

FIFTEENTH DAY

Thursday, February 6, 1997

The Senate of the Nineteenth Legislature of the State of Hawaii, Regular Session of 1997, convened at 11:09 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Captain Lani Chamness, Salvation Army Leeward Corps, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Fourteenth Day.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 10 and 11) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 10, transmitting H.C.R. No. 23, which was adopted by the House of Representatives on February 5, 1997, was placed on file.

By unanimous consent, H.C.R. No. 23, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR AND THE MAYORS OF THE SEVERAL COUNTIES TO DESIGNATE FEBRUARY 9 TO 15, 1997 AS 'NATIONAL CHILD PASSENGER SAFETY AWARENESS WEEK'," was referred to the Committee on Transportation and Intergovernmental Affairs.

Hse. Com. No. 11, transmitting H.B. No. 240, H.D. 1, which passed Third Reading in the House of Representatives on February 5, 1997, was placed on file.

On motion by Senator Ihara, seconded by Senator Slom and carried, H.B. No. 240, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BOATING," passed First Reading by title and was referred to the Committee on Economic Development, then to the Committee on Ways and Means.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 19 to 22) were read by the Clerk and were deferred:

Senate Concurrent Resolution

No. 19 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND FINANCIAL EFFECTS OF REQUIRING HEALTH INSURERS TO OFFER COVERAGE FOR POST-MASTECTOMY BREAST RECONSTRUCTION SURGERY."

Offered by: Senators Fukunaga, Levin, Chun Oakland, Baker, Fernandes Salling, Matsunaga, Solomon, Chumbley, McCartney.

No. 20 "SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND FINANCIAL EFFECTS OF REQUIRING HEALTH INSURERS TO OFFER FORTY-EIGHT-HOUR MATERNITY COVERAGE IN ORDER TO ELIMINATE THE PROBLEMS OF 'DRIVE-THROUGH DELIVERIES'."

Offered by: Senators Baker, Fukunaga, Fernandes Salling, Levin, Matsunaga, Solomon, Chumbley, Chun Oakland, McCartney.

No. 21 "SENATE CONCURRENT RESOLUTION REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS TO

URGE NATIVE HAWAIIANS TO PARTICIPATE IN AN EARLY CANCER DETECTION PROGRAM."

Offered by: Senator Solomon.

No. 22 "SENATE CONCURRENT RESOLUTION URGING THE OFFICE OF HAWAIIAN AFFAIRS TO PROVIDE FINANCIAL SUPPORT TO THE NATIVE HAWAIIAN HEALTH SYSTEMS."

Offered by: Senator Solomon.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 5 and 6) were read by the Clerk and were deferred:

Senate Resolution

No. 5 "SENATE RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND FINANCIAL EFFECTS OF REQUIRING HEALTH INSURERS TO OFFER COVERAGE FOR POST-MASTECTOMY BREAST RECONSTRUCTION SURGERY."

Offered by: Senators Chun Oakland, Solomon, Baker, Levin, Chumbley, Fukunaga, Fernandes Salling, Matsunaga, McCartney.

No. 6 "SENATE RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND FINANCIAL EFFECTS OF REQUIRING HEALTH INSURERS TO OFFER FORTY-EIGHT-HOUR MATERNITY COVERAGE IN ORDER TO ELIMINATE THE PROBLEMS OF 'DRIVE-THROUGH DELIVERIES'."

Offered by: Senators Chun Oakland, Baker, Fukunaga, Fernandes Salling, Levin, Matsunaga, Solomon, Chumbley, McCartney.

STANDING COMMITTEE REPORTS

Senators Chun Oakland and Kanno, for the Committee on Human Resources, presented a report (Stand. Com. Rep. No. 24) recommending that S.B. No. 1545 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1545, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR AN ELECTRONIC BENEFIT TRANSFER SYSTEM," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Chun Oakland and Kanno, for the Committee on Human Resources, presented a report (Stand. Com. Rep. No. 25) recommending that S.B. No. 1547, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1547, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DISPOSITION OF UNCLAIMED FINANCIAL ASSISTANCE BENEFITS," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Chun Oakland and Kanno, for the Committee on Human Resources, presented a report (Stand. Com. Rep. No. 26) recommending that S.B. No. 1548 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1548, entitled: "A BILL FOR AN ACT MAKING AN EMERGENCY APPROPRIATION FOR THE STATE MEDICAL ASSISTANCE PROGRAM," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Chun Oakland and Kanno, for the Committee on Human Resources, presented a report (Stand. Com. Rep. No. 27) recommending that S.B. No. 1550 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1550, entitled: "A BILL FOR AN ACT MAKING EMERGENCY APPROPRIATIONS FOR THE RANDOLPH-SHEPPARD REVOLVING ACCOUNT AND FOR THE BLIND SHOP REVOLVING AND HANDICRAFT FUND," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 28) recommending that S.B. No. 168, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 168, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PRESERVATION OF ANTIQUITIES," passed Second Reading and was referred to the Committee on Judiciary.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 29) recommending that S.B. No. 1331 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1331, entitled: "A BILL FOR AN ACT RELATING TO SUPERVISION OF ACCOUNTS," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 30) recommending that S.B. No. 1333 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1333, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 31) recommending that S.B. No. 1334, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1334, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 32) recommending that S.B. No. 1335 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1335, entitled: "A BILL FOR AN ACT RELATING TO DRIVERS EDUCATION PROGRAM," passed Second

Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the majority of the Committee on Education, presented a report (Stand. Com. Rep. No. 33) recommending that S.B. No. 1329 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 1329, entitled: "A BILL FOR AN ACT RELATING TO AN INCOME TAX DEDUCTION FOR TUITION EXPENSES," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 34) recommending that S.B. No. 1332, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1332, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 35) recommending that S.B. No. 1336 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1336, entitled: "A BILL FOR AN ACT RELATING TO THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 36) recommending that S.B. No. 1339 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1339, entitled: "A BILL FOR AN ACT RELATING TO THE STATE AQUARIUM," passed Second Reading and was referred to the Committee on Ways and Means.

Senators Aki and Tam, for the Committee on Education, presented a report (Stand. Com. Rep. No. 37) recommending that S.B. No. 1953 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ihara, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 1953, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Second Reading and was referred to the Committee on Ways and Means.

At 11:12 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:20 o'clock a.m.

ORDER OF THE DAY

THIRD READING

H.B. No. 117, S.D. 1:

Senator Chumbley moved that H.B. No. 117, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Matsunaga.

Senator Chumbley rose in support of the measure as follows:

"Mr. President, I rise to speak in favor of H.B. No. 117, S.D. 1.

"This bill proposes a constitutional amendment which would limit marriage to couples of the opposite sex.

"In what is a significant departure from the position of this Committee and of the Senate last year, we agree that it is appropriate and necessary that this issue be put to the voters of Hawaii in the form of a constitutional amendment. However, while we share the House's desire to definitively resolve this issue, we cannot recommend passage of the H.B. No. 117 as received because it is constitutionally suspect.

"The United States Supreme Court, in the 'Romer' case declared a Colorado state constitutional amendment unconstitutional under the United States Constitution because: (1) it was based upon 'animus' against a minority; and (2) it deprived the minority from access to government. We fear that this bill as received from the House similarly violates the constitution. Our proposal is therefore based in large part upon avoiding the flaws of the Colorado amendment. We believe that it does so.

"First, there is no hint of 'animus'. It can be fairly said that some of the proposals on this issue are aimed solely at abolishing rights won in court by a minority. We firmly believe that the motivation for this is simply to preserve traditional marriage. But if the net effect of our efforts is the surgical removal of rights from a very unpopular minority group, we fear that a court could conclude that the Legislature's motive was more a result of fear and hatred than any legitimate governmental interest.

"The proposal before the Senate cannot under any circumstances reasonably be found to be based on fear, hatred or bigotry. Rather than excise civil rights, it attempts to ensure them. And rather than limit interpretation because of fear, it expresses the positive power and aspirations of the tolerant people of our state.

"Second, this bill does not in any way deny access to democratic recourse. Some of the other proposals considered by your Committee would have prohibited the courts from ruling on constitutional issues. While we are certain that the measures were not intended to limit the rights of any of our citizens, we do not believe that such an approach should be embodied in our constitution.

"Our government is one of three co-equal branches. The duty of the legislative branch is to adopt laws, the executive branch administers the law, and the judicial branch interprets the law. This structure is adopted in our State Constitution in Article III, Section 1; Article V, Section 1; and Article VI, Section 1. This balance of power has served the people of our state and nation well. Through it the rights of all our citizens have repeatedly been defined and preserved. It is a fundamental element of our democracy that this delicate, if somewhat inefficient, balance will ultimately reflect the best of our people.

"Other proposals expressly seeks to shatter this symmetry. They would, by their terms, dictate judicial and administrative interpretations of the constitution while leaving the legislature free to do as it pleases. Some of our citizens would thus be effectively deprived of access to the courts on this issue.

"We believe that this result may be unconstitutional, and lawyers can reasonably disagree on this issue, Mr. President -- 'experts' can be found to argue for either side. But whether technically unconstitutional or not, we know that this result is wrong. It is simply wrong to deprive any of our citizens his or her day in court. This is especially so when the deprivation might be based upon his or her minority status -- or because we fear that our commitment to democracy may permit him or her

to prevail. The proposal before you today, colleagues, does not direct judicial or administrative outcomes. Rather it is a positive statement of the power and values of our people. Access to all the elements of our Government are left intact. No rights are sacrificed in order for us to do what we think is right.

"Our purpose in supporting this bill is to preserve Hawaii's commitment to traditional marriage without violating our constitution. We believe that the bill accomplishes the objective and I urge your support.

"I might add, colleagues, this is not going to be your final vote on this issue today. It is clear that this will go to Conference Committee and, yes, you will have another opportunity to vote on this issue again. I urge you, even if you don't agree fully with the bill, to vote 'aye with reservations' and express those reservations so that the people of this state know that this body, the Senate, is serious in resolving this issue.

"Thank you, Mr. President."

Senator Solomon then rose to speak against the bill and said:

"Mr. President, I rise to speak in opposition.

"First, Mr. President, I would like to commend the Judiciary Committee. I know that this is a very controversial issue and I would like to commend them for coming up with what they perceive as a compromise position. However, I beg to differ on the matter.

"Mr. President, I would change the title of this bill. It should read, 'Relating to the Destruction of Marriage in Hawaii.' This bill is misguided, hasty and ill-conceived. Clearly it has the potential to destroy the institution of marriage in Hawaii because, Mr. President, it is impossible prove a negative. Example -- that our marriage law does not deprive any person of civil rights on the basis of sex. All persons married in Hawaii are subject to the loss of their status as husband and wife at the whim of the Judiciary. If our courts were to decide that any statute, regulation or administrative action concerning marriage deprived any person of civil rights, based on sex, our marriage law would be rendered ineffective and all marriages in Hawaii now, formed or to be formed, will be contingent on being held invalid by judicial action. Obviously, Mr. President, such a condition would be intolerable to our citizens, married or not.

"Thank you."

Senator Slom also rose to speak against the measure and stated:

"Mr. President, I rise in opposition to this bill.

"I think that H.B. No. 117 perpetuates a fraud on the people of Hawaii, Mr. President. It purports to preserve traditional marriage but by design its language does exactly the opposite. The bill says that it will retain the state's ability to regulate marriage but 'only if the laws of the state insure that the application of this reservation does not deprive any person of civil rights on the basis of sex.' This proviso effectively negates the right to regulate and allows the Supreme Court and not the people to decide the basis of traditional marriage in Hawaii.

"And what are these civil rights? The bill is silent as to what rights and if all the benefits of marriage must be conferred. If the language of this bill is enacted, then the presumption is that all rights and all costs must be conferred.

"Our learned colleague from the Valley Isle said that there is no hint of 'animus' in this bill. I beg to differ. The 'animus' is to those who support traditional marriage. My learned

colleague said that the bill seeks to avoid flaws and yet by its very nature this bill has created additional flaws. My learned colleague talks about the balance of power between the three branches of government and yet, Mr. President, as our Chief Justice stood where you're standing just a week or so ago, he let all of us know that, actually, the trump card is held by those of us here in the Legislature.

"Mr. President, do you hear them? Do you hear the voices of our disenfranchised taxpayers and voters? They have said clearly and constantly that they want us to represent them and to listen to them. And they have asked simply for us to allow them the right to make the decision on this issue themselves since the impact affects all of them and all of Hawaii. A simple request -- let the people decide. Respect their desire to express their intent.

"This Legislature, which caused all the current problems because of its inability and unwillingness to act properly for years, now attempts to subvert rather than support the wishes of the people.

"This measure does not allow our citizens to voice their opinion as was the original intent. Instead, it seeks to further confuse and to guarantee continued litigation and success by those who would remove every final vestige of our most basic and fundamental of societal values. The issue is marriage between one man and one woman -- basic, simple imperative.

"The people of Hawaii have been most tolerant and most patient for many, many years. They were urged to trust their elected officials to do the right thing, but we didn't do the right thing. Instead, we have made Hawaii a social and sexual experimental laboratory, while stripping away the basic beliefs, the traditions, and the values of the people who have sent us here to honorably represent them.

"If we want to get this state out of the marriage business altogether and leave it to the individual religious groups, where it actually belongs, then fine, let's do so. Otherwise, let's listen to the will of the people and trust them, not the lawyers and the courts. Trust the people to know what is the right thing to do. After all, we do, in fact, trust the people to elect us, to pay the taxes, and to support the government and to obey the laws that we pass in this body.

"Mr. President, I hear the voices and they shout clearly that this bill is not what they want. They demand and are entitled to the right to decide this issue for themselves. Let's not fool or defraud them any longer. Let's defeat this bill and give the public an honest choice.

"Thank you, Mr. President."

Senator Iwase, rising in opposition to the measure, then stated:

"Mr. President, I rise to speak in opposition to the amendments made by the Senate Judiciary Committee.

"Mr. President, before delving into my reasons for opposing the Senate Draft, I do want to briefly address the comments made by the co-chair of the Judiciary Committee regarding the 'Romer' case. The 'Romer' case, Mr. President, is totally inapplicable to what is happening in Hawaii. It's like comparing the proverbial 'apples and oranges.' The 'Romer' case nuked the rights of individuals. That law denied gays and lesbians access to all levels of government, all levels of state government, every branch in the state government. You could not seek redress of grievance from the executive branch, from the legislative branch, or from the courts. Additionally, the Colorado Legislature's law denied access to all political subdivisions. That is not the case here.

"This law, this amendment proposed by the House, simply restores the status quo. It does not deny, it defines marriage --

merely defines marriage, merely clarifies the definition. It is not unusual. It is not something we pull out from the universe. It is something we do in rules in defining what we mean. We do it in ordinances. We do it in statutes, and we do it in our constitution. That is all the House bill did. It is not a 'Romer' case. 'Romer' does not apply, by facts or by law, to H.B. No. 117.

"Indeed, Mr. President, federal courts have upheld laws defining marriage as between man and woman; have held that such laws do not violate the United States Constitution. That fact must be made today for the record.

"With respect to the draft, Mr. President, I have the following reasons for opposing it. First, Mr. President, to paraphrase Yogi Berra, 'This is deja vu all over again.' Last year with the single chairmanship system in place, the Senate refused to give the voters a clear, clean constitutional amendment to vote on. For the voters, it was a take it or leave it proposition -- a lose-lose situation. This year, with a dual chairmanship in place, the Senate draft again refuses to give the voters a clear, clean constitutional amendment. It is again lose-lose. The Senate again turns its back to the people. The Senate again is intransigent; the Senate is again the obstacle.

"Secondly, despite all the lofty talk of hearing the voice of the people in the 1996 elections, the Senate draft speaks to the contrary. It says to the voters, 'We have eyes, but we do not see; we have ears, but we do not hear.' This past Tuesday, there was a lively debate here on the floor regarding procedures followed by the Judiciary Committee in passing House Bills 117 and 118. One of the chairs of the Judiciary Committee, in defending the Committee's vote is quoted in the newspaper as saying, 'If you don't like what happened, go change the Rules, but it is simply wrong, wrong, wrong to complain when you don't get what you want.' Mr. President, no branch of this government has the right to deny the people their ownership of their constitution.

"With respect to the Supreme Court ruling in Baehr vs. Lewin, the people of Hawaii have been consistent and persistent in their efforts to get a constitutional amendment, to change the rule. And it is wrong, wrong, wrong for this body to deny the people their right to vote on their constitution. It is wrong to deny the people of Hawaii the right to define what their constitution is, what it means. And it is wrong for this body to submit to the voters an amendment which leaves the people with this choice: If you are among the vast majority who support traditional marriage, vote 'yes' and you lose; vote 'no' and you lose.

"Finally, Mr. President, while it may seem ironic, I am compelled to raise the constitutional issues. I believe the Senate draft raises serious constitutional questions. First, the Baehr court ruled on Article I, Section 5 of the State Constitution. The Senate draft, however, leaves this article untouched and unamended, and instead amends Article IX of the Constitution, relating to public health. Whether such an indirect focus on the erroneous ruling in Baehr is sufficient to overrule Baehr is in question.

"Second and more importantly, Mr. President, under the Senate draft, the state's ability to reserve marriage to couples of the opposite sex is not effective upon ratification of the amendment by the voters. Instead, it is effective if, and only if, unspecified present and future laws of this state, quote (quoting from the Senate draft) 'insure that the application of this reservation does not deprive any person of civil rights on the basis of sex' end quote. In short, the effectiveness of this amendment is contingent upon some court in some yet to be initiated lawsuit, ruling on some yet to be specified laws, does not deprive some yet to be named individual of some yet to be defined civil rights.

"Mr. President, pursuant to Article XVII of the Hawaii Constitution, only one condition must be met in order for the

constitutional amendment to be effective -- the ratification of the amendment by the voters. Nothing more is required -- nothing more. We are not empowered to burden this simple constitutional ratification process by imposing additional conditions which must be met before the amendment is effective. Indeed, given the language of the Senate draft, one can legitimately question whether this amendment will ever have an effective date. And again, in this regard the voters lose

"Mr. President, the previous speaker alluded to the people -- the 1996 elections when the voters spoke. It was a message filled with anger and frustration -- anger at legislative logjams on key issues; frustration because of their belief that legislators do not listen and do not respond. The same-sex marriage issue was a flash point for this anger and frustration. Today we have before us a Senate draft which is no different in form and substance than what we had last year. To those who would argue that the Senate draft represents progress, I would respectfully submit to you that it would be true, only if progress is defined as one step forward and one step backwards. Mr. President, motion alone does not constitute progress.

"Deja vu all over again.' Last year I spoke in vain in support of a clean constitutional amendment. This year I make the same plea because this draft does not constitute movement towards the House position of 1996 or 1997.

"Deja vu all over again' -- Yogi Berra's words may well be the caption for the 1998 election.

"We have before us a Senate draft which is legally suspect, which is of questionable merit and which has the great potential to create yet another impasse. And I deeply regret, I deeply regret, despite all of the hopes and talk and speeches we made about hearing the voters, I deeply regret that we have not heard. I deeply regret that I am unable to support Senate Draft 1 and I urge my colleagues to vote 'no.'

"Thank you, Mr. President."

Senator Sakamoto rose and stated:

"Mr. President, honorable colleagues in the Senate, the Legislature has been wrestling with this same-sex marriage issue for the past four years, ...

The Chair interjected:

"Senator, are you speaking in opposition?"

Senator Sakamoto replied:

"I am speaking in opposition, Mr. President.

"I'm happy that some in this distinguished body have shifted their position to come to share the House of Representatives' view that it is time to put the same-sex marriage issue before the voters. The people of Hawaii deserve a clean solution. They deserve a clear choice.

"Mr. President, and honorable colleagues in the Senate, I have strong reservations about the language in the measure before us. As it now stands, it gives an unclear choice. It will not make it easy for the voters to decide the issue. It will make it harder for the people to discuss the issue of same-sex marriage in a clear and straightforward manner. I fear the lack of a clear choice will impair the democratic process.

"Mr. President, and honorable colleagues, many of us have expressed our strong support for traditional marriage and the family. We acknowledge that the family is the foundation of our society, that Hawaii's future lies in strong families and our best hope is in strong families. Let our legislation clearly reflect that commitment.

"Mr. President, and honorable colleagues, let us give the people of Hawaii a clear choice. Let us give the people of Hawaii a clear choice in the proposed constitutional amendment. I strongly believe the voters want and deserve a clear choice on this matter. Therefore, I will vote 'no' on this measure.

"Thank you, Mr. President."

Senator Bunda, also rising to speak against the bill, then said:

"Mr. President, I rise to speak in opposition on this matter.

"Mr. President, I want to make the record clear to this body that I strongly favor a constitutional amendment, but not this one -- not this one as written in H.B. No. 117, S.D. 1.

"I firmly believe that any constitutional amendment, if compromised like this proposal, will diminish or have no effect on the case that is before our courts. If this measure is passed and further compromised with the House in conference, I believe we should simply defer to the courts because that's the kind of effect the contents of this bill would have on this whole process -- zero, Mr. President. We may as well call a spade a spade and let same-sex marriage become law as legislated by the courts. It is that simple.

"Mr. President, at this point, who's got the trump card? The Legislature or the Judiciary. Of course, my preference would be to accept the House's language of a constitutional amendment because it is simple and clear that marriage is between a man and a woman. I have strong feelings that same gender marriage is not a civil right. It is to me a choice of sexual behavior that is contrary to the laws of nature. I'm just as tired as you are on this issue and yes, let us all face the fact facing that's suggested by the committee chairs of Judiciary.

"In spite of hundreds of pages of testimony, I have not heard enough said in the legal defense of traditional marriage. To date, Mr. President, this issue is totally one-sided. The Judiciary has asserted control of the issue. It has failed its citizens. Over the past six years, virtually all, virtually all legal reviews and arguments fail to defend traditional marriage. So, no wonder the only defense, really, has been on religious or scientific way.

"The state's argument against same-sex marriage is weak. There is no substantial defense on the historical and prevailing legal policy of all states allowing only heterosexual couples to marry. And everyone knew that we were going to lose, or the AG was going to lose. This whole court case was a 'shibai.' It was one-sided with no thorough legal defense from the Judiciary Committee throughout the United States defending traditional marriage. So the answer is to use the only tool left in the process, and that is sending a strong message to the courts through a constitutional amendment with no strings attached.

"Simple and clear is what the people want, Mr. President. The constitution is an expression of the people's will, not the will of the courts. The courts' duty is to interpret the law, not create it. The citizens of our state are the ultimate constitutional authority. The bottom line, Mr. President, is that we need to let the people decide.

"For these reasons, Mr. President, I will be voting, 'no.' This proposal is not a choice that is acceptable to me or the citizens of this state. A majority of the people of Hawaii want a constitutional amendment that is not compromised. We are not paying attention to the people who are electing us.

"Thank you, Mr. President."

Senator Baker rose to speak in support of the measure as follows:

"Mr. President, I rise in support of H.B. No. 117, S.D. 1.

"I'd like to commend the Judiciary co-chairs and the members of the committee for dealing with this very emotional issue in a manner which I think is both reasonable and responsible. On an issue where the rhetoric often tends to be vitriolic and emotions can get very inflamed, I think our committee, this year, has acted in a manner that moves the issue forward, gave all parties an opportunity to state their case and then came up with a solution that will resolve the matter in a manner that, in fact, gives us a win-win situation.

"Mr. President, under the guise of bowing to the people's will, we cannot trample on the rights and concerns of citizens who just happen to be different than the majority. Protecting a minority from tyranny by the majority is something that's been the hallmark of our country from its very inception and is certainly something that we all hope remains embodied in this the Aloha State.

"Mr. President, I think that this bill and the one that we will consider next, taken together, give us the best possible hope for resolving a very, very difficult and contentious issue. I'm proud to vote in support of this measure."

Senator Matsunaga rose in support of the measure and stated:

"Mr. President, I rise in support of this measure.

"Mr. President, the opposition to this bill today appears to focus on three questions which I would like to address.

1. Will the Senate draft finally and permanently preserve traditional marriage?

"Yes. Even lawyers, constitutional experts on the other side concede that empowering the state to regulate marriage in Article IX of our Constitution will have the effect of constitutionally affirming opposite sex marriage limitations.

"Further, our 'provided that' language, which has been so warmly received here today, that follows the restriction on marriage is absolutely necessary -- that language is absolutely necessary -- to satisfy the Supreme Court's concerns raised in the Baehr decision. And furthermore, what in the heck is wrong with making sure that people are not deprived of their civil rights on the basis of sex? The following language is taken directly from the Baehr decision:

"The applicant couples correctly contend that the Department of Health's refusal to allow them to marry on the basis that they are members of the same sex deprives them of access to a multiplicity of rights and benefits that are contingent upon that status.

'For present purposes, it is not disputed that the applicant couples would be entitled to all of these marital rights and benefits, but for the fact that they are denied access to the state-conferred legal status of marriage.'

2. Will it prevent further lawsuits?

"Probably not, but I challenge any lawmaker to develop a suit-proof law. Attorney creativity, as we attorneys know, knows no bounds and for every expert who says that his or her formulation will prevent further suits, there will be two who will invent a cause of action. This bill, as we received it from the House, certainly would not have prevented further lawsuits. I wish it were that simple. The only way to prevent any further suits would be to absolutely foreclose access to the courts. The original House version of this bill proposed to do just that -- limit the jurisdiction of the courts to interpret our constitution.

"To do so violates a very fundamental principle of our democracy, and that is -- the separation of powers. This is a fundamental principle in both our federal and state

constitutions, as well as a keystone to the success of our democratic society. Although some may believe it more politically convenient to attack this principle, we believe it is wrong and unconstitutional for us to strip our State Supreme Court of its jurisdiction to interpret the laws and the constitution.

"A brief review of some typical failed federal attempts to limit Supreme Court jurisdiction clearly indicates why the separation of powers should be jealously protected:

- (1) In 1958 there was an attempt to insulate from federal judicial review Senator Joe McCarthy's handling of the Un-American Activities Committee.
- (2) In 1964 there was an attempt to strip the Supreme Court of jurisdiction to review state reapportionment (one person one vote).
- (3) In 1968 there was an attempt to prohibit the courts from ruling on the constitutionality of voluntary confessions (Miranda decision).
- (4) In 1968 there was an attempt to strip the federal courts of jurisdiction regarding state obscenity prosecutions.

"All of these aforementioned attempts failed miserably. As these examples demonstrate, attempts at heavy-handed responses to unpopular judicial decisions are usually misguided and thus, we believe that we are better served by defending this fundamental structure of three co-equal branches of government.

3. Isn't the civil rights proviso in our Senate draft just another way to legalize same-sex marriage or domestic partnerships?

"No. The intention of the proviso is to ensure the extension of all reasonable and appropriate rights and benefits to couples other than those permitted to marry.

"House bill 118 demonstrates how this would work. In this companion measure, we have recognized the government's interest in preserving traditional marriage by excluding those rights and benefits relating to marriage, divorce, parentage, adoption, premarital agreements, mutual support, community property, dower and curtesy, and evidentiary privileges.

"And because the state has a legitimate and substantial interest in this exclusion, it will stand for as long as this Legislature so chooses.

"Thank you, Mr. President."

Senator McCartney added his support of the measure as follows:

"Mr. President, I rise to speak in favor of this measure.

"First of all, Mr. President, I would like to commend all the members for this debate today. I think it's a good day for the Senate that we can hold our strongly held beliefs, discuss them on the floor of the Senate, and take a vote before the people of Hawaii who elected us into office. I think it's a good day. I also think it's a positive day. Who would have thought during the election of 1996 that this year on day 15 of the legislative session the Senate would be passing a bill, a House bill, and go into conference on this bill on day 15. I think that's positive, Mr. President.

"Secondly, for this body, I think it's positive that last year there was not even a committee position on this bill. It was a group of us who were conferees that took a position on it and it failed in conference. But we now have a committee position and today we are taking a position as the Senate. I think that's positive and a step forward. So I would like to commend

everybody for working on this bill. This is not the last series of debates that will take place on this bill. We need to work with the House, to dialogue with them, and to come back with a conference draft that we can live with. I think that is very important.

"For me, Mr. President, on this bill, it's been a journey. I've learned many things on this bill. My original position on this bill was to simply support the constitutional amendment. In examining my position and searching my soul and hearing all the testimony and the discussions, it was the easiest thing for me to do -- to go along, to get along because that's what the will of my community wanted. But the more I heard the testimony, the more I listened to them, the more I knew that wasn't my position; that I could not support that for the reasons that they were saying the bill needed to be supported

"Mr. President, I believe that our constitution is a precious document. It's a document that has stood the history of time and has produced the greatest country in the history of the world, and that document means a lot. And the equal protection clause is the heart and soul of that document which gives everybody the ability to be treated equally and fairly even though you're a minority. And I think that it is very important for us to realize that the tyranny of the minority needs to be protected from the tyranny of the majority. And that's an important principle that we must remember.

"And secondly, I also believe that Hawaii is a special place. It's a place where all of us are minorities. All of us here, our ancestors and whoever we are, we are minorities. And I think Hawaii has a special gift where we tolerate differences. We respect others and we have a balance and we live in aloha spirit. I also believe, on a personal level, that I have a hard enough time living my life according to my code, my integrity and what's right, let alone judge others. And in my opinion, Mr. President, what we need to do in Hawaii is to live our lives with our own personal integrity and allow others to do the same as long as it doesn't hurt anybody. And I don't think that this hurts anybody.

"This bill has a balance. It attempts to address the need to preserve traditional marriage because the State of Hawaii is uncomfortable with it, but it also recognizes the delicate balance of protecting people's civil rights and equal rights. And today, Mr. President, I think it's so important to say that, you know, I support the courts' decision; I think that their interpretation of the constitution is right. And I also believe that what's at the fundamental issue of this bill is how you view others with differences, and if you believe that those differences affect you, then you have a hard time. And I think, Mr. President, what we have to do is go beyond that and say that this is the State of Hawaii where we tolerate our differences.

"So, Mr. President, I'm proud to support this measure even though it's unpopular, even though it's misunderstood, but I believe it's the right thing to do.

"Thank you."

Senator Anderson then rose in opposition and said:

"Mr. President, I'm opposed to this piece of legislation and I think that the Senator from Maui, Senator Baker, is right. It's an emotional issue for many. I'm going to try to make sure that it's not emotional for myself.

"I'd like to let our Senator from Kaneohe remember that the constitution was ratified by the people. It's a people's document. They have asked you this time not to vote for them. They have asked for the right to look at that constitution and vote for themselves again. It is not your responsibility to vote for them this time. You are here because they voted for you and they asked you to vote for them. Now they have asked for that vote back. That's all they've done. And I think that that's fair.

"But I think that what made me stand up today, Mr. President, more than anything, was that some of my staff people told me that if you vote against this, you won't be on the Conference Committee. I would be damned if I would rather not be on Conference Committee after listening to all the attorneys today.

"What they're saying, and I will take this from my chairman when he first stood up, he said he shot this down because 117 from the House was unconstitutional. Yet, it's all right, he said, if it's unconstitutional now and we're going into conference, we can fix that up. We're going to sit there and argue with attorneys on both sides what's constitutionally right, what's wrong, who's going to benefit and who's not. I don't want to sit on that Conference Committee. I don't want to sit there and try to tell them that I believe with just two days of research our attorneys found all kinds of flaws.

"No matter which side of the aisle I sit on, or which side I believe is right or wrong, I think that this document is an insult to both sides. I would rather defer it, sit down, look at it really responsibly, and come up with something that's constitutionally right for both sides. If that's what you want, then come up with something that's going to stand up. I'm not going to vote for anything that's unconstitutional and an attorney tells me, 'Well, we have differences of opinion. When we go to school, that's the way we learn; we can fight for this side or that side.' As a businessman I am told, in other words, it's all right if you lose a million dollars because sometimes I can fight for you and sometimes I can go against you. For that reason, Mr. President, I'm opposed to this type of legislation where everybody sits down and says, you can go ahead and vote for this and it's all right even if it's flawed. And I think that the people of Hawaii have had enough of that.

"Thank you very much, Mr. President."

Senator Iwase rose on a point of inquiry as follows:

"Mr. President, point of inquiry. I'd like to see if the chair of the Judiciary Committee, the Senator from Palolo, would yield to a few questions."

The Chair posed the question to Senator Matsunaga who answered in the affirmative. Senator Iwase then inquired:

"The House bill, Senate draft, references civil rights. Is it your position that the right to marry is a civil right?"

Senator Matsunaga replied: "No."

Senator Iwase continued:

"It is not a civil right? The right to marriage is not a civil right?"

Senator Matsunaga responded:

"Our constitutional scholars have told us and the Senator from Wahiawa also stated on the floor that marriage is not a civil right. The constitutional expert from the University of Hawaii believes that marriage, the actual license itself, is not a civil right and this constitutional amendment as set forth would have the effect, if ratified by the people, of preserving traditional marriage."

Senator Iwase continued his line of questioning as follows:

"If it is not a civil right, then why do we have the proviso clause, which states 'shall be effective only if the laws of this State ensure that the application of this reservation does not deprive any person of civil rights on the basis of sex.' What civil rights are you referring to?"

Senator Matsunaga replied:

"The civil rights that we're referring to are those which are set forth in H.B. No. 118, which we are going to debate shortly."

Senator Iwase then asked:

"If marriage, in your view, is not a civil right, why is there a need to include this proviso in H.B. No. 117 when, in fact, we're dealing with it in a second bill, H.B. No. 118?"

Senator Matsunaga answered:

"It's necessary because of the actual language I earlier quoted from the Baehr opinion. To put it as plainly as possible, H.B. No. 117, as we received it from the House, would only deal with half the issue. As we revised it, it is a holistic approach to deal with both issues raised in the Baehr decision. The first issue obviously is the refusal to grant a marriage license; that license itself. The second issue is the rights and benefits that flow because of that marriage license. Now, H.B. No. 117 does not address the full issue, and that's why we needed to amend it."

Senator Iwase then inquired:

"Senator, if it's not a civil right, the state is free to do anything it wants to do with respect to a marriage license, would it not? What rights would be violated?"

Senator Matsunaga replied:

"I'm sorry, I don't understand your question."

Senator Iwase continued:

"If you limit marriage to a man and a woman, and such a limitation does not violate a civil right because marriage is not a civil right, the state is free to do anything it wants to do in defining marriage, can it not?"

Senator Matsunaga responded:

"So why are you objecting to the language if it's civil rights?"

Senator Iwase interjected:

"Well, why is it included here? Why is it necessary, why is it there?"

Senator Matsunaga replied:

"Just as I earlier stated. Because, it's to protect other rights and benefits."

Senator Iwase continued:

"One other question, is it your position that it is a violation of the principle of separation of power for any body -- legislative, council -- to define the language it is using in its enactment?"

Senator Matsunaga answered:

"It is a violation of the separation of powers for the Legislature to try and tell the courts how to interpret the constitution."

Senator Iwase then asked:

"Can we define what we mean by the words we use. Are we prohibited from doing that?"

Senator Matsunaga responded:

"We are not prohibited from defining the words that we use. But we have a delicate balance between the three branches of government. The Legislature enacts the laws; the Judiciary interprets laws; and the Administration enforces it. And it is wrong for one branch to extend into the others."

Senator Iwase then said:

"Thank you, Mr. President. Just one comment, I am somewhat surprised to learn that it is now the position, I have thought all along that this whole controversy swirled around the belief, the belief that marriage was a civil right and therefore we had to go through all of these obstacles in order to clear certain hurdles which are brought up because of the issue of civil rights. I'm pleased that there is a concession, at least, that marriage is not a civil right. And I believe it now gives us greater freedom to enact a clean constitutional amendment without worrying about *Baehr vs Lewin*. I'm also pleased that we are free to define the words we used in the enactments that we pass."

"Thank you, Mr. President."

Senator Matsunaga then rose and said:

"Mr. President, I rise in rebuttal. I just want to ask a question to the Senator from Mililani."

Senator Iwase having answered in the affirmative, Senator Matsunaga continued:

"Does this now change your position? Are you going to support the bill now?"

Senator Iwase replied:

"Which bill are you referring to?"

Senator Matsunaga responded:

"House Bill 117. Now that we made that concession that marriage is not a civil right, does that mean that you will make a concession that you will ..."

Senator Iwase interjected:

"There are several other objections that I pointed out and, unfortunately, we can discuss this further, but I don't wish to prolong the debate. Thank you very much."

Senator Matsunaga added:

"It didn't hurt to ask."

Senator Metcalf then rose and said:

"Mr. President, I have some brief remarks in support of the measure I would like to insert in the Journal."

The Chair having so ordered, Senator Metcalf's remarks read as follows:

"Mr. President, I speak in favor of this measure. Dag Hammarskjöld once observed that 'everyone in his own eyes has a good case, and there must be some element in his case that must be regarded as right.'

"It is in this spirit that I support this proposed constitutional amendment.

"It appears clear that in the discussion regarding the extension of marital rights to same-sex couples, that many in our community wish to directly participate in the debate on this matter and have their voices heard. At the same time it is of benefit to give thought to the humanitarian view of life espoused by Albert Schweitzer, a view guided by a respect for

the individual out of which can be deduced a demand for the greatest possible freedom for the individual to live life as he or she sees fit on the one hand and the demands for social justice in one form of equal rights and equal possibilities for all on the other.

"This proposed amendment together with H.B. No. 118, H.D. 1, S.D. 1, will allow for discussion and the expression of the public's voice with respect to the extension of marital rights while promoting social justice in the form of equal rights and possibilities for all lawful members of our community on the other."

At this time, Senator Anderson requested a Roll Call Vote be taken.

Senator Tam rose to support the measure and said:

"Mr. President, I vote in favor of this bill with reservations, and what I'm going to try to do is draw my rationale in a less emotional climate.

"This issue has been around for many years. It has been very, very emotional. I've seen whereby within my community, neighbors fighting each other and they don't talk to each other after a while, and we need to resolve this issue.

"Let me state this. I'm in favor of moving this bill forward because I respect the legislative process. In essence, we have 60 working days. This is only the first part of the legislative process, not even half way through. And I know that through communication we can work on, in terms of proper language, this legislation of an emotional issue.

"We have two issues before us. The first issue is the definition of marriage. When I was in para-legal school within the State of Hawaii, I learned that one of the things we had to do was define the terminology. And on this bill, H.B. No. 117, we don't even define what marriage is though we all speak about traditional marriage or anti-same-sex marriage. Let me make it very clear -- I am not for same-sex marriage. (So newspapers and news media, please print it correctly.) I don't think any of us are basically for same-sex marriage.

"Secondly, in terms of the issue of civil rights, we have a constitution that is very liberal here within the State of Hawaii. And it's more liberal, per se, than the Constitution of the United States, I guess because of our multi-culture heritage and whatever it may be in the State of Hawaii, and we have to make sure that we protect the rights of people. And maybe this is where the next bill comes along to help define, in terms of civil rights and so forth.

"My reservations are based on the following: The wording is not to my desire, as I said earlier, and it leaves an open door for attorneys to file actions in court. And if that's what we want then we pass any type of bill per se. Basically, attorneys can cause a lot of confusion and we need to find the proper language. I think that if we had the time to discuss this more we can find the proper language. And please pardon me for the members who are attorneys, I didn't mean to pick on you but I've seen it in terms of lot of interpretations can be left open, and we need to define definitions and so forth.

"Also, if I may state, the language is ambiguous. The English language, as I was told, and I speak Chinese as my second language, the English language is the most difficult language worldwide. It's a complicated language. You have many terms that mean the same thing or differently, and it's much easier, to be honest with you, if you would try to learn to speak Chinese than English.

"Also, I wish to emphasize that if this bill dies, that ends the discussion this year. Keep in mind that you will have a very emotional community out there. They will blame us whether

you're for or against same-sex marriage. So we need to keep the communication ongoing.

"Thank you."

Senator Solomon rose again in opposition and said:

"Mr. President, I did rise earlier and spoke in opposition, and I am still in opposition. However, in the discussions in this body, Mr. President, and I'm speaking as and on behalf of Native Hawaiians, I find it very distressing when people say that the spirit of aloha and aloha as impugning or insinuating that the Hawaiian's culture was a very tolerant culture, that we didn't have very strong beliefs in certain traditional values.

"The Hawaiian nation was a very strict nation. It had very strict laws. And I don't know of any marriage laws that existed in ancient Hawaii that allowed persons of the same gender to get married. It really distresses me when it is said that Hawaiian Culture is tolerant and I'm hoping that as my colleagues use Hawaiian terminology and phrases, that they do so with due respect to the culture from which that language came from.

"I agree with the previous speaker who stated that he has problems with the Chinese language; i.e., with the actual meaning of the words; a similar situation that often exists with the Hawaiian language. I want to make it clear that the Hawaiian nation was a very, very strong nation that had strong laws and traditional values and defined marriage as that between a man and a woman.

"Thank you, Mr. President."

Senator Levin rose to speak in support of the measure and said:

"Mr. President, I rise to speak in favor of this bill.

"Mr. President, I believe in the strong tradition in this country that marriage is a union of one man and one woman. But I also believe in other strong traditions in this country, including our tradition of respect for equal protection under the law.

"It was not this body, it was not this Legislature, that raised the issue of same-gender marriage. It was the court -- the traditional and appropriate and ultimate protector of human rights and constitutional rights -- that identified for us that equal protections were not being accorded to all our citizens when the Department of Health denied a marriage license to a same-sex couple. Even then, the state was given the opportunity to show some compelling state interest as to why the marriage license should be denied. The state attempted to do that and, as far as I know, it made its best effort to do that through the attorney general's office.

"The Circuit Court was not persuaded, and it should not be forgotten that one of the reasons we are discussing this issue today is that virtually no one thinks that the state can prove its case in the Supreme Court either.

"In other words, we've been forced to confront our prejudices and the discriminations that have been traditional in our society. I think that traditional discrimination is one tradition that is not worthy of being maintained.

"The Senate position to protect traditional marriage while assuring equal protection under the law, I believe, is the right position. Whether the language before us today constitutes the magic words that would meet those two goals, is what we are now debating. And I think that based on the discussion today, we can gather that we have not found the right formulation yet. But I commend the Judiciary Committee for its efforts and I will support this bill enthusiastically because I believe it is a

step toward meeting the twin goals that we are all trying to achieve.

"Thank you."

Senator Anderson rose again in opposition to the measure and said:

"Mr. President, a short rebuttal, if I may, on what our learned colleague said.

"I'm still in opposition and one of the things that bothers me is that I don't believe that the courts were right. Had I been fighting, I would not have been where the children are going to be brought up by an individual. No one says that a child is not going to be brought up better or worse if it's a male or female or two people.

"There's 300 bills and that's what I tried to tell my colleague across the aisle. The people want to vote because it's 300 bills that you and I are responsible for. If we change laws, it should be for everybody. When my learned colleague talks about same-sex marriage, I want to include everybody. If I am going to change 300 laws, which is my responsibility, I want to do it properly. I want to include everybody.

"Just because you have an attorney that you put a black robe on, doesn't make them the most intelligent people and now they understand everything. So I am supposed to say that because this judge made a determination, I have to believe in that? That's not fair. That's your opinion of looking at the way a person is as a judge. There are many good judges. I'm not disputing that he is looking at what he was given, but I didn't even think that we fought a good case, and I'm not an attorney!

"For that reason, I'd vote against this bill and would hope that all of my colleagues do. Thank you very much."

The motion was then put by the Chair and carried, H.B. No. 117, S.D. 1, entitled: "A BILL FOR AN ACT PROPOSING A CONSTITUTIONAL AMENDMENT RELATING TO MARRIAGE," having been read throughout, and Roll Call vote having been requested, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 10 (Aki, Anderson, Bunda, Ige, M., Iwase, Kawamoto, Sakamoto, Slom, Solomon, Tanaka).

H.B. No. 118, H.D. 1, S.D. 1:

Senator Chumbley moved that H.B. No. 118, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Matsunaga.

Senator Matsunaga rose in support of the measure and said:

"Mr. President, I rise in support of this measure.

"Apart from the constitution itself, I believe that America's commitment to fairness and equality is best captured in the words of Dr. Martin Luther King:

'I have a dream,' he said, 'that someday my children will be judged not by the color of their skin but rather by the content of their character.'

"And it is a daily challenge that we Legislators make real this dream -- to ensure that distinctions imposed by the law are based on genuine and substantial governmental interests and not based on fear, ignorance, or unreasoned prejudice.

"The issue addressed by H.B. No. 118 is not one which easily fits into this formula. On the one hand, we are compelled to preserve and protect one of our peoples' most cherished social institutions -- that of traditional marriage. And with this duty arises other substantial governmental interests -- these

include respect for the authority of the federal government and respect for the autonomy of our sister states.

"On the other hand, we must ensure that we do not punish people for exercising their most fundamental of all human, rather than governmental, rights -- their right to choose and support their life partner.

"Our governmental structure extends hundreds of benefits to married couples because we believe that our society and our state are benefitted by relationships based on mutual care and the pooling of resources. Our examination of this issue convinces us that there are basically three categories of marital benefits.

"First, there are those benefits and burdens which have evolved from the traditional understanding of marriage. These include those found in our laws relating to marriage, divorce and child custody, parentage and adoption.

"Second, there are those laws that acknowledge the practical benefits and burdens of shared lives. Marital partners are thus legally permitted to share in what each of us know to be the critical decisions of life: health care, inheritance, home ownership, hospitalization and care, insurance, retirement benefits, and the disposition and treatment of a loved one after he or she has passed away.

"Third and finally, we have taken pains to ensure that families are not punished for pooling resources. Our tax code thus extends special treatment to avoid as much as possible a marital penalty.

"The issue we vote upon today is simply this: Which of these benefits will we keep from some of our citizens because our society at large is not prepared to acknowledge their choice of partners?

"In framing an answer to this question, we looked to guidance from the House of Representatives in its version of this bill and to our colleagues through S.B. No. 98, a measure co-introduced by ten of our Senators. These bills appear to acknowledge that there is simply no rational basis for withholding certain benefits from non-traditional couples. The Committee's bill incorporates the substance and apparent intent of these measures.

"In essence, this bill incorporates the original House bill's 'Reciprocal Beneficiary' model and language, supplements it with the rights identified by our colleagues in S.B. No. 98, and further includes those benefits which necessarily follow from those already identified. These ultimately include virtually all of the rights and benefits identified in the second and third categories which I identified -- reciprocal beneficiaries are permitted to share in what each of us know will be the critical decisions of joined lives, and detrimental tax consequences of resource pooling are avoided.

"What is not included, what we have specifically excluded, are those rights and benefits associated with traditional marriage. Our laws relating to marriage, divorce, and children are not, I repeat, are not included in the bill before us, because they are based exclusively upon our traditional understanding of that social institution. We are in agreement that Hawaii's people are not prepared to redefine traditional marriage. And it is in defense of that interest that these rights are not included in this bill."

"Thank you, Mr. President."

Senator Iwase rose in opposition to the measure as follows:

"Mr. President, I rise to speak in opposition to H.B. No. 118, H.D. 1, S.D. 1.

"Mr. President, I think a couple of things have to be made clear on the floor for the record. This whole idea of packaging of bills was necessitated because of our efforts to address Baehr vs. Lewin, the decision of the court and, until today, a belief that marriage was a civil right. And so you have to create these bodies of law in order to address it.

"The committee report references the same-sex marriage issue and my colleague from Palolo mentioned a bill, S.B. No. 98, which was submitted by ten members of this body, myself included. We submitted that bill as a package in order to bring closure to the Baehr case, but it is important to remember what we did.

"There were three bills. The first part, the first bill is a clean constitutional amendment preserving the right of the state to define marriage as between a man and a woman. It doesn't prohibit the state from defining marriage otherwise, but it does allow the state to define marriages between a man and a woman.

"Second, was an economic benefits package. The purpose of that bill was to deal with the issues of what kinds of civil rights may be violated because of the allegation that marriage was a civil right. If that is not true, then perhaps that bill is no longer needed.

"The third part of the package was a bill on hate crimes to address crimes committed against persons and property because of hate based on race, gender, sexual orientation, national origin, religion and ancestry. That bill is not before us. The economic benefits bill is somewhat before us. The constitutional amendment we proposed is not before us.

"So what we have here now is an attempt to put things together. But, Mr. President, without trying to be facetious, it is the old saying that a camel is a horse designed by committee. I think what we have before us is a camel and I can't support it today because we do not have the total package and also because I am now under the assumption that we are proceeding under the belief, as a body, that marriage is not a civil rights. So long as that is true, benefits provided by the government to support that institution, and all the benefits that are conferred to support that institution, do not violate anyone's civil rights.

"Thank you, Mr. President."

Senator Slom also rose in opposition to the measure and said:

"Mr. President, I speak in opposition to this bill.

"This bill transforms last year's domestic partners into something called reciprocal beneficiaries. But the questions that are left unanswered and the problems and the concerns remain the same. A few basic questions point out the difficulties.

"First, in this bill there are no estimates of just how many of these reciprocal beneficiaries, or let's call them RBs, would be created in Hawaii by this legislation. We do know, though, that the number would be critical, particularly if we examined past state adventures like the QUEST program. And just who could be an RB? There don't seem to be any limiting factors and, as a matter of fact, the legislation talks about individuals who are legally prohibited from being married. That raises a whole new concern. What about fraud for those people who try to claim benefits? The bill is silent in this area.

"Don't make any mistake -- this bill is definitely about benefits and money, not commitment. It has major long-reaching economic and tax implications. What would be the total estimated economic impact to the state, both the public and the private sector? The bill is silent. No one has discussed this matter. And can the committee or the President explain why this bill received no public hearing in the Ways and Means Committee, even though the tax implications and the economic

and revenue implications are very important and yet totally masked?

"With the economy already in a downturn here in Hawaii, the only state in which this poor condition exists, why would the authors introduce legislation to impose even more mandates on business, especially small business who constitute 98 percent of the total businesses in this state? And, Mr. President, we know that there are alternatives already. There are voluntary alternatives and voluntary treatment of individuals for benefits as evidenced nationally by such well-known and large corporations as Apple Computers, Ben and Jerry, Disney, IBM and others who voluntarily feel that they can afford to extend these benefits and to measure them. If the concept is so good, it should work voluntarily without the force that is required in this present bill.

"There are constitutional questions that are raised in this bill. There are unanswered questions, for example, having to do with residency and the definition thereof.

"But, finally, putting the ambiguity in the question of benefits aside, our real concern should be the impact of this bill on the children. My knowledgeable colleague from Palolo said that the children were specifically excluded from this bill and that they did that by design. But, Mr. President, many legal scenarios can be constructed, economic and judicial, that affect the children even though there is no mention of them. Are we going to say that these RBs cannot have children or cannot have RB rights to the children? The bill is entirely silent and I find that very curious. If we are truly concerned about the future of our keiki and our families, we should be solving existing problems, not creating new ones with benefit-absorbing RBs.

"We need to lead in this body. I should be standing here discussing the merits of much needed economic incentives and reforms so desperately needed in this community to insure job creation and more take-home pay, and an improved business climate, which is now ranked number 50 of 50 states; and also to insure the framework to help family values that we say we believe in. Yet we are continuing to waste time, divert focus and fool the public rather than listening to them. Mr. President, they don't want RBs, they want more take-home pay.

"Thank you very much, Mr. President."

The motion was then put by the Chair and carried, H.B. No. 118, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO UNMARRIED COUPLES," having been read throughout, and Roll Call vote having been requested, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 15. Noes, 10 (Aki, Anderson, Bunda, Ige, M., Iwase, Kawamoto, Sakamoto, Slom, Solomon, Tanaka).

ADJOURNMENT

At 12:33 o'clock p.m., on motion by Senator Ihara, seconded by Senator Slom and carried, the Senate adjourned until 11:30 o'clock a.m., Friday, February 7, 1997.