This has been a long and difficult session for us all, proponents and opponents alike. For many of us who are concerned with the enactment of this new policy, today is a hard day. Many of us continue to believe that the steps we're taking as a Legislature are in opposition to the will of the people. That makes today a hard day, not just for many in this Chamber, but also for many people in the State of Hawaii. And while it is difficult not to win, particularly when emotions run so high, there are encouragements along the way.

"Although this special session is not what the Legislature wanted, it was foisted upon us. In response to that though, record numbers of people engaged our government, many for the first time in their lives. That advocacy and that level of engagement made a difference. It is that kind of engagement that will continue to make a difference, but only if people remain engaged in our government and remain involved on every issue.

"We as a Legislature must also respond in kind by hearing the people. I think as we close today, the words of Saint Francis of Assisi can offer some inspiration to us all. These words have been invoked by many a leader over the past century, and may be the most fitting way to adjourn this special session for us all, proponents and opponents alike.

"Where there is hatred, let us sow love. Where there is injury, let us pardon. Where there is error, let us seek truth. Where there is doubt, let us seek faith. Where there is despair, let us hope. Where there is darkness, let us seek light. Where there is sadness, let us seek joy. And where there is discord, let us seek peace."

"Thank you, Mr. Speaker."

Speaker Souki then gave his closing remarks as follows:

"Again, wishing to thank you all, and wishing to thank the Judiciary Chair and the Finance Chair and its members who sat through five days of grueling hearings, and the wonderful way that you sat with composure and with compassion that you listened to all the testifiers. For that I thank you so much.

"I wish to also thank my Majority Leader and Vice Speaker who have done a great job in supporting me through this very difficult session, and providing great assistance as we moved along. Thank you both very much.

"I wish to thank all of the staff for the hard work they've done. Thousands of testimonies have been provided and needed to be processed. For that you did a yeoman's job, and thank you so much.

"Also, the Sergeant-at-Arms, we cannot forget the Sergeant-at-Arms and the Public Safety Department that kept us from harm, and kept the peace within the discord, both in the rotunda and in the gallery. Thank you so much.

"To all the staff who patiently waited and not getting even paid for this, other than their normal salary, they did not get any overtime pay nor compensation pay. Thank you so much from the bottom of our hearts.

"Members, with this, I also want to thank the Senate for passing the measure just now. I am convinced of one thing, the Senate speaks much longer than the House per individual. Thank you for your conciseness when you were making your speeches, I shall no longer complain about the House."

Representative Aquino: "Thank you, Mr. Speaker. The National Disaster Preparedness Training Center will have their recently FEMA certified course, National Disaster Awareness for Community Leaders, here at the Capitol at no expense to attendees. There are seats available for their afternoon sessions, both today and tomorrow, in Conference Room 325, from 1:30 p.m. to 5:30 p.m. Onsite registration is available, so please consider taking advantage of this opportunity. Thank you, Mr. Speaker."

Representative Tokioka: "I'm sorry, Mr. Speaker. Thank you very much. I know the other night the Representative from Laie did talk about it, but now that we have more details, Mr. Speaker, on Typhoon Haiyan in the Philippines, at the appropriate time, can we take a minute for a moment of silence, Mr. Speaker? Thank you."

Representative Cabanilla: "Mr. Speaker, I just would like to announce to the Filipino Caucus members, we did have a meeting today regarding what kind of actions we should participate in, in light of the disaster that happened in the Philippines. We will have another meeting at 10 o'clock, next week Tuesday, Room 435, for further discussion on the matter. Thank you, Mr. Speaker."

Representative Mizuno: "Mr. Speaker, I have a family member, my sister-in-law. Her family is in Leyte, that's the epicenter where the typhoon hit. At this time, she's been spared, her and my brother-in-law live south, they live in the province of Negros Oriental. They've been spared, they don't have much damage. But to the people of Leyte, we have not heard from her family, they've gone missing, and we don't know if they're alive.

"I wanted to let the members know, if you want to get involved in the relief effort, my wife has coordinated this with the Philippine Consul General, the Filipino Community Center, and the Filipino Chamber of Commerce. They're working with her, she's the President of the Congress of Visayan Organizations, on a relief effort to help victims of Typhoon Haiyan in the Philippines. Feel free to come to our office, and my wife will get you to the right people you need to talk to if you'd like to help in the relief effort. Thank you, Mr. Speaker."

At this time, the Members of the House of Representatives stood for a moment of silence in honor of the victims of Typhoon Haiyan in the Philippines.

ADJOURNMENT

Representative Saiki moved that the House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, adjourn Sine Die, seconded by Representative Johanson.

The motion was put to vote by the Chair and carried, and at 1:20 o'clock p.m., the Speaker rapped his gavel and declared the House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Second Special Session of 2013, adjourned Sine Die. (Representatives

Carroll, Choy, Fale, Har, Ito, Jordan, Matsumoto, McDermott, Morikawa, Oshiro, Rhoads, Say, Takai and Ward were excused.)

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 5 and 6) were received by the Clerk:

Sen. Com. No. 5, dated November 12, 2013, informing the House that the Senate has this day agreed to the amendments proposed by the House to the following Senate Bill and that said bill has this day passed Final Reading:

S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS."

Sen. Com. No. 6, transmitting S.R. No. 3, entitled: "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE," which was adopted by the Senate on November 12, 2013.

**GOVERNOR'S MESSAGES RECEIVED AFTER THE ADJOURNMENT
OF THE 2013 LEGISLATURE SECOND SPECIAL SESSION SINE DINE**

GOVERNOR'S MESSAGES

The following messages from the Governor (Gov. Msg. Nos. 44 through 47) were received by the Clerk and were placed on file:

Gov. Msg. No. 44, informing the House that on November 13, 2013, the following bill was signed into law:

S.B. No. 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS." (ACT 001)

Gov. Msg. No. 45, informing the House that on November 14, 2013, the following bill was signed into law:

H.B. No. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS." (ACT 002)

Gov. Msg. No. 46, informing the House that on November 14, 2013, the following bill was signed into law:

H.B. No. 2, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS." (ACT 003)

Gov. Msg. No. 47, informing the House that on November 14, 2013, the following bill was signed into law:

H.B. No. 3, HD 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION." (ACT 004)