

JOURNAL
of the
SENATE OF THE
TWENTY - SEVENTH LEGISLATURE
of the
STATE OF HAWAI‘I

Second Special Session of 2013

Convened Monday, October 28, 2013
Adjourned Tuesday, November 12, 2013

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

FIRST DAY

Monday, October 28, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, was called to order at 10:05 a.m., by Senator Ronald D. Kouchi, Vice President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and was placed on file:

PROCLAMATION

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 M. Louie
 David M. Louie
 Attorney General"

The Roll was called showing all Senators present with the exception of Senators Dela Cruz, Green, Kahele, Keith-Agaran, Kim, and Wakai who were excused.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1 to 37 and 39 to 40) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 1, dated September 11, 2013, transmitting 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., was placed on file.

Gov. Msg. No. 2, submitting for consideration and confirmation to the Hawai'i Teacher Standards Board, Gubernatorial Nominee, LISA DELONG, term to expire June 30, 2016, was referred to the Committee on Education.

Gov. Msg. No. 3, submitting for consideration and confirmation to the Hawai'i Teacher Standards Board, Gubernatorial Nominee, SCOTT PARKER, term to expire June 30, 2016, was referred to the Committee on Education.

Gov. Msg. No. 4, submitting for consideration and confirmation to the Hawaiian Homes Commission, Gubernatorial Nominee, WALLACE ISHIBASHI, JR., term to expire June 30, 2015, was referred to the Committee on Hawaiian Affairs.

Gov. Msg. No. 5, submitting for consideration and confirmation to the Hawaiian Homes Commission, Gubernatorial Nominee, PATRICIA SHEEHAN, term to expire June 30, 2017, was referred to the Committee on Hawaiian Affairs.

Gov. Msg. No. 6, submitting for consideration and confirmation to the Hawai'i Medical Board, Gubernatorial Nominee, MARIA CHUN, term to expire June 30, 2017, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 7, submitting for consideration and confirmation to the State Board of Public Accountancy, Gubernatorial Nominee, DARRYL KOMO, term to expire June 30, 2017, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 8, submitting for consideration and confirmation to the Disability and Communication Access Board, Gubernatorial Nominee, PAULINE AUGHE, term to expire June 30, 2015, was referred to the Committee on Health.

Gov. Msg. No. 9, submitting for consideration and confirmation to the Disability and Communication Access Board, Gubernatorial Nominee, BRYANT YABUI, term to expire June 30, 2017, was referred to the Committee on Health.

Gov. Msg. No. 10, submitting for consideration and confirmation to the Mental Health and Substance Abuse, Hawai'i Service Area Board, Gubernatorial Nominee, FRANCES LYONS, term to expire June 30, 2014, was referred to the Committee on Health.

Gov. Msg. No. 11, submitting for consideration and confirmation to the Mental Health and Substance Abuse, Maui Service Area Board, Gubernatorial Nominee, ROBERT COLLESANO, term to expire June 20, 2014, was referred to the Committee on Health.

Gov. Msg. No. 12, submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, AMY ASSELBAYE, term to expire June 30, 2016, was referred to the Committee on Education.

Gov. Msg. No. 13, submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, PATRICIA HALAGAO, term to expire June 30, 2016, was referred to the Committee on Education.

Gov. Msg. No. 14, submitting for consideration and confirmation to the Board of Dental Examiners, Gubernatorial Nominee, DENNIS NAGATA, term to expire June 30, 2017, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 15, submitting for consideration and confirmation to the Emergency Medical Services Advisory Committee, Gubernatorial Nominee, JANE GREENWOOD, term to expire June 30, 2016, was referred to the Committee on Health.

Gov. Msg. No. 16, submitting for consideration and confirmation to the Kaneohe Bay Regional Council, Gubernatorial Nominee, JERRY KALUHIWA, term to expire June 30, 2017, was referred to the Committee on Water and Land.

Gov. Msg. No. 17, submitting for consideration and confirmation to the Enhanced 911 Board, Gubernatorial Nominee, MARK WONG, term to expire June 30, 2017, was referred to the Committee on Economic Development, Government Operations and Housing.

Gov. Msg. No. 18, submitting for consideration and confirmation to the Board of Pharmacy, Gubernatorial Nominee, MARY JO KEEFE, term to expire June 30, 2017, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 19, submitting for consideration and confirmation to the Board of Directors of the Hawai'i Public Housing Authority, Gubernatorial Nominee, MYOUNG OH, term to expire June 30, 2014, was referred to the Committee on Human Services.

Gov. Msg. No. 20, submitting for consideration and confirmation to the State Boxing Commission of Hawai'i, Gubernatorial Nominee, QUENTON BROWN, term to expire June 30, 2016, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 21, submitting for consideration and confirmation to the Language Access Advisory Council, Gubernatorial Nominee, REBECA ZAMORA, term to expire June 30, 2017, was referred to the Committee on Health.

Gov. Msg. No. 22, submitting for consideration and confirmation to the Board of Land and Natural Resources, Gubernatorial Nominee, SHAWN SMITH, term to expire June 30, 2016, was referred to the Committee on Water and Land.

Gov. Msg. No. 23, submitting for consideration and confirmation to the Kaho'olawe Island Reserve Commission, Gubernatorial Nominee, HOKULANI HOLT-PADILLA, term to expire June 30, 2016, was referred to the Committee on Water and Land.

Gov. Msg. No. 24, submitting for consideration and confirmation to the Natural Area Reserves System Commission, Gubernatorial Nominee, ULALIA WOODSIDE, term to expire June 30, 2016, was referred to the Committee on Water and Land.

Gov. Msg. No. 25, submitting for consideration and confirmation to the State Rehabilitation Council, Gubernatorial Nominee, DAVID FRAY, term to expire June 30, 2016, was referred to the Committee on Human Services.

Gov. Msg. No. 26, submitting for consideration and confirmation to the State Rehabilitation Council, Gubernatorial Nominee, ROLAND PRIETO, term to expire June 30, 2016, was referred to the Committee on Human Services.

Gov. Msg. No. 27, submitting for consideration and confirmation to the State Rehabilitation Council, Gubernatorial Nominee, JOHN KUWAYE, term to expire June 30, 2016, was referred to the Committee on Human Services.

Gov. Msg. No. 28, submitting for consideration and confirmation to the Advisory Board on Veterans' Services, Gubernatorial Nominee, HAROLD BUGADO, term to expire June 30, 2015, was referred to the Committee on Public Safety, Intergovernmental and Military Affairs.

Gov. Msg. No. 29, submitting for consideration and confirmation to the Board of Directors of the Agribusiness Development Corporation, Gubernatorial Nominee, DOUGLAS SCHENK, term to expire June 30, 2017, was referred to the Committee on Agriculture.

Gov. Msg. No. 30, submitting for consideration and confirmation to the Advisory Committee on Pesticides, Gubernatorial Nominee, L. DOUGLAS MACCLUER, term to expire June 30, 2016, was referred to the Committee on Agriculture.

Gov. Msg. No. 31, submitting for consideration and confirmation as the Director of the Office of Environmental Quality Control, Gubernatorial Nominee, GENEVIEVE SALMONSON, term to expire June 30, 2015, was referred to the Committee on Energy and Environment.

Gov. Msg. No. 32, submitting for consideration and confirmation to the Board of Private Detectives and Guards, Gubernatorial Nominee, KENNETH CHANG, term to expire June 30, 2017, was referred to the Committee on Commerce and Consumer Protection.

Gov. Msg. No. 33, submitting for consideration and confirmation to the Design Selection Committee for Art Work to Honor United States Representative Patsy T. Mink, Gubernatorial Nominee, ALLICYN TASAKA, term to expire June 30, 2017, was referred to the Committee on Technology and the Arts.

Gov. Msg. No. 34, submitting for consideration and confirmation to the Design Selection Committee for Art Work to Honor United States Senator Daniel K. Inouye, Gubernatorial Nominee, MAY CAZIMERO, term to expire June 30, 2017, was referred to the Committee on Technology and the Arts.

Gov. Msg. No. 35, submitting for consideration and confirmation to the Civil Process Server Working Group, Gubernatorial Nominee, DANIEL TOYAMA, term to expire June 30, 2015, was referred to the Committee on Public Safety, Intergovernmental and Military Affairs.

Gov. Msg. No. 36, submitting for consideration and confirmation to the Civil Process Server Working Group, Gubernatorial Nominee, RICHARD MITCHELL, term to expire June 30, 2015, was referred to the Committee on Public Safety, Intergovernmental and Military Affairs.

Gov. Msg. No. 37, submitting for consideration and confirmation to the Hawai'i Employer-Union Health Benefits Trust Fund Task Force, Gubernatorial Nominee, CLINT SAIKI, term to expire June 30, 2014, was referred to the Committee on Judiciary and Labor.

Gov. Msg. No. 39, letter dated October 22, 2013, transmitting a proposed draft of the marriage equity bill, was placed on file.

Gov. Msg. No. 40, letter dated October 22, 2013, transmitting proposed drafts of additional legislation to consider during this Special Session, was placed on file.

JUDICIARY COMMUNICATION

The following communication from the Judiciary (Jud. Com. No. 1) was read by the Clerk and was disposed of as follows:

Jud. Com. No. 1, submitting for consideration and confirmation, the nomination of LLOYD A. POELMAN to the District Court of the Second Circuit, State of Hawaii, for a term of six years, was referred to the Committee on Judiciary and Labor.

INTRODUCTION OF A SENATE BILL

On motion by Senator Espero, seconded by Senator Slom and carried, the following bill passed First Reading by title and was referred to committee, with Senator Slom voting "No":

S.B. No. 1 "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS."

Introduced by: Senator Galuteria.

Referred to: Committee on Judiciary and Labor

SENATE RESOLUTION

The following resolution (S.R. No. 1) was read by the Clerk and was disposed of as follows:

S.R. No. 1 "SENATE RESOLUTION AMENDING RULE 16 OF THE RULES OF THE SENATE OF THE TWENTY-SEVENTH LEGISLATURE OF THE STATE OF HAWAII."

Offered by: Senator Galuteria.

On motion by Senator Espero, seconded by Senator Slom and carried, S.R. No. 1 was adopted.

At this time, Senator Hee made the following announcement:

"Members of the Committee on Judiciary and Labor, there will be a meeting immediately following this session in the majority caucus room. It is imperative that you be present at the meeting. Thank you."

Senator Ige rose to speak on a point of personal privilege as follows:

"Yes, Mr. President, we have been summoned to convene in a special session to consider a bill on same-sex marriage. I support a bill to provide equal treatment for same-sex couples under state and federal law while protecting the First Amendment rights of churches and clergy. Typically, in a special session, the bills are agreed to before the start, testimony is pro forma, and we race to finish as soon as possible. I would just encourage all of us to step back to allow our communities to speak on these issues, consider their concerns, and make amendments as appropriate as we work to find the right balance between the rights of same-sex couples and the churches and clergy working in our communities. Thank you."

The Chair then made the following announcement:

"As a reminder to the members, a revised list of Senate standing committee assignments was distributed to all offices earlier this interim. The Clerk is directed to place the same in the Journal."

The following list of standing committees of the Senate and their respective chairs and members was revised on July 25, 2013:

AGRICULTURE

Senator Clarence K. Nishihara, Chair
Senator Ronald D. Kouchi, Vice Chair
Senator Donovan M. Dela Cruz
Senator J. Kalani English
Senator Laura H. Thielen
Senator Glenn Wakai
Senator Sam Slom

COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Senator Clarence K. Nishihara
Senator Glenn Wakai
Senator Sam Slom

ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

Senator Donovan M. Dela Cruz, Chair
Senator Sam Slom, Vice Chair
Senator Rosalyn H. Baker
Senator Suzanne Chun Oakland
Senator J. Kalani English
Senator Laura H. Thielen
Senator Glenn Wakai

EDUCATION

Senator Jill N. Tokuda, Chair
Senator Michelle N. Kidani, Vice Chair
Senator Mike Gabbard
Senator Russell E. Ruderman
Senator Sam Slom

ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
Senator Suzanne Chun Oakland
Senator Les Ihara, Jr.
Senator Sam Slom

HAWAIIAN AFFAIRS

Senator Maile S.L. Shimabukuro, Chair
Senator Clayton Hee, Vice Chair
Senator Brickwood Galuteria
Senator Michelle N. Kidani
Senator Sam Slom

HEALTH

Senator Josh Green, Chair
Senator Rosalyn H. Baker, Vice Chair
Senator Suzanne Chun Oakland
Senator Clarence K. Nishihara
Senator Sam Slom

HIGHER EDUCATION

Senator Brian T. Taniguchi, Chair
Senator Gilbert Kahele, Vice Chair
Senator David Y. Ige
Senator Gilbert S.C. Keith-Agaran
Senator Michelle N. Kidani
Senator Jill N. Tokuda
Senator Sam Slom

HUMAN SERVICES

Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair
Senator Michelle N. Kidani
Senator Brian T. Taniguchi

Senator Sam Slom

ADJOURNMENT

At 10:11 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, October 29, 2013.

JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senator Mike Gabbard
Senator Brickwood Galuteria
Senator Les Ihara, Jr.
Senator Malama Solomon
Senator Sam Slom

PUBLIC SAFETY, INTERGOVERNMENTAL AND
MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair
Senator Brickwood Galuteria
Senator Josh Green
Senator Sam Slom

TECHNOLOGY AND THE ARTS

Senator Glenn Wakai, Chair
Senator Clarence K. Nishihara, Vice Chair
Senator Les Ihara, Jr.
Senator Jill N. Tokuda
Senator Sam Slom

TOURISM

Senator Gilbert Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senator David Y. Ige
Senator Les Ihara, Jr.
Senator Sam Slom

TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Senator Will Espero
Senator Mike Gabbard
Senator Gilbert Kahele
Senator Gilbert S.C. Keith-Agaran
Senator Ronald D. Kouchi
Senator Malama Solomon
Senator Sam Slom

WATER AND LAND

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair
Senator Donovan M. Dela Cruz
Senator Les Ihara, Jr.
Senator Russell E. Ruderman
Senator Maile S.L. Shimabukuro
Senator Brian T. Taniguchi
Senator Laura H. Thielen
Senator Sam Slom

WAYS AND MEANS

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Senator Suzanne Chun Oakland
Senator Donovan M. Dela Cruz
Senator J. Kalani English
Senator Will Espero
Senator Gilbert Kahele
Senator Gilbert S.C. Keith-Agaran
Senator Ronald D. Kouchi
Senator Russell E. Ruderman
Senator Laura H. Thielen
Senator Jill N. Tokuda
Senator Sam Slom

SECOND DAY

Tuesday, October 29, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:33 a.m. with the Vice President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Dela Cruz, English, Kahele, and Kim who were excused.

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

At this time, Senator Chun Oakland introduced the following members of her staff who were seated in the gallery: Alisha Leisek, office manager; Tyrell Ma'ae, committee manager; Karissa Kinney, volunteer; and Arshak Gasparyan, intern from Armenia.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 41 and 42) were read by the Clerk and were placed on file:

Gov. Msg. No. 41 letter dated October 28, 2013, correcting the term of nomination for Gov. Msg. No. 4, Gubernatorial Nominee to the Hawaiian Homes Commission, WALLACE ISHIBASHI, JR., term to expire amended to June 30, 2017.

Gov. Msg. No. 42, informing the Senate that on October 28, 2013, the Governor withdrew GENEVIEVE SALMONSON, Gubernatorial Nominee as the Director of the Office of Environmental Quality Control, from consideration by the Senate (Gov. Msg. No. 31).

At 11:36 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:04 p.m.

STANDING COMMITTEE REPORT

Senator Hee, for the majority of the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1) recommending that S.B. No. 1 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the majority of the Committee was adopted and S.B. No. 1, entitled, "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, October 30, 2013.

Senator Shimabukuro rose to announce that the Committee on Hawaiian Affairs would be holding a hearing on gubernatorial nominees to the Hawaiian Homes Commission the following day at 10:00 a.m. in Conference Room 224.

Senator Hee rose to speak on a point of personal privilege as follows:

"Now that the committee report has been decked for Third Reading tomorrow, I wanted to take the opportunity to thank the members of the committee for the presence and longevity of being at the hearing, which was a long hearing. I also wanted to recognize the staff – my own staff, but also some of your staff which may have been involved because we tried to pull as many people that were available.

"I also want to thank the Senate Clerk. Many people have commented on how the committee hearing was run, and I am gratefully appreciative of that. I've received more emails about that, which is a new experience for me. I must candidly admit

that Carol Taniguchi and Jenn and her crew really did a terrific job in coming up with a way to move people quickly, but yet offer the time. I believe, quite frankly, she has set a standard that other committees will think long and hard about engaging in.

"And finally, I want to thank the people who testified, and the conduct and behavior of the testifiers on both sides. The hearing could not have been done as quickly or as effectively, in my view, but for the fact that people were aware of the proceeding. They evidently got the gravity of the issue at hand and were respectful, and really followed the instructions that were offered during the proceeding.

"The Sheriff Division did a terrific job. We wanted to show a visible presence because of the kinds of unfortunate situations that could have occurred as they have in the mainland. So, I do want to shout-out to Daryl Naauao and Ben Villafior. It was a long hearing, but a well-run hearing; and I think, for the most part, people had the opportunity to express themselves.

"Lastly, Mr. President, may I rise on a point of inquiry?"

The Chair responded:

"I am reluctant to grant it, but proceed, Senator."

Senator Hee continued:

"Now that the hearing is done, I wanted to offer my appreciation to the members, including those who are not on the committee who offered to sit in our seats because it was clear during the hearing that some of us had to leave to take care of biological needs, as the case may have arisen. It is safe to say that the absence was noticed by comments.

"But you know, one person that left for a while is dear to me. So, I was just curious, Mr. President, if you would ask the Senate majority leader because his absence was notable and really heartfelt, because any time he's not with us, there's a pain in all of us. I was wondering if the pain was shared. So, would you ask the Senate majority leader to explain to his colleagues, who I'm sure have an interest in his health and wellbeing; and if necessary, we do have a medical doctor who, interestingly enough, sits right behind him. So, would you ask the Senate majority leader what is on the minds of the committee members and, maybe by this time, all of the members of the Senate, because when he's gone, we miss him. Would you ask him to share with us, so we can carry his load with him, on where he was, what he was doing, how was the outcome, and can we exhilarate in some euphoric outcome as a result of his absence?"

The Chair responded that the majority leader had a scheduled same-day surgical procedure, but his dedication and commitment to the issue compelled him to return to the Capitol to participate in the public hearing until its completion. The Chair also invited the majority leader to respond.

Senator Galuteria rose in response to humorously inform the members of his condition.

ADJOURNMENT

At 12:12 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Wednesday, October 30, 2013.

THIRD DAY

Wednesday, October 30, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:38 a.m. with the President in the Chair.

The Roll was called showing all Senators present.

The President announced that she had read and approved the Journal of the Second Day.

At this time, Senator Baker introduced Jackie Young, former State Representative and Vice Speaker who was seated in the gallery.

Senator Ihara introduced Jocelyn Idriss, an intern from Hawai'i Pacific University.

Senator Slom introduced the following interns: Nadiya Pashkova from Ukraine; Iren Danielyan from Armenia; and Alyssa Turnbull from Waialua, O'ahu.

Senator Hee welcomed retired Hawai'i Supreme Court Justice Steven Levinson, and acknowledged his significant contributions to the discussions on same-gender marriage.

Senator Solomon rose to speak on a point of personal privilege as follows:

"I just would like to echo the remarks of the previous speaker. I, too, was at the time in the Legislature, and I want to pay my respects to the Honorable Steven Levinson and to all the many, many persons who did come forward to testify in support; and also to commend our Judiciary Chairman for being able to bring us to this moment. Thank you."

ORDER OF THE DAY

THIRD READING

S.B. No. 1:

Senator Hee moved that S.B. No. 1, having been read throughout, pass Third Reading, seconded by Senator Shimabukuro.

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

"Members of the Senate, I rise in support of the passage of Senate Bill Number 1.

"I wish to frame my support around two groundbreaking civil rights moments where religious overtones, implications and insinuations dominated the verbal and political landscapes of the day – just as they do today.

"The year was 1958. Eighteen-year-old Mildred Jeter, who was part black and part Cherokee Indian and twenty-four-year-old Richard Loving, a white man of Irish-English descent, journeyed from their hometown in Virginia to get married in Washington, DC. They returned to Virginia but their matrimonial bliss was ended abruptly five weeks later when, during the early morning hours in July three police officers entered their home through an unlocked door.

"The record indicates that the county sheriff and two deputies found their way into the couple's bedroom, shined a flashlight into their faces, and demanded to know what they were doing in bed together. When Mildred answered, 'I am his wife,' and Richard Loving directed the officers to the District of Columbia marriage certificate that hung on the bedroom wall the sheriff curtly informed them that their marriage was not

valid in the state of Virginia. He then arrested the bewildered couple and hauled them off to jail.

"The Lovings were charged with having violated the Virginia statutes prohibiting interracial marriage and leaving the state to evade that law. Richard and Mildred Loving plead guilty to the charges, and Judge Leon Bazile sentenced each to one year in the county jail, but suspended the sentence on the condition that they agree to leave Virginia and never return together for 25 years.

"Richard and Mildred Loving went to court to challenge their convictions, contending that the anti-miscegenation law of Virginia violated their constitutional rights to due process and equal protection. In 1965, Judge Bazile reaffirmed the validity of both laws and his original decision, concluding with the following remarks:

Almighty God created the races white, black, yellow, malay and red, 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 races to mix.

"On June 12, 1967 the United States Supreme Court ruled that anti-miscegenation laws violated Americans' Fourteenth Amendment rights to due process and equal protection of the law, and were thus unconstitutional. Chief Justice Earl Warren, an appointee of President Dwight Eisenhower delivered the Court's unanimous opinion by stating:

Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all of the State's citizens of liberty without due process of law. The fourteenth Amendment requires that the freedom of choice to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.

"In his concurrence, Justice Stewart reiterated his belief that 'it is simply not possible for a state law to be valid under our Constitution which makes the criminality of an act depend upon the race of the actor.'

"On June 12, 2007, just a little over six years ago, Mildred Loving – an active member of a Baptist Church, and widowed for 32 years from the man she fought so hard to wed legally – released a statement commemorating the 40th anniversary of the Loving decision. Titled, 'Loving for All,' Mrs. Loving proclaimed her belief that all Americans, regardless of race, sex, or sexual orientation, 'should have that same freedom to marry.' She ended her statement by saying, 'That is what the Loving case, and loving are all about.'

"My friends, the defamatory statements, aspersions and disparagements made by one group during the Loving case are eerily similar to the statements we have heard regarding this matter before us. Like same-sex couples today, interracial couples of the American past faced accusations that their relations were 'unnatural' and 'evil' and were 'corruptions' of what God had intended. The same assertions made in 1958 that God would punish Americans for violating divine law by marrying across the color line are not that different from those statements you and I received electronically, in writing and verbally two nights ago during the public hearing.

"Closer to home, the date of case number two was March 18, 1970. The place was here at these very chambers in Honolulu. The issue of that day was the approval of this nation's first law legalizing abortion, a diametric departure from century's old law of the Kingdom of Hawaii, whose punishment was \$500 and two years imprisonment at hard labor.

"In his message of what became Act 1 of 1970 Governor John A. Burns lamented the situation of personal attacks to him as a person. Governor Burns said:

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 non religious groups. I have felt that in the heated debates over the abortion question, 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. I have an obligation in such serious matters to defend my reputation, as Sacred Scripture reminds us: A good name is more desirable than great riches, and high esteem, than gold and silver, (Proverbs 22:1).

"Madame President, one of the repetitive comments your committee heard over and over again at the public hearing was that times and attitudes of society have changed with regard to same gender marriage and now is the time for this legislature to act.

"Similarly, in 1970, Governor Burns commented:

There is reported to be ample evidence that traffic in illegal abortions is considerable in Hawaii – as well as in other jurisdictions covered by restrictive abortion laws. It seems to me that to continue a breach of the law because of a change in the public's attitude on a moral question is inconsistent with the democratic philosophy that the rule of law should prevail at all times. If community standards have changed, we should then change the law rather than continue violating an outmoded law.

"Finally, I would note that when commenting on the role of public servants elected to office Governor Burns said, 'He must never let his private political and religious convictions unduly influence his judgment of all the people. He must be profoundly conscious of the meaning of the words, "the common good."'

"I raise these two examples for obvious reasons. I believe both examples provide a pathway for us today. Just as I believe this legislature's action establishing domestic partnerships, reciprocal benefits and civil unions have provided a pathway for today's discussion.

"This is a defining moment in all of our careers and we should embrace it.

"The purpose and intent of this measure is to recognize marriages between individuals of the same sex in the State of Hawaii. The intent is to ensure that (1) 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) 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. The intent also is to protect religious freedom and liberty by: (1)

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 (2) 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.

"In September of this year I was privileged along with three other members of this body to travel to Niihau, the last and only Hawaiian island where the native language and culture is alive 24/7 365 days of the year. There is no other place like it anywhere, and that fact is indisputable.

"While there we were given the opportunity to hear how the small community of perhaps a hundred or so felt threatened by "outsiders" whose ways and means posed a threat to their well being and survival.

"The four of us along with several others who journeyed to Niihau heard over and over from the Native Hawaiians that help was needed and we were the ones they looked to for that help in order to survive and endure as the last Native Hawaiian place.

"Towards the very end one of the owners of the island addressed us. He said, in a very soft voice that the maluhia of the island was at risk; that the maluhia was threatened and that the maluhia was at peril. And as he talked about the maluhia of the island his voice cracked with emotion.

"To most of us who understand Hawaiian the word maluhia means peace such as in the Christmas hymn Silent Night where the word maluhia is meant to mean 'peace'.

"But to Bruce Robinson and the native people of Niihau 'maluhia' means that everything is right, that all things are in order, and that no one needs to worry. He continued that so long as predators from Kaua'i were allowed to raid and pillage the natural resources of the near shore fisheries of Niihau, an island where their entire dependence for protein was upon and came from the sea, there would be no maluhia on Niihau.

"Members, with the passage of SB1 you define yourself as one who is committed to bring equality and justice to a community of our family, friends and neighbors who are our school teachers, administrators, small business persons, elected officials, lawyers, judges, athletes and veterans of the armed services who fight for the freedoms we enjoy today. By passing SB1 today you define yourself as one who has fought for the rights of everyone including all Americans.

"I respectfully and humbly ask that you join me in bring maluhia to this small community. I ask you to expand the meaning of aloha to truly include everyone regardless ..."

The Chair interjected:

"Excuse me, Senator Hee. I'm going to remind the gallery that you are guests of this chamber and that you must act accordingly, with proper decorum. Any audible conversation or demonstration, approval or disapproval, at these proceedings, either verbal or gesture, is a violation of Senate rules and the state law, and if it persists, we will ask that you be removed."

The Chair directed Senator Hee to continue his remarks.

Senator Hee continued:

"Thank you, Madam President. In finishing, members, I ask you to expand the meaning of 'aloha' to truly include everyone, regardless of his or her race, color, creed or sexual orientation. Thank you very much."

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

"Let me begin that I'm very happy, very honored, and privileged to be here in this legislative body as we do take up this very historic piece of legislation, this landmark legislation that will affect many future generations to come.

"Several sessions ago, I voted 'no' on the civil union bill passed by the Hawai'i Legislature. It was not an easy vote, since I felt both opponents and proponents had valid arguments. Regardless of my vote, I knew one side would be satisfied and happy, and the other side would be disappointed. That is the nature and outcome of some issues that come before us at the state legislature, and we move on to another day and other issues.

"I knew the possibility of same-sex marriage would come before the Legislature one day. Thus, I paid particular attention in the last few years to what was going on nationally and internationally. I read articles, watched talk shows, listened to pundits, and talked to constituents and other people interested in same-sex marriage, and especially individuals of faith. I witnessed other politicians evolve on this matter and knew I must be very open-minded when this issue came before us at the Legislature.

"As a person of faith, an individual born into and raised a Roman Catholic, and one who is a practicing Catholic today, I have had moments of deep reflection and thought. I have privately prayed, and have asked others to pray for me.

"Some people have asked me why I am voting 'yes' to same-sex marriage, if I am a Catholic. My answer is simple. I was elected to serve all people regardless of faith. Moreover, it is likely over my 14-year career in the State Legislature, people who have supported me included Buddhists, Hindus, Muslims, Jews, Mormons, atheists, and Christians. In regards to the Christian community, many are divided on the matter of same-sex marriage and there is no clear consensus. Recently, I met a gay Franciscan priest, a Catholic, and his words were encouraging and insightful. Pope Francis has also influenced me, and I am thankful that my church is led by a pope who is compassionate, open-minded, understanding, and merciful. I believe Pope Francis has changed the tone and the direction of the same-sex marriage discussion in my church, and for this he is a godsend.

"Some have asked why we don't allow the people to vote on this matter. Since statehood, we have elected citizens to the Hawai'i State Legislature to address issues such as this, in this legislative arena. Committee hearings are held, public testimony is provided and heard, and we vote as required by laws and rules. As part of the checks and balances, the measure then goes to the governor for approval or veto. Many people feel that same-sex marriage is a civil right, an equal right, or just a societal right, and that issues of this magnitude should not go to a popular vote that could be influenced by slick television ads, catchy newspaper ads, big money, or even a millionaire's bankroll.

"Some feel if the civil rights bill of the sixties, the suffrage act allowing women to vote, or even Social Security were put to a popular vote in the past, those issues probably would have failed. This same-sex marriage legislation belongs in the public arena we call the Hawai'i Legislature!

"Many individuals who are opposed to this measure are against it due to their religious beliefs. They feel their religious rights are being trampled, children will be put at risk, and terrible things will happen if Senate Bill 1 is passed. For those of us who favor this measure, we respectfully disagree.

"We have included exemptions for churches and religious institutions, and we have language protecting the clergy in Senate Bill 1. We also respect the freedom to worship with one's private personal beliefs. With Senate Bill 1, we will not change anyone's faith or religious doctrine.

"The LGBT community deserves to be treated with dignity and equality. The LGBT community includes our friends, family members, our co-workers, and employers. We shop at the same stores, eat at the same restaurants, visit the same parks and beaches. We live in the same neighborhoods, and yes, we even worship together based on our beliefs and our faiths.

"I'd like to close with some words from the Declaration of Independence: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.'

"Isn't that what being in a lasting, legal marriage, with the person you love, is all about? Thank you."

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

"I'd like to inform the members that throughout the hearing, there were a number of people that came and spoke and raised the issue about as parents that their children will be taught what they consider 'lifestyles' that they believe violates their beliefs. Having been an educator for 30 years in the DOE, 10 of which as an administrator, I do realize and understand the department has a number of policies that concern education and what is taught. I'd like to read this particular one because I think it's pertinent to what was discussed; this was dated May 1, 2013, from the Office of the Superintendent. The title is, 'Notice on BOE Policy No. 2210 on Controversial Issues.' It says:

This memo is intended to provide formal notification to all teachers and school administrators regarding the Board of Education Policy No. 2210 and the Department of Education's Regulation No. 2210.1 as they relate to controversial issues, and to remind all teachers and school administrators of the requirement to follow all BOE policies. Before engaging in any lesson or activity that may touch upon potentially controversial matters, teachers must discuss the potentially controversial matters with his or her principal to determine whether a letter concerning a potential controversial topic should be sent out to parents or legal guardians. The DOE Regulation No. 2210.1 requires instructional staff or administration to notify parents or legal guardians of controversial issues that will be discussed in the classroom or through other school activities. This notification may be done through a general letter about the lesson or activity; a sample is attached for your review and utilization. The parents or legal guardians may also, on their own volition, write a letter to the school administrators or teacher to have their child excluded from specific lessons or activities. If such a letter is received, the student must be provided with an alternative learning activity. The parents or legal guardians have an obligation to notify the school administrator or teacher prior to the lesson or activity.

"I say 'prior to the lesson or activity' because I know there were a number of comments made by parents who came to these hearings and stated that they were afraid that the department would teach things that were counter to what they believe. And so, I assured those who have come to talk to me that having been a department employee for about 30 years, I can safely say that the department is very risk-averse. They will

not do any kind of controversial matters without regard to what parents or guardians feel. So, I would like to assuage any fears that the department is going willy-nilly to do all kinds of stuff; this does not happen. I don't care what they say about what schools in Massachusetts or Canada may do; this is Hawai'i, and this is the policy. So with that, I'm just letting you know, and thank you for your support as well."

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

"First, I'd like to commend Chair Hee and our Judiciary and Labor Committee for taking on a most herculean task, and working with our outstanding Senate support team to ensure that people were able to participate in the process in a fair, safe, and orderly manner. I'd also like to thank everyone who has sent me their thoughts on this issue, whether it be a phone call, email, or a letter. I want them to know that I know that this is a deeply personal issue for many individuals in my district and across the state, and I hope to get back to all of you very soon. When we do connect, it is my sincerest hope that even if we disagree, I hope it can be respectfully so that we can focus on things that we can work together on and move forward from there.

"As the key strengths and protections provided in this bill have already been covered by many of the previous speakers, I'd like to focus on some of the concerns that have actually been raised by the speaker that just spoke about the impacts this will have on our schools and our children. As an education advocate and as a parent of a public school child, I always appreciate a sincere interest in the wellbeing of our schools and our students. But let me be very clear—S.B. No. 1 is not about our schools. It's about equal rights. If we must talk about schools, let's talk about the fact that our curriculum is based upon established content and standards that are aligned to the Common Core. The fact that General Learner Outcomes are stressed, where being a self-directed learner, a community contributor — where we understand that it's essential for human beings to work together — and being a complex thinker and effective communicator, are valued, emphasized, and the focus of classroom instruction. The fact is that the department defines as one of its stated objectives in its strategic plan that students are connected to their school and community to develop a love of learning and contribute to a vibrant civic life. The fact that Board Policy No. 2109 states, 'Character education is the process through which students are provided opportunities to learn and demonstrate democratic principles and core ethical values such as civic responsibility, compassion, honesty, integrity, and self-discipline.' These are the facts as to the content and curriculum in our public schools, and if any controversial issue should arise, as was mentioned, the board has established parental notification and opt-out policies.

"As many of you know, the testimony and perspectives provided have not been limited to Hawai'i, and have, in fact, talked about the impacts of same-sex marriage on Massachusetts students. Nowhere is it mentioned, however, that Massachusetts is ranked as one of the top school systems in the country, number one in National Assessment of Educational Progress (NAEP) scores, and has even been compared globally as trailing just second behind Singapore in science. If you don't believe me, just ask Mitt Romney, who has been known to frequently make the statement that Massachusetts schools are number one in the country.

"But again, I must reiterate: While I appreciate the interest in our schools and education, S.B. No. 1 is not about schools. S.B. No. 1 is about equal rights.

"Some of the letters that I have received have asked me to reconsider my position on this issue as a mother of young children. As all of you know, I am a wife and a mother to Matt

and Aden first, and those roles give context to many of the decisions I make here in this body. It did so on this issue as well, but perhaps not in the way that many may think. I have only a few basic things on my life bucket list, and one of those things is to dance with my sons on their wedding day. And maybe it's because my mom didn't get that chance to dance with my brother at his wedding, or receive my bouquet at mine, but it got me thinking about all the other mothers and fathers out there who just want that moment with their child, and who've suffered alongside them with their rights denied.

"Pope Francis said, 'Who am I to judge?' I ask, 'Who am I to deny?' As parents, we just want what's best for our children. And as we get older, we hope they will be able to find a partner in life that loves and protects them as fiercely as we do, is loyal and kind, and will care for them if we are no longer physically there to do so. I've been blessed in life to be able to find my life partner in my husband Kyle. Who am I to deny someone else those same rights, benefits, and protections marriage provides us?

"The last few days have provided me with the opportunity for much reflection, and in doing so, I found this sticker — 'Equal marriage rights for all, legalize same-gender marriage.' I picked this up almost 20 years ago during the 1994 hearings, when people filed through and filled the old Department of Health auditorium across the street, and testifiers were listed on page after page of dot matrix paper taped up on the door, waiting to testify. I remember rushing over to those hearings after school, sitting and listening, observing, taking it all in and feeling what was going on around me. And in the end, I remember tucking this very sticker into my folder and telling myself, 'Maybe one day.' Then a few years later in 1998, we were battling to protect our Constitution, and I remember again looking at this very sticker and telling myself, 'Well, maybe one day.' I'm hoping after all this time that when I go again to put this sticker away I can finally say, 'It was today.'

"Colleagues, it is an honor and a privilege to stand up on this day and finally have the chance to vote 'yes'. Thank you."

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

"Thank you Madam President and honorable colleagues. I rise in strong support of SB1.

"The New Commandment of Jesus to 'love one another' is part of the final instructions given to his disciples after the Last Supper had 'ended'.

"This commandment appears thirteen times in twelve verses in the New Testament — including:

- John 3:11: For this is the message which ye heard from the beginning, that we should love one another
- John 3:23: And this is his commandment, that we should believe in the name of his Son Jesus Christ, and love one another, even as he gave us commandment.
- John 4:7: let us love one another: for love is of God

"It is not enough to say you care and love someone without also caring about their well being and their happiness. This bill for marriage equality is not only for constitutional justice but also to tell our gay brothers and sisters that we recognize your right to pursuit of happiness.

"Robert Kennedy who fought for civil rights in our country at a time when blacks were not treated as equals once said:

Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. It is from numberless diverse acts of courage

and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.

"Thank you Senator Hee and staff and members of the Judiciary Committee for your tireless work. Aloha and Maluhia to all."

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

"I echo the previous comments from my colleagues that this is a civil rights issue. It's exactly analogous to the hard-fought rights to vote and to marry in the past regardless of race or gender. I see this as another step in the march toward liberty and justice for all.

"I'm honored to support this bill on behalf of the very large gay and lesbian constituency in my district, and the even larger constituency, in my district and statewide, for tolerance, compassion, and love are the highest values, and must guide our actions. Thank you."

Senator Keith-Agaran rose to speak in support of the measure as follows:

"I appreciate and really admire the comments that were made by the previous speakers from the windward side of this island. I want to make a few somewhat personal remarks on this. In three weeks, I'll be celebrating my seventh – actually, eighth anniversary. My friends who know me know that obviously my marriage is a work-in-progress. I don't claim to be an expert in marriage. But I believe I have enough faith and sober humility to understand that the successes or failures in my marriage depend more on the work and love I pour into that committed relationship than whether or not we as a government, whether we as a legislature, and whether we as a community exclude or welcome other Hawai'i citizens from entering into marriage. I vote 'aye.'"

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

"Today, colleagues, we gather here at our State Capitol, a symbol that has always looked forward and has always been progressive and has always championed progress. We gather in the tradition of those who have come before us, as the gentleman from Kahaluu reminded us – some wonderful champions of the people – and we've come here to discuss a momentous question, not only before us today, but before our nation. Should government prevent men and women of the same sex to marry? It's a question that cuts to the core of who we are as a country and as a state. It's a question that deserves to be answered. It's a question that requires us to step back from the platitudes and partisanship of the everyday political debate, and consider the principles that lead us forward – freedom, liberty, and equality. These are the principles that have animated generations of citizens to expand opportunities to an even wider circle of citizenry. Over many long years, the legal prohibitions to freedom and equality were overcome, some on the battlefield, some in the State House, and some in the courts. Throughout our history, each and every generation has expanded upon the freedoms won by their parents and grandparents. Each and every generation has removed some barrier to full participation in the American dream. Each and every generation has helped our country to take another step on the road to a more perfect union, if you will. That, colleagues, is the arc of history, and we participate in that arc today. That is the journey that we must never stop traveling, and that is the reason that we have come into our special session. And

although the work on this bill is far from over, there is no doubt that we've passed the tipping point.

"I guess the question really is now, do we stand up for equality? Is this the time to conquer the next frontier of freedom? Is this the time to be bold, as the pioneers who came before us have suggested? And by the way, Madam President, colleagues, we come from a place like no other in the world. Committed to the freedom of religion, artistry, policy, social, personal – no matter what our ethnicity or our orientation, we come from the land of Aloha. This has always been what sets us apart. In Hawaii, we take you as you are and let you be as you wish to be. That is the essence of Hawaii. That is what makes us a safe haven of every background and orientation. As other states recognize the rights of same-sex couples to marry, we cannot stand by and watch.

"Now, I understand the desire by some seeking guidance from their religious teachings. I, too, am a faith-based Senator; and that is why, under the bill proposed, no church or synagogue or mosque would be required to perform or sanction a same-sex wedding, as is the case in every state that has legalized marriage equality. Long ago, the Supreme Court declared that separate but equal opportunities are inherently unequal. It took the U.S. Supreme Court nearly 60 years after *Plessy v. Ferguson*, which upheld disparate treatment of non-whites to come to that conclusion. It took the Supreme Court another 13 years to strike down laws barring interracial marriage, and another 36 years after that to strike down laws criminalizing same-sex relationships, and of course, the recent Supreme Court decision on the Defense Of Marriage Act. The march for equality and tolerance in America is sometimes slow, but it has never stopped. That's democracy. Government either treats everyone the same or it doesn't, and right now it doesn't. That desire for equal standing in society is extraordinarily powerful, and has led to extraordinary advances in American freedom. Colleagues, there is no retreating to a past that has disappeared. There is no holding back a wave that has crested, and there is no denying a freedom that belongs to us all. The time has come for us to allow thousands of men and women to become full members of the American family. Together we can work across the aisle to pass a bill allowing all citizens to walk down the aisle, and lead our state and country toward a more perfect union. Thank you, Madam President."

Senator Slom rose to speak in strong opposition to the measure as follows:

"During the past hour, we've heard many good comments, many good thoughts; and the curtain is coming down today on the drama that has been this political theater because, in fact, this was not a special session. It was totally scripted, totally politicized. The votes were extracted and taken before we ever met, or we wouldn't have met. As I said previously on many occasions, there was no reason, no urgency, for a special session devoted to sexual orientation. In the past 12 years, this state has had two special sessions unrelated to the Senate's advising and consenting to judicial or cabinet nominees. One had to do with the Superferry and the economic implications; the other was called immediately after 9/11 when we were all concerned about what was going to be the future of our state and our nation. To say that the argument for sexual orientation rises to that level is absurd. To say that this is historic is untrue; hysteric, it may be. We should've decided it, if at all, during the regular session. Lord knows we've spent years and years on this topic.

"For those of you that have not heard me over the past 20 years, I've said very loudly and very clearly that the Legislature and government should not be involved in marriage. You did not have to worry about separation of church and state, not in our Legislature, because you didn't hear a prayer at the beginning of this session. You haven't heard a prayer in several

years because again, special interests who pushed the issue pushed us back. Are we truly the representatives of all the people? I think not.

"I heard mixed arguments this morning; one is that the tide of history has changed, that people have changed, and so we should listen to them – except when it means giving them the right to let the people decide. Then, we don't want to listen to them. Oh yeah, they're smart enough to vote for us or not vote at all. The public is smart enough to create a salary commission to give us all salary increases automatically. The people are smart enough to vote for a rail to nowhere, but they're not smart enough to vote on basic issues.

"And why don't legislators want the public to vote? Because the public will vote overwhelmingly in opposition to same-sex marriage. The other night during our 12-hour hearing, we had between 6,000 and 8,000 people outside, even more if you looked around the corners and on the lawn and everywhere else. Many of those people did not get an opportunity to testify even though they had signed up to do so. Other people who had signed up early did not get the opportunity to testify, and most of these people, if not all of them, were in opposition. The figures released of those that did get to testify showed that more than 60 percent were in opposition; and yet, we do not want to let the people decide. There's a real problem with that.

"Hawai'i is the only state out of the 50 (or 57, as our President insists) that has neither statewide initiative, referendum, recall, or term limits. So, what is the public to do? The public comes down here seeking an opportunity to testify and to participate, and they're denied that. Then they seek to talk to us, to talk about reason and rationality and law, and our minds had already been made up.

"And now we celebrate a 'momentous' time in history, and individuals have gotten up and told about how they have evolved. They're very proud of their evolution. The governor evolved from his statements as a candidate in 2010. My colleagues in the Senate and in the House that are running for a higher office have evolved because they stick their finger up in the wind to see where the votes may be, where the activism may be. In full disclosure, I married interracially; I have two beautiful interracial sons. I am not a Christian or a Catholic, yet am religious; and yet, I see a continuing attack, an onslaught, against Christians and Catholics and people of religion in this community and elsewhere. We were told five years ago that our President, his administration, and his followers were going to transform America, the one promise that has been kept. Those that accuse people like me of not evolving, not changing, not going along with the tide and the wave and all of that, stubbornly and steadfastly sticking to tradition and to the Constitution and to what is right – we're called all kinds of names, and we've been given threats as well. By the way, let me say there is no room for non-respect or lack of civility in this or any other discussion, and the fact that we've had it is sad.

"This issue should not be part of a legislative agenda, especially when we have an economy in shambles, people out of work, people who can't afford food or health care or proper education for their children. We heard about education, but we didn't hear about how we continue to rank lowest among the states in educational attainment. We have a terrible infrastructure. We have problems in health care. We have problems with the homeless, with Native Hawaiians, and others.

"And yet, we champion this cause, which is not about equal rights. It is about extending a privilege. The Loving case does not apply here; it involved a man and a woman. And while there were wrongs committed in our country and they were redressed, calling something 'equality' and carving out a right does not necessarily make it so, no matter how loud the voices are, no

matter how people champion it like our media (which has been in the bag from the beginning and does not report news), special interest groups, and political parties. By calling an elephant a donkey does not make it so. Marriage is marriage. It is separate. We can have disagreements on that.

"We can talk about equal rights in other areas, but we have become a nation and a state where people every day talk about the new rights that they have. They misconstrue privilege for right, and they misconstrue entitlements for rights. Our rights are God-given, yet we are told now we can't even allow God in our house. At a time when lawmakers particularly, as smart as we are (and you all know how smart we are) and at a time when we have all of these problems, we are not even allowed to seek divine guidance. And yet, we are listening to the voices who say we represent change, we represent something new. At one point, we're told to listen to the majority. At another point, we're told to not listen to the majority. Well, I know a little bit about that, being the only one here in the Senate. This is not a partisan issue, or it should not be; and yet, interestingly enough, some of the activists pop up in the same issues against religion, against prayer, against a free enterprise, capitalist American system – in fact, against America. We have people that say that the Constitution of the United States is outmoded, that it should be changed, it should be ignored selectively. These people have not read and do not understand the Constitution of the United States or the State of Hawai'i.

"We had a 12-hour hearing the other day; 3 years ago, we had an 18-hour nonstop, continuous hearing that I was part of in the Senate. I encourage people to come forward. I encourage people to give their views and opinions. But you should understand that the Legislature is not all-wise and all-seeing. We all have our fallacies and our foibles. For us to make decisions for a community that is so divided now, just like our nation, is not the best use of our time or our resources. I have to say that in listening to everyone, yes, there were some intemperate remarks made; yes, there were repetitive statements made; and yes, there were statements that really were not on point about this issue. Legal scholars, in fact, do differ about whether or not same-sex marriage should be allowed and should be taken under the tent of equal rights. They differ, and yet these views, as are my views, are told that we're out of step. We're finding more and more in our country and in our legislative bodies that anybody that has a different view is not given that equality of speech; and that's where this bill fails.

"This bill is an attack on religious freedom and the First Amendment. Make no mistake about it. The so-called 'protections' in this bill, as written now, will not protect religious organizations and their facilities. This bill gives additional legal causes of action, and people will use them. They will continue to sue. Years ago, we were told, 'If you just pass reciprocal beneficiaries, then everything will be fine.' And then we were told, 'If you just pass civil unions, then everything will be fine.' And yet, honestly, those people who have advocated on the front lines for same-sex marriage have always done so, and that's their right and their privilege, but they haven't been honest and open about it. Are there problems with reciprocal beneficiaries, domestic partners, and civil unions? Yes, there are. I've said over and over again that in those areas that deny people the right to take care of one another or to visit in the hospital or to have power of attorney, those parts of the law that do not meet those standards – then change them. We can do that. That's something that the Legislature can do. That's something that the Congress can do.

"But there was a lot of misinformation the other day, including, with all due respect, our former Supreme Court Justice Levinson. First of all, the DOMA law, the Defense of Marriage Act, was not struck down by the U.S. Supreme Court. A section was, and it applied primarily to California and New

York. The Supreme Court has not ruled that same-sex marriage is both an equal right and deserved. Mr. Levinson talked about Iowa; and he was incorrect because in Iowa, the State Supreme Court struck down the opposite-sex marriage provision, and three of the justices who supported it were removed by the Iowa residents. Of course, we don't allow election of judges, either, in the State of Hawai'i. Maybe we should revisit that, too, Madam President, because for those people that didn't like the plantation system in Hawai'i, you're sitting in the new plantation right here. We tell you what to think. We tell you what to wear. We tell you who to hire. We tell you how much to pay. We tell you that you must have insurance. We tell you all these things. We are the plantation here. We have more monopolies in this state than anywhere else. We have more unholy alliances between businesses and government than any other state. And then we wonder why our people are struggling.

"There are a lot of people that have been afraid in this debate to speak out, and that's a shame, but they are afraid, for one reason or another. I fully expect that in the next few days, you're going to hear comments from the Native Hawaiian community about how devastating this law would be to them, and they'll be more specific about it. But all those people that have been cheerleading, letting us believe everybody's in favor of this and it's only those few people that are political misanthropes or social laggards, as was described in a publication the other day – it's only those that are opposed to this. Let the people vote! Let the people decide! Let's find out! But we're not going to do that because everything here has been neatly done, and that's a shame, and that is not democracy. That reflects poorly on everyone – gay and straight, Republican and Democrat.

"We have problems in this state, and we have not addressed them. We have so much talent here, and it doesn't matter about your political party or your sexual orientation. But when we try to force people to do certain things that they don't want to do, that is not positive. This bill will not advance life, liberty, or happiness in this state. This bill will not improve our economic conditions. Oh yes, I know there have been studies saying that if we just do this, wow, we'll have more people, more gays and lesbians coming to Hawai'i to enjoy our state and spend money. But there will be other people that would be concerned about that lifestyle and concerned about our image. At last count, 14 states, in fact, have legalized some sort of same-sex marriage, which leaves, in my public school math, 36 states that have not. We talk all the time about trying to better the lives of people. If we worked on our economy, if we worked on making Hawai'i a better place, then in fact all people, regardless of their religious outlook, regardless of their sexual orientation, is going to benefit. And that's what we're here for. You have to hold our feet to the fire, not just on a single issue, but on what we're doing for the state. We are all public servants. We all are beholden to you; you pay for everything we do. But you've got to be more involved. You've got to be more engaged; and don't let me hear any of you say your vote doesn't matter, you don't matter. Your vote on this issue matters. Your vote on every issue matters.

"So, I appeal to my colleagues that before they uncork the bottles of champagne, they should be fully concerned about what this measure and others like it do in our community. We should be working to bring people together. We should be working to help those people who need help. This is not the case. And we've learned over the years, and particularly over the last couple of days, that this issue is not about love, it's not about compassion, it's not about equal rights – it's about money! It's about tax benefits. It's about federal benefits. Even the attorney general, in his very unique way of answering questions, had to admit that if you want to go to another state – as many people do on a regular basis, including to get married – you will not lose those benefits; you will gain those benefits.

But you know what it tells me? It tells me that what I've been fighting for the 18 years I've been here that are taxes are too high, our government regulations too unfair, the fees and everything that are eating you alive – that's what we should be doing, that's what we should be together on a bipartisan basis.

"So, I'll leave you with this thought: Passing a law like this is not going to solve our problems. It's not going to make divisions go away, but it will get people concerned who have been disenfranchised and who realize that their government is going in a different direction from them. It's not bad to disagree on any issue, and it certainly is not bad to stick up for your beliefs and your rights and your freedom of speech. I believe that this bill will be compromised, and I will continue to oppose it. Thank you."

At this time, the Chair said:

"I remind the public again to refrain from any audible or other responses, otherwise we will clear the gallery."

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

"I rise in strong support of equal rights and S.B. No. 1.

"I firmly believe that equal rights delayed are equal rights denied. Perhaps the urgency was brought on by the Supreme Court action on the Defense of Marriage Act, but even if it hadn't come from that, I still think this is an action we should have taken, and it's appropriate to do it now. In response to the minority leader, there were hearings on S.B. 1; we've all received email, letters, phone calls and other communications, and in-person visits. So, it's not as if we don't understand the issues or don't even know what our constituents think. S.B. 1 is about equal protection of the laws, in my view.

"I grew up in the deep south. I started first grade in 1952, graduated high school in 1964, and went to college and graduated in 1968. For the entire 12 years of my elementary, middle, and high school years, I did not go to school with one black child, although there were plenty of black children in my town. They went to a separate school. I've seen up close and personal the ugly face of discrimination. With every minority group, you simply don't put their rights on the ballot for a popular vote because like the decision to get rid of the so-called 'separate but equal' doctrine, if we put that on the ballot, do you think that those black schools would have gone out of existence in the State of Texas? No, they wouldn't have; and those children who deserved the kind of good quality education that I received, with teachers well-qualified to teach them and paid equally what the teachers in my school were paid at the time, that wouldn't have happened. We wouldn't have had any of the advancements in equal rights if they'd been put up to a popular vote. Minorities don't ever get their rights that way, and that, to me, is one of the fundamental reasons that we need to continue to move S.B. 1 forward. It is about equality of rights under the law, and as long as marriage has a status in our code, whether it's tax, whether it's being able to make sure that your children or your partner's wishes are upheld if you pass, it is tied up with what's in our statutes and it does make an unequal situation.

"I met a woman yesterday; I'd gotten over to the UH Cancer Center to hear an eminent, distinguished professor on public policy dealing with smoking and e-cigarettes, thinking that these are some of the things that we may be dealing with next session. I had an occasion to talk to his wife afterward, and she said, 'I understand you folks are dealing with legalizing same-sex marriage in Hawai'i.' She was from California, and she said, 'I just want to relate a story to you about what happened to a friend of mine; and if you needed any additional reason for supporting the enactment of S.B. 1, this would be something you might want to consider.' She had friends, a lesbian couple, who had a son. The couple was driving down the highway, and

another car hit them almost head-on and killed one of the women. The other one went to the hospital. The young son was strapped into a child restraint in the back seat because he was only about 18 months old, and he survived without a scratch. The woman who was killed happened to be his birth mother. His other mother went to the hospital. The grandmother – the mother of the birth mother – came and took the child, and when his other mother came out of the hospital and was well enough to be reunited with her son and take care of him, the grandmother, with the backing of the law, made sure that that woman never ever saw her son again. That's why we need same-sex marriage – to provide those protections for couples in committed relationships who may have children. But that's just one example.

"I think it's important for us to understand how fundamental equal rights are in our Constitution, in our form of government, and to do everything that we can to ensure it. That's one of the reasons that I'm standing in strong support of S.B. 1. It's also because with the DOMA decision, we have folks who are civil union couples in our state, but cannot access the full benefits that the decision of the United State Supreme Court allowed with regard to federal benefits. I was very pleased when the Chair of the Judiciary and Labor Committee asked for the attorney general to provide the committee with a list of those benefits that would be denied if we did not pass same-sex marriage in our state and continue to have our folks be unequal under the law. Madam President, I think all of my colleagues received a copy of that memorandum in our email this morning, and with your permission I'd like to have that included in the Journal as another example of why we need to be moving this measure forward." (The Chair so ordered.)

"I want to close with some of the words of Eleanor Roosevelt. She happens to be one of my 'sheroes' and one of the people that I look up to, as I do Patsy Mink. I think these are very instructive; she begins:

Where, after all, do universal human rights begin? In small places, close to home, so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person: the neighborhood that he or she lives in; the school or college where he or she attends; the factory, farm, or office where he or she works. Such are the places where every man, woman, and child seek equal justice, equal opportunity, equal dignity without discrimination.

"Madam President, I submit that's what S.B. 1 does. Mahalo."

The Chair having so ordered, the memorandum is identified as "ATTACHMENT A" to the Journal of this day.

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

"I support S.B. No. 1 as it seeks balance in providing equal rights, protections, and benefits to same-sex couples as opposite-sex couples. I did want to commend the Chair of the Judiciary and Labor Committee for his work on the bill and seeking to find the appropriate balance of protecting religious freedoms with providing equal rights.

"I did want to comment that all of you know that we were summoned here to deal with this issue; this was not of our choosing. I did want to commend the Senate Judiciary and Labor Committee and all of the members of the committee for their work on this bill, and more importantly, the staff for organizing it in the way that they did. I think anyone who observed the hearings would agree that even though we did not have the time to hear each and every individual who showed up and wanted to speak, the discourse was very respectful and the

committee was managed very well. The members engaged both those in support and those in opposition in appropriate and in depth questions that allowed the entire community to benefit from the conversation. I think that at the end of the day, at 10:00 p.m. or so when the committee had concluded their work and the final vote was taken, I really believe that many felt that both sides had the opportunity to share their opinions and their perspectives on the measure, and the committee had listened patiently and engaged, and the votes fell where they may.

"So, once again, I would just like to commend the chair, the committee, and the staff for really managing the situation that we were put in very respectfully and thoughtfully; and I think that at the end of the day today, we have an opportunity to vote our conscience and make the decision to provide equal treatment to same-sex couples. Thank you."

Senator Gabbard rose to speak in strong opposition to the measure as follows:

"I, too, would like to say mahalo to the Judiciary Chair and his staff for laboring long and hard in crafting the bill. Also, let me thank the same Senator who represents the North Shore and his staff for all their hard work in putting together the Judiciary and Labor Committee hearing on Monday. It was run very well and very orderly. Also, mahalo to the Senate Clerk, the Sergeant-at-Arms, and the Sheriffs for doing a masterful job at Monday's almost 12-hour hearing.

"Colleagues, here in Hawai'i we have been having this statewide conversation about same-sex marriage for about 23 years. Sometimes the discussions have been civil, cordial, and productive. At other times, there have been death threats, bodily harm, TROs, and (speaking from personal experience) even businesses being forced to close because of the owners publicly opposing same-sex marriage. I know the emails have been pouring into your offices as well. Let's see: I'm sure most of you did not get the ones calling you a hater, homophobe, Nazi, etc. I think those are reserved for the minority leader and myself. But maybe you've gotten the ones calling you Satan and that you're going to burn in hell eternally if you vote the wrong way on this measure. So much for the Aloha Spirit. My point is that this has been a contentious, divisive issue for over 20 years.

"Some of you may be thinking, 'Yeah, okay, so enough already. Let's put it to rest; let's be the 15th state in the country to legalize same-sex marriage and be done with it.' But if we do that, do you really think that this issue will be any less contentious? Right now, the most recent poll by *Honolulu Civil Beat* shows that people of our state are now split down the middle, with 44 percent in favor and 44 percent opposed to legalizing same-sex marriage. So, the obvious question is why the urgency and why are we trying to cram an issue of this magnitude into a short special session? As Senator Ige mentioned, it was imposed; we did not decide to be here on our own. This was imposed upon us.

"We all saw the thousands of people that showed up on Monday to lend their voices on both sides of the issue, but we unfortunately didn't give the same opportunity to the people on the neighbor islands. What about that farmer in Kaunakakai who couldn't afford the airfare to come to O'ahu to testify? What about the mother of three in Po'ipū who feels so strongly about expressing her point of view at the public hearing, whether for or against, but again could not afford the plane fare and the babysitters. I know some people have said we've talked this issue to death and we've already heard all the arguments. That may very well be, but the real issue here is have we really done all that we can to give the opportunity for people's voices to be heard? After all, isn't that what the democratic process is all about? This is even more reason that we should heed the advice of the people who are urging us to let the people decide

by putting this back on the ballot in 2014 as a constitutional amendment. The fact is there are many valid concerns that opponents of this bill have had, and it's a mistake to ram this through without taking the time to really address them.

"What I heard during our marathon hearing on Monday is that people are very worried about the protection of religious freedom and how this will also impact our children's education. And although I acknowledge the assurances from the Senator from Kailua and the Senator from Waipahu about opt-out provisions in DOE policy for our taxpayer-funded public schools, people should not have to worry about their kids being taught that homosexual relations are normal and natural if that isn't what they believe. Yet, based on the experience of other jurisdictions with same-sex marriage, both in this country and abroad, it's likely this will happen. Will the taxpaying parents who strongly oppose same-sex marriage be forced to homeschool or send their kids to private schools to keep their family's values intact? We all know this issue isn't going to go away if S.B. No. 1 passes into law.

"So, what I'm asking is let's take some more time to really figure this out. Let's take this issue on the road to all the islands. Let's talk story, continue the conversation, and let people on both sides weigh in and possibly come up with the aloha solution. Let's vote this down today and resume our deliberations in the upcoming session in January. Colleagues, I urge you to vote 'no' on S.B. No. 1. Mahalo and Ke Akua me ke Aloha."

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

"I can't be as eloquent as many of the speakers who came before me; I actually didn't plan to speak. I think the Senate Judiciary Chair and many of the others have already stated the reasons why I support this bill, but I am rising today because I want to address some of the remarks that were made by the Senate minority leader, particularly about the separation of church and state. The Senate minority leader said that he didn't hear this session open with prayer, and implied that special interests are lobbying to push this bill and to restrict the freedom of religion and expression. I stand before you with a slightly different view on the freedom of religion.

"As I've shared with many of you, I am a direct descendent of William Brewster, who was one of the leaders of the pilgrims who came over to the mainland country on the *Mayflower*. The reason that he left England was because he practiced a religion that was different than the official religion of the Church of England. He published sermons about his religion. Consequently, he and his fellow believers were under threat of their lives. So, they fled England. First to the Netherlands. While he was in the Netherlands, he continued to publish sermons for his religion. The Church of England sent representatives over to the town of Leiden to ask the Dutch government to repatriate him back to England, either to jail him or to execute him. Because they were worried about the relationship between the Dutch and the British, the Puritans then secured the *Mayflower* and sailed to the New World to a new home.

"I am also a direct descendent of one of the founding fathers of the United States of America, Patrick Henry. Patrick Henry refused to sign the United States Constitution because he felt it centralized too much power and control in the federal government and it was not respectful of the rights of the citizens. He and others were instrumental in getting the Bill of Rights, the first ten amendments, added to the United States Constitution. The very first amendment in that Constitution is the separation of church and state; it prohibits the government from establishing a religion. It does that not because it is against religion; it does it to protect everyone's right to their own

religious beliefs. It does it because government has to be neutral. It does it to protect people like my ancestor, so government cannot say that one religion is right and believers of a different faith are wrong and that you cannot pray in that way.

"While there has been much talk about the fact that we had a special session and didn't listen to people, I think if people take a look at the bill, S.B. No. 1, and the original draft of the bill, you will see that there was a lot of listening. We received a lot of testimony, a lot of calls, had a lot of meetings before this session ever began when the first draft of the bill was posted by the Governor's office. I know the two chairs of the Judiciary Committee, in the House and in the Senate, both worked with the Attorney General's office to try to address those concerns. I was on the phone a number of times to ask them to address the concerns as well with the bill because I support the freedom of religion. But I also support same-sex marriage as an equal right.

"I don't speak as somebody who has 'evolved.' I campaigned against the constitutional amendment 15 years ago by going door-to-door in my neighborhood to ask people to vote against it because I felt that the judicial interpretation that our Constitution allowed freedom of same-gender marriage should have been honored from the beginning. I would never put that right up for a popular vote, just as I would never put up the First Amendment for a popular vote, because these rights are ingrained. These Bill of Rights are what make our country unique in the world.

"We did do a lot of changes from the original draft of the bill, and I stand before you today, again, thanking the Senate Judiciary Chair and others for making sure that those went into place. I feel that we have found a very, very good balance that respects the full First Amendment rights of freedom of religion for the churches, but also respects the equal rights to be free from discrimination for same-gender couples. It ensures that government acts in a neutral manner when we issue government licenses so that we do not discriminate based upon gender orientation and marriage. Thank you."

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

"Madam President, I was inspired by the speech from our newest Senator from Maui who is looking forward to his eighth wedding anniversary. For many years, I had thought about taking a stand in not marrying until everyone had that right. But when I found the love of my life, I could not withhold marrying. This past February, my wife and I celebrated our seventh wedding anniversary; and I know my wife's views on this issue, so I am dedicating my vote today to her so that we may allow all of our gay friends to also have the happiness of marriage. If and when the Senate bill passes, this will indeed be a very, very special session. Thank you, Madam President."

Senator Slom rose in rebuttal and said:

"We talked earlier, and the majority leader talked about compromise, and I certainly agree with that. I think the mark of any good legislation is the fact that in the end, people have compromised, they come to an agreement, and they can accept what there is. Despite what has been said over and over again, there are no religious protections in this bill as written now. And the proof of that is no religious person who had opposed the original legislation came forward and said, 'Oh, yeah, you guys really did a good job. You really worked hard. You really were in there together to make sure that there was a balance.' There is no balance in this bill! It is totally one-sided. So, those people that may be surprised later on after this becomes law (if it does) should not be surprised because we've discussed it.

"Madam President, I call for a Roll Call vote." (The Chair so ordered.)

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

"First, I want to thank my colleagues who have been overly generous in thanking me for running the hearing on Monday. I'm grateful and appreciative. As I said yesterday, it could not have been done but for the organized efforts of our Senate Clerk, the Sergeant-at-Arms, the Sheriffs, the staff, and of course the members of the committee. So, I'm very appreciative.

"I want to say something about some of the dialogue that I've heard over the time, and I want to do so in the context of some of the sound bite statements made by the minority leader, many of which are frankly untrue. If you can read English and if you can read S.B. No. 1, it's explicit in its religious protections, but I know I'm preaching to the choir because I think all of you can read English. Evidently, some of us refuse to read English. I'll leave it at that.

"The minority leader talked about surprises. Well, it should come as no surprise to him that in 1998, when he voted 'aye' on H.B. No. 117, S.D. 1, C.D. 1, that he voted 'aye' on the following bill, which said in part, '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.' He voted 'aye'. His tune has changed. The bill continues, 'This constitutional measure is thus designed to confirm that the legislature has the power to reserve marriage to opposite-sex couples,' and here is the part that he evidently does not understand in English, 'and to ensure that the legislature shall 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.' He voted 'aye'. He voted 'aye' with six other members who are with us today.

"On Monday, October 28, Professor Robin Fretwell Wilson, a professor of law at the University of Illinois and co-editor of *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*, said in a published article in the *Star-Advertiser*, 'SB1 sensibly says the facility cannot be used "for profit" (and donations don't count),' and that it's an improvement over the Governor's proposal. She says that the religious freedoms that exist today remain tomorrow should this bill become law. Although she writes that there should be other improvements to be considered, she makes it very clear that the religious freedoms protected and enjoyed today remain tomorrow in S.B. No. 1 as enshrined in the Constitution of the United States of America and the Constitution of the State of Hawai'i. Thank you very much."

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

"I take exception to some of the statements made by the minority leader regarding the positions and views of Native Hawaiians. He's hardly the one to speak on our behalf. I'd like to enter into the record today the editorial that was in the *Honolulu Star-Advertiser* this morning by Hinaimoana Wong-Kalu titled, 'Hawaiian values differ from Western traditions.'" (The Chair so ordered.)

"Just to summarize, what Hina talks about is basically saying you cannot merge the idea of Hawaiian values and Western values; you cannot choose between the two and have both of them. Either you practice Hawaiian culture and you choose to do so, or you choose Christian culture, you choose a Roman Catholic culture, you choose a Buddhist culture – it doesn't matter. The point is that you cannot merge the two. I think that the article is germane today because it lays out some of the traditional Hawaiian marriages: aikane, punalua, and other

types of marriages. This is our traditional Hawaiian marriages. So when people say let's defend traditional marriage, yes, of course, I defend traditional Hawaiian marriages. So, I'd like to enter this into the record so that we have a clear understanding of what exactly this means. Thank you, Madam President."

The Chair having so ordered, the editorial is identified as "**ATTACHMENT B**" to the Journal of this day.

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

"I would like to support the remarks made by the Judiciary Chairman. I was part of the 1998 group, and I do strongly believe that these legislative matters must be settled in the Legislature.

"If I may, Madam President, I'd like to just deviate from the issues that have been discussed by all the previous speakers. I would like to remind this body that the persons that really have been discriminated against in the State of Hawai'i have been the Native Hawaiians. I'm very pleased that so many of my colleagues have come so far in their thoughts of how this body needs to evolve, and I'm hoping that these thoughts will continue as we look at the Hawaiian issues in terms of their equality and equal rights. I want to give credit to Senator Akaka, who has championed our equal rights in the federal government. For the last 20 years we have struggled to get federal recognition for the Hawaiian people; unfortunately this has not happened to this day. I want to thank my colleagues who voted for Native Hawaiians to be finally recognized by the State of Hawai'i as equal partners in 2010.

"As discussed with you, Madam President, when our Judiciary Chairman decided to change the title of this bill to equal rights, we caucused on the issue and agreed, as I indicated to the caucus, if we should attach another chapter to this bill to support the federal recognition of Native Hawaiians?

"It distresses me, how this body conveniently uses Native Hawaiian values and culture to benefit their own agenda; when, in fact, they did not unanimously support this recommendation, nor did all Senators support Act 195 of the 2011 Legislative Session giving Hawaiians their due justice.

"I was at an Advise and Consent hearing early on when committee members questioned the Commissioner being nominated as to whether the Department of Hawaiian Homes would exercise the exemptions that were given to the Department of Hawaiian Home Lands to expedite the development of their assets. Why would that even come up, Madam President? These statutory exemptions were not given at the free will of this body; these were negotiated, discussed, and it took years of deliberation, similar to the conclusions we are discussing today. This particular issue, same sex marriage, has been in this legislature for over 30 years. This issue is not new. Maybe if we're talking about evolution, which I've heard this word many times on this floor, well maybe we have finally evolved, Madam President, and finally give the Native Hawaiian people their due justice.

"So, I'd like to close with the song of *Hawai'i Aloha*: "Oli ē! 'Oli ē! Nā 'ōpio o Hawai'i nei.' May we rejoice for the youth of this land, that they may have a better future that we can give to them, so they, in fact, can evolve, and they, in fact, can create a society that is equal and free to all – gender-free, colorblind, and it goes on and on. Madam President, this is what I feel – that we must mālama, which means to take care; we must 'ike, which means to recognize; and we must pono, which means to do right. Mahalo."

The Chair then made the following remarks:

“Before we take the Roll Call, I do want to thank everyone, on behalf of the Senate, who has participated in the process, whether you are for or against this issue, for taking the time to send your emails, your phone calls, and to appear at the hearings. There has been a lot of work that went into this that the public did not see. As it was said earlier, this was not the call of the Legislature; the Governor has called us into this special session. It required a lot of work over the past seven weeks, working together with the House and with staff. I want to thank all of the support staff that have helped to make the process a little bit easier; and while nothing is perfect, I commend this body for the process that we have been through.”

The motion was put by the Chair and carried, S.B. No. 1, entitled: “A BILL FOR AN ACT RELATING TO EQUAL RIGHTS,” having been read throughout, and Roll Call vote having been requested, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20. Noes, 4 (Gabbard, Kim, Kouchi, Slom).
Excused, 1 (Wakai).

The Chair announced that Senator Wakai was excused from voting due to the sudden passing of his mother, and extended condolences to his family on behalf of the Senate.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 1 and 2) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 1, transmitting H.B. No. 1, which passed Third Reading in the House of Representatives on October 30, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 1, entitled: “A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS,” passed First Reading by title and was referred jointly to the Committee on Judiciary and Labor and the Committee on Ways and Means, with Senator Slom voting “No.”

Hse. Com. No. 2, transmitting H.B. No. 2, which passed Third Reading in the House of Representatives on October 30, 2013, was placed on file.


On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 2, entitled: “A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS,” passed First Reading by title and was referred jointly to the Committee on Judiciary and Labor and the Committee on Ways and Means, with Senator Slom voting “No.”

Senator Hee then announced that the Committee on Judiciary and Labor would be holding a hearing on H.B. Nos. 1 and 2 the following day at 12:00 p.m. in Conference Room 211.

ADJOURNMENT

At 1:32 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Thursday, October 31, 2013.

ATTACHMENT A

<p>NEIL ABERCROMBIE GOVERNOR</p>	 STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL 425 QUEEN STREET HONOLULU, HAWAII 96813 (808) 596-1500	<p>DAVID M. LOHRE ATTORNEY GENERAL</p> <p>RUSSELL A. SUZUKI FIRST DEPUTY ATTORNEY GENERAL</p>
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October 28, 2013

The Honorable Clayton Hee
Senator, Twenty-Third District
The Twenty-Seventh Legislature
State of Hawaii
State Capitol, Room 407
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Senator Hee:

Re: S.B.1 Relating to Equal Rights - Availability of Federal Benefits in the Event that the Marriage Equality Bill is Not Passed

I. Introduction

This letter responds to questions which were raised this morning at the Judiciary and Labor Committee hearing concerning S.B.1. We understand that the questions sought to determine what federal benefits would be available to a hypothetical Hawaii same-sex couple if S.B. 1 did not pass, where the couple had entered into a civil union in Hawaii and was married in another state, such as California, and returned to Hawaii to reside. Based on this hypothetical situation, you asked whether this couple would have rights to the same federal benefits that are available to a married opposite-sex couple residing in Hawaii.

II. Short Answer

If S.B. 1 does not pass, there will be a significant number of federal benefits that are not available to the hypothetical couple, although a significant number of benefits, primarily tax benefits, will be available. Because departments within the federal government have not yet conclusively determined how to implement the holding of the *Windsor* case with respect to relevant statutes and regulations, there are a great many federal benefits for which an answer cannot yet be determined.

We also note that under this hypothetical situation, there would be substantial intangible benefits that correctly accrue to married opposite-sex couples that would be denied to same-sex couples.

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The Honorable Clayton Hee
October 28, 2013
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III. Analysis

A. Availability of Federal Benefits if S.B. 1 Does Not Pass

1. If S.B. 1 does not pass, a significant number of federal benefits will not be available to same-sex couples residing in Hawaii even if they become legally married in other jurisdictions.

In June 2013, in *United States v. Windsor*, 133 S. Ct. 2675 (2013), the United States Supreme Court overturned section 3 of the Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7), holding that DOMA's definition of marriage was unconstitutional as a deprivation of the liberty of the person as protected by the Fifth Amendment of the U.S. Constitution. After the decision in *Windsor*, many federal agencies that provide benefits and services based on marital status updated their practices to extend benefits to married couples of the same sex. But under current law it appears that there are some significant federal benefits that are not available to same-sex married couples if they reside in a state that does not recognize their marriage. These include, for example:

- Federal Family Medical Leave Act (FMLA) 29 U.S.C. § 2601 et seq., 29 C.F.R. § 825.102 ("Spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized."). The FMLA allows employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women. It provides certain employees with up to 12 work weeks of unpaid, job-protected leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave.
- Veterans' Benefits, 38 U.S.C.A. § 103 ("In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued."). Veterans' benefits include: (a) disability compensation, which is a tax free monetary benefit paid to veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service, (b) a variety of education benefit programs, (c) valuable life insurance benefits, (d) supplemental income through the Veterans Pension and Survivors Pension benefit programs, and (e) vocational

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rehabilitation and employment programs that assist veterans with service-connected disabilities to prepare for, find, and keep suitable jobs.

- Copyright, 17 U.S.C.A. § 101 ("The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried."). Copyright laws protect the intellectual property rights of authors.

For each of these benefits, the recognition of the marriage turns on the law of the state where the couple is domiciled, not the law of the state where they were married. The fact that their marriage is valid in the state where it was entered would not matter for this inquiry.

Beyond those benefits listed above, there are other federal programs that are dependent on the recognition of the marriage in the state that the couple resides in.¹ These programs include certain federal death benefits and retirement benefits.

2. If S.B. 1 does not pass, there are numerous federal benefits where it is not clear whether such benefits would be available to same-sex couples legally married in other jurisdictions and residing in Hawaii.

Given the number of federal benefits available to married couples, and the fact that each depends on its own statutory or regulatory rules in determining eligibility, it is a difficult and complex question to determine availability of all of them to same-sex couples.

Whether a married same-sex couple may access federal benefits if they reside in a state that does not recognize their marriage is unclear for several very significant federal programs. This uncertainty is substantial because same-sex couples are unable to truly rely on these programs as opposite-sex couples do, if access to such benefits is open to question based on whether their state of residence recognizes their marriage. We give four highly significant examples. Each of these programs or benefits can have large personal and financial impacts on the affected couples and families.

First, there are still some open questions regarding access to Federal Medicare after Windsor. There is some guidance from the U.S. Department of Health and Human Services that

¹ See, e.g., 28 C.F.R. § 32.3 (regarding public safety officers death benefits, definition of spouses references the law of the domicile of the officer at the time of injury or death); 5 C.F.R. § 1651.5 (defining "spouse of participant" regarding federal civilian and military service thrift savings plan death benefits refers to the "state of the participant's domicile."); 20 C.F.R. § 222.11 (defines "spouse of participant," which addresses railroad employees retirement benefits, looks to the law of employee's permanent home or permanent home at death.).

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same-sex marriages will be recognized when the couple resides in a non-marriage equality state.² However, the statute uses a place of domicile rule to determine eligibility, premised on recognition of the marriage, so this guidance may be in question. See 42 U.S.C.A. § 416 ("An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the state in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the state in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any state, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.").

Second, the law regarding Social Security is also evolving after the Windsor decision. Marital status (and access to spousal security benefits) is based on "appropriate State law," 42 U.S.C. 1382c(d), and the regulations define this as the place of domicile. 20 C.F.R. §§ 404.345-404.346. However, the Social Security law also indicates that a spouse can receive spousal benefits if state law provides that they could inherit intestate as would a "wife or husband, widow, or widower." 42 U.S.C. § 416(h)(1)(A)(ii). Same-sex couples married in another state may be entitled to federal spousal Social Security benefits (assuming they are otherwise eligible) because their marriage would be recognized as a civil union here under current law. However, the answer is not yet entirely clear, as this area of the law has not been resolved after the Windsor case.

Third, it is unknown how a married same-sex couple living in a state that does not recognize their marriage would be able to take advantage of the federal bankruptcy code. Our research indicates that there are no federal statutes or regulations that would instruct a bankruptcy court how to determine whether to recognize a marriage. Generally, domicile is very important in bankruptcy matters, because it determines the court's jurisdiction and the propriety of exemptions sought by the debtor. This is yet another area where the shifting legal doctrines after the Windsor decision leave married same-sex couples who reside in a state that does not recognize their marriage with a great deal of uncertainty.

Fourth, with respect to Medicaid, same-sex couples would not be able to utilize certain exemptions that are currently available to opposite sex couples if the same-sex spouse was applying for Medicaid long term care services. This would result in significant financial consequences. For example, the home property of an institutionalized individual will not be considered a countable asset if the spouse is living in the home. 42 U.S.C. § 1396p(f)(2)(A); Haw. Admin. R. (HAR) § 17-1725.1-36(c)(1)(B). Therefore, the home property of a same-sex couple married in another state would be a countable asset to the institutionalized spouse, even if the community spouse is residing in the home, and would adversely impact the institutionalized

² See <http://www.hhs.gov/news/press/2013pres/08/20130829a.html>

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spouse's eligibility for Medicaid long term care services.

Similarly, Medicaid generally penalizes applicants when they transfer assets for less than fair market value, by counting such assets that were transferred within five years prior to the date of application when determining eligibility for long term care services. HAR §17-1725.1-51(a). However, this penalty does not apply if the asset transferred was the applicant's home property and title was transferred to the applicant's spouse. HAR §17-1725.1-56(1)(A). Therefore, opposite sex married couples would not be subject to the five year penalty period if a spouse transfers the home property to the other spouse for less than fair market value, but the transfer by an individual to their same-sex spouse would be subject to the penalty period, delaying the applicant's potential eligibility for Medicaid long term care services for five years.

3. If S.B. 1 does not pass, there are a significant number of federal benefits, primarily for tax, labor, and military benefits, available to same-sex couples legally married in other jurisdictions and residing in Hawaii.

For several significant federal benefits, it has been conclusively resolved that a married same-sex couple gains these benefits even if they reside in a state that does not recognize the marriage. For example, in Rev. Rul. 2013-17, 2013-38 I.R.B. 201, the U.S. Internal Revenue Service ruled that same-sex couples, legally married in jurisdictions that recognize their marriage, will be treated as married for federal tax purposes; the U.S. Department of Labor, in its Technical Release 2013-04, at 1 (Sept. 18, 2013) recognizes "marriages to include same-sex marriages that are legally recognized as marriages under any state law"; and the U.S. Secretary of Defense in his Memorandum for Secretaries of the Military Departments Under Secretary of Defense for Personnel and Readiness, dated August 13, 2013 stated that it would be extending benefits to same-sex spouses of military members.

While these benefits are significant, we note that conclusive determinations have been made for only a few federal programs following *Windsor*. Given that only about four months have elapsed since *Windsor* was decided and the complexity of the issue, this is not particularly surprising. Both federal and state agencies are and will be continuing to develop guidance which may or may not result in more benefits being made available to same-sex couples. In addition, future litigation will likely interpret which benefits are available as same-sex couples continue to marry in the states where it is available to them.

B. Intangible Considerations

If Hawaii does not enact marriage equality, it will create substantial uncertainty with respect to estate planning, tax planning, wealth transfer, succession planning, and inheritance planning for some same-sex couples, because of the uncertain applicability of federal benefits. In addition, requiring same-sex Hawaii couples to travel to another state to become married will

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impose a heavy burden on those couples that is not imposed on opposite-sex couples. Some people may not have the funds, the physical capacity, the ability to take time from work, or they may have other restrictions that prevent them from traveling the substantial distance to the mainland. This creates an inequality by requiring some but not all residents of the State of Hawaii to travel to other jurisdictions in order to acquire the federal benefits that would be available.

Finally, without the passage of S.B. 1, a same-sex couple that lives in Hawaii and wants to be married not only would be forced to travel out-of-state to get married, but would not have their relationship *recognized as a marriage* once they returned home to Hawaii. Under current law, a same-sex couple that married out-of-state is treated as having entered a civil union pursuant to section 572B-10, Hawaii Revised Statutes. Litigation in other states shows that the manner in which these relationships are recognized matters, in and of itself. *See, e.g., Perry v. Brown*, 671 F.3d 1052, 1078 (9th Cir. 2012), and *vacated on other grounds sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) ("It is the designation of 'marriage' itself that expresses validation, by the state and the community, and that serves as a symbol, like a wedding ceremony or a wedding ring, of something profoundly important."). Being recognized as a *marriage* is a distinct benefit in itself, for all the reasons the Supreme Court highlighted in *Windsor*. *Windsor*, 133 S. Ct. at 2692-93 ("For same-sex couples who wished to be married, the state acted to give their lawful conduct a lawful status. This status is a far-reaching legal acknowledgment of the intimate relationship between two people, a *relationship deemed by the state worthy of dignity in the community equal with all other marriages*. It reflects both the *community's considered perspective on the historical roots of the institution of marriage and its evolving understanding of the meaning of equality*." (emphasis added)). These are the goals served by S.B. 1.

IV. Conclusion

Denial of some federal benefits and continuing uncertainty about other federal benefits shows the need for marriage equality. Full equality for all federal benefits and programs for Hawaii's own residents can be secured by S.B. 1. Passing the bill would have the additional benefit of avoiding the potential uncertainty explained above for significant programs such as Social Security. If Hawaii becomes a marriage equality state, then there will be no question that same-sex couples who live here and marry here are treated the same as couples who marry elsewhere and reside here later.

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For the above reasons, we continue to stand in strong support of the passage of S.B. 1,
which would allow two individuals regardless of gender to marry in Hawaii.

Please do not hesitate to contact me if you have additional questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "David M. Louie", is positioned above the printed name.

David M. Louie
Attorney General

ATTACHMENT B

http://www.staradvertiser.com/editorialspremium/guesteditorialspremium/20131030_Hawaiian_values_differ_from_Western_traditions_.html?id=2298

Hawaiian values differ from Western traditions - Hawaii News - Honolulu Star-Advertiser

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Hawaiian values differ from Western traditions

By Hinaleimoana Wong-Kalu

POSTED: 01:30 a.m. HST, Oct 30, 2013



Several hundred people rallied at the state Capitol Monday against legislation to legalize same-sex marriage. Bruce Asato/Star-Advertiser.com

The debate over marriage equality in Hawaii has created much tension and division in our communities. 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 compromise, convolute and decimate us even beyond what has already been accomplished at the hands of the colonizers.

replaced by neo-Christian beliefs and used to further a Western political agenda on our islands.



Hinaleimoana Wong-Kalu, of Naama, is cultural director at Hoku Lokuhi Public Charter School, and chairperson of the Oahu Island Barred Council.

This has become evident over the past weeks as many of my fellow Kanaka Maoli wave signs on the streets or speak on TV to insist on "traditional marriage" as a way to protect "ohana values." In truth, pre-contact Hawaiians would have scoffed at the simplistic view of marriage as "the union of one man and one woman," and their family arrangements often included and even depended upon relatives in same-sex relationships.

In pre-contact times, ohana was far more extensive than the Western nuclear family. They included kupuna and their siblings and cousins, makua and their siblings and cousins, children and grandchildren and all other cousins and distant and hanai relations. Our people lived in a format employing kauhale, where multigenerational and latitudinal families gathered together. Western missionaries thought us barbaric and labeled us heathens, but our extended families took care of the whole ohana.

Our people also embraced mahu (those who embody both kane and wahine ability, insight, feeling and spirit all rolled up into one body), aikane (those involved with intimate relations of the same sex), punalua (those men and women who had multiple partners of the opposite sex), and, of course, poolua children (a child with more than one father figure and the ability to claim more than one genealogy). Such people and relationships were not just "tolerated," as in the current neo-Christian dogma, they were an intrinsic part of the social fabric.

In these challenging times, convoluted views of our native culture are being appropriated for other purposes. Hawaiians need to be consistent. Choose your water source and stay there. If you would like to

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Oct 30, 2013 06:58:37PM MDT

http://www.staradvertiser.com/editorialspremium/guesteditorialspremium/20131030_Hawaiian_values_differ_from_Western_traditions_.html?id=2298

drink the holy water from the Christian chalice, then that is your choice. If you would like to drink from the punawai of the wai a kane, then that, too, is yours to pursue. The problem occurs when Hawaiians want to have it both ways, drawing water from the wai a kane to further the goals of Christianity, enabling its proselytizers to continue perpetuating the wrongs of the past.

Wake up, kanaka maoli! If you support the Westernized Christian view of marriage, then so be it — but please don't pretend that your choice has anything to do with Hawaiian thought or values. You have joined the ranks of the ones without a culture, without a language and without a soul, those our ancestors called haole. You require your soul's mana to come from a completely outside source and have no wherewithal to find that source of life within. You would relegate our people to nothing but mere shells along the seashore, damaged by those who trample upon their fragile beauty because they want to walk in paradise.

I speak on behalf of mahu and those in aikane relationships who are too afraid, too shy or unable to articulate their profound connection to the true native concept of Hawaii — an inclusive society that unconditionally accepts, respects and loves all people, and that values the full and wondrous diversity of our relationships and families.

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FOURTH DAY

Thursday, October 31, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:38 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Gabbard, Galuteria, and Wakai who were excused.

The President announced that she had read and approved the Journal of the Third Day.

MESSAGE FROM THE GOVERNOR

The following message from the Governor (Gov. Msg. No. 43) was read by the Clerk and was placed on file:

Gov. Msg. No. 43, informing the Senate that on October 30, 2013, the Governor withdrew SHAWN SMITH, Gubernatorial Nominee to the Board of Land and Natural Resources, from consideration by the Senate (Gov. Msg. No. 22).

HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 3) was read by the Clerk and was disposed of as follows:

Hse. Com. No. 3, transmitting H.B. No. 3, H.D. 1, which passed Third Reading in the House of Representatives on October 31, 2013, was placed on file.

On motion by Senator Espero, seconded by Senator Slom and carried, H.B. No. 3, H.D. 1, entitled: "A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION," passed First Reading by title and was referred jointly to the Committee on Health and the Committee on Ways and Means.

STANDING COMMITTEE REPORTS

Senator Espero, for the Committee on Public Safety, Intergovernmental and Military Affairs, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate advise and consent to the nomination of HAROLD BUGADO to the Advisory Board on Veterans' Services, in accordance with Gov. Msg. No. 28.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2 and Gov. Msg. No. 28 was deferred until Friday, November 1, 2013.

Senator Baker, for the Committee on Commerce and Consumer Affairs, presented a report (Stand. Com. Rep. No. 3) recommending that the Senate advise and consent to the nomination of MARIA CHUN to the Hawai'i Medical Board, in accordance with Gov. Msg. No. 6.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3 and Gov. Msg. No. 6 was deferred until Friday, November 1, 2013.

Senator Baker, for the Committee on Commerce and Consumer Affairs, presented a report (Stand. Com. Rep. No. 4) recommending that the Senate advise and consent to the nomination of DARRYL KOMO to the State Board of Public Accountancy, in accordance with Gov. Msg. No. 7.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 4 and Gov. Msg. No. 7 was deferred until Friday, November 1, 2013.

Senator Baker, for the Committee on Commerce and Consumer Affairs, presented a report (Stand. Com. Rep. No. 5)

recommending that the Senate advise and consent to the nomination of DENNIS NAGATA to the Board of Dental Examiners, in accordance with Gov. Msg. No. 14.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 5 and Gov. Msg. No. 14 was deferred until Friday, November 1, 2013.

Senator Baker, for the Committee on Commerce and Consumer Affairs, presented a report (Stand. Com. Rep. No. 6) recommending that the Senate advise and consent to the nomination of MARY JO KEEFE to the Board of Pharmacy, in accordance with Gov. Msg. No. 18.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 6 and Gov. Msg. No. 18 was deferred until Friday, November 1, 2013.

Senator Baker, for the Committee on Commerce and Consumer Affairs, presented a report (Stand. Com. Rep. No. 7) recommending that the Senate advise and consent to the nomination of QUENTON BROWN to the State Boxing Commission of Hawai'i, in accordance with Gov. Msg. No. 20.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 7 and Gov. Msg. No. 20 was deferred until Friday, November 1, 2013.

Senator Baker, for the Committee on Commerce and Consumer Affairs, presented a report (Stand. Com. Rep. No. 8) recommending that the Senate advise and consent to the nomination of KENNETH CHANG to the Board of Private Detectives and Guards, in accordance with Gov. Msg. No. 32.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 8 and Gov. Msg. No. 32 was deferred until Friday, November 1, 2013.

Senator Espero, for the Committee on Public Safety, Intergovernmental and Military Affairs, presented a report (Stand. Com. Rep. No. 9) recommending that the Senate advise and consent to the nominations to the Civil Process Server Working Group of the following:

DANIEL TOYAMA, in accordance with Gov. Msg. No. 35; and

RICHARD MITCHELL, in accordance with Gov. Msg. No. 36.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 9 and Gov. Msg. Nos. 35 and 36 was deferred until Friday, November 1, 2013.

Senator Hee rose to announce that the Committee on Judiciary and Labor would be holding a hearing the following day at 12:30 p.m. in Conference Room 414 on gubernatorial and judicial nominees.

Senator Green rose to announce that the Committee on Health and the Committee on Ways and Means would be holding a joint hearing the following day at 1:30 p.m. in Conference Room 211.

Senator Ige rose to remind the members of the Committee on Ways and Means of a joint hearing and decision making meeting that day at 12:00 p.m. in Conference Room 211.

Senator Nishihara rose to announce that the Committee on Technology and the Arts would be holding a hearing that day at 1:30 p.m. in Conference Room 414, and that he would be presiding as chair in Senator Wakai's absence.

Senator Kouchi rose to speak on a point of personal privilege as follows:

“As you know, yesterday, several of my colleagues referred to their wedding anniversaries. My colleague from Maui struggled to get the accuracy of his anniversary correct. I went home and did some research, and so as not to upset my wife, I just wanted to state that next month my wife and I will be celebrating our 26th wedding anniversary. Thank you.”

Senator Hee rose to announce that the Committee on Ways and Means' hearing that afternoon would also include the Committee on Judiciary and Labor, and reminded the members to attend for decision making.

Senator Dela Cruz rose to announce that the Committee on Economic Development, Government Operations and Housing would be holding a hearing and decision making that afternoon at 2:00 p.m.

STANDING COMMITTEE REPORTS

On motion by Senator Espero, seconded by Senator Slom and carried, the Senate authorized the Clerk to receive standing committee reports on Governor's Messages for advise and consent to nominations. In consequence thereof, and subsequent to its recessing at 11:44 a.m., the Senate took the following actions:

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 10), recommending that the Senate advise and consent to the nomination of DOUGLAS SCHENK to the Board of Directors of the Agribusiness Development Corporation, in accordance with Gov. Msg. No. 29.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 10 and Gov. Msg. No. 29 was deferred until Friday, November 1, 2013.

Senator Nishihara, for the Committee on Agriculture, presented a report (Stand. Com. Rep. No. 11), recommending that the Senate advise and consent to the nomination of L. DOUGLAS MACCLUER to the Advisory Committee on Pesticides, in accordance with Gov. Msg. No. 30.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 11 and Gov. Msg. No. 30 was deferred until Friday, November 1, 2013.

Senator Dela Cruz, for the Committee on Economic Development, Government Operations and Housing, presented a report (Stand. Com. Rep. No. 12), recommending that the Senate advise and consent to the nomination of MARK WONG to the Enhanced 911 Board, in accordance with Gov. Msg. No. 17.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 12 and Gov. Msg. No. 17 was deferred until Friday, November 1, 2013.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 13), recommending that the Senate advise and consent to the nomination of MYOUNG OH to the Board of Directors of the Hawai'i Public Housing Authority, in accordance with Gov. Msg. No. 19.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 13 and Gov. Msg. No. 19 was deferred until Friday, November 1, 2013.

Senator Shimabukuro, for the Committee on Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 14) recommending that the Senate advise and consent to the

nominations to the Hawaiian Homes Commission of the following:

WALLACE ISHIBASHI, JR., in accordance with Gov. Msg. No. 4; and

PATRICIA SHEEHAN, in accordance with Gov. Msg. No. 5.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 14 and Gov. Msg. Nos. 4 and 5 was deferred until Friday, November 1, 2013.

Senator Solomon, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 15), recommending that the Senate advise and consent to the nomination of JERRY KALUHIWA to the Kaneohe Bay Regional Council, in accordance with Gov. Msg. No. 16.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 15 and Gov. Msg. No. 16 was deferred until Friday, November 1, 2013.

Senator Solomon, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 16), recommending that the Senate advise and consent to the nomination of HOKULANI HOLT-PADILLA to the Kaho'olawe Island Reserve Commission, in accordance with Gov. Msg. No. 23.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 16 and Gov. Msg. No. 23 was deferred until Friday, November 1, 2013.

Senator Solomon, for the Committee on Water and Land, presented a report (Stand. Com. Rep. No. 17), recommending that the Senate advise and consent to the nomination of ULALIA WOODSIDE to the Natural Area Reserves System Commission, in accordance with Gov. Msg. No. 24.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 17 and Gov. Msg. No. 24 was deferred until Friday, November 1, 2013.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 18) recommending that the Senate advise and consent to the nominations to the Disability and Communication Access Board of the following:

PAULINE AUGHE, in accordance with Gov. Msg. No. 8; and

BRYANT YABUI, in accordance with Gov. Msg. No. 9.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 18 and Gov. Msg. Nos. 8 and 9 was deferred until Friday, November 1, 2013.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 19), recommending that the Senate advise and consent to the nomination of FRANCES LYONS to the Mental Health and Substance Abuse, Hawai'i Service Area Board, in accordance with Gov. Msg. No. 10.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 19 and Gov. Msg. No. 10 was deferred until Friday, November 1, 2013.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 20), recommending that the Senate advise and consent to the nomination of JANE GREENWOOD to the Emergency Medical Services Advisory Committee, in accordance with Gov. Msg. No. 15.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 20 and Gov. Msg. No. 15 was deferred until Friday, November 1, 2013.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 21), recommending that the Senate advise and consent to the nomination of REBECA ZAMORA to the Language Access Advisory Council, in accordance with Gov. Msg. No. 21.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 21 and Gov. Msg. No. 21 was deferred until Friday, November 1, 2013.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 22) recommending that the Senate advise and consent to the nominations to the Hawai'i Teacher Standards Board of the following:

LISA DELONG, in accordance with Gov. Msg. No. 2; and

SCOTT PARKER, in accordance with Gov. Msg. No. 3.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 22 and Gov. Msg. Nos. 2 and 3 was deferred until Friday, November 1, 2013.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 23) recommending that the Senate advise and consent to the nominations to the Board of Education of the following:

AMY ASSELBAYE, in accordance with Gov. Msg. No. 12; and

PATRICIA HALAGAO, in accordance with Gov. Msg. No. 13.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 23 and Gov. Msg. Nos. 12 and 13 was deferred until Friday, November 1, 2013.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 24) recommending that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

DAVID FRAY, in accordance with Gov. Msg. No. 25;

ROLAND PRIETO, in accordance with Gov. Msg. No. 26; and

JOHN KUWAYE, in accordance with Gov. Msg. No. 27.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 24 and Gov. Msg. Nos. 25, 26, and 27 was deferred until Friday, November 1, 2013.

Senator Green, for the Committee on Health, presented a report (Stand. Com. Rep. No. 25), recommending that the Senate advise and consent to the nomination of ROBERT COLLESANO to the Mental Health and Substance Abuse, Maui Service Area Board, in accordance with Gov. Msg. No. 11.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 25 and Gov. Msg. No. 11 was deferred until Friday, November 1, 2013.

ADJOURNMENT

At 4:30 p.m., the Senate adjourned until 11:30 a.m., Friday, November 1, 2013.

FIFTH DAY

Friday, November 1, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:46 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Gabbard and Ihara who were excused.

The President announced that she had read and approved the Journal of the Fourth Day.

At this time, Senator Espero introduced Raj Kolluru, a student from Hawai'i Pacific University who was serving as an intern for Senator Ihara.

Senator Tokuda recognized Patricia Halagao, gubernatorial nominee to the Board of Education, and her husband A.J.

Senator Tokuda also welcomed Uncle Jerry Kaluhiwa, a constituent from her district and gubernatorial nominee to the Kaneohe Bay Regional Council, who was accompanied by his wife Auntie Rocky.

Senator Baker recognized the following gubernatorial nominees to various boards and commissions: Maria Chun, Hawai'i Medical Board, and her husband; Quenton Brown, State Boxing Commission of Hawai'i, and his wife; and Kenneth Chang, Board of Private Detectives and Guards.

The Chair extended an additional welcome to all of the guests present and thanked the boards and commissions nominees for their willingness to serve.

STANDING COMMITTEE REPORTS

Senators Hee and Ige, for the majority of the Committee on Judiciary and Labor and the majority of the Committee on Ways and Means, presented a joint report (Stand. Com. Rep. No. 26) recommending that H.B. No. 1 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the majority 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 on Monday, November 4, 2013.

Senators Hee and Ige, for the majority of the Committee on Judiciary and Labor and majority of the Committee on Ways and Means, presented a joint report (Stand. Com. Rep. No. 27) recommending that H.B. No. 2 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the majority 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 on Monday, November 4, 2013.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 2 (Gov. Msg. No. 28):

Senator Espero moved that Stand. Com. Rep. No. 2 be received and placed on file, seconded by Senator Baker and carried.

Senator Espero then moved that the Senate advise and consent to the nomination of HAROLD BUGADO to the Advisory Board on Veterans' Services, term to expire June 30, 2015, seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 3 (Gov. Msg. No. 6):

Senator Baker moved that Stand. Com. Rep. No. 3 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of MARIA CHUN to the Hawai'i Medical Board, term to expire June 30, 2017, seconded by Senator Taniguchi.

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

"Since those previous remarks were not on the record, I just want to rise in strong support for Gov. Msg. Nos. 6, 7, 14, 18, 20, and 32. These are all Governor's Messages for members of boards and commissions that are part of the Division of Professional and Vocational Licensing in the Department of Commerce and Consumer Affairs. All of these men and women are either licensees or public members and are well-qualified for the positions for which they have been appointed. We are very fortunate to have their knowledge, expertise, and willingness to serve. Thank you, Madam President."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 4 (Gov. Msg. No. 7):

Senator Baker moved that Stand. Com. Rep. No. 4 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of DARRYL KOMO to the State Board of Public Accountancy, term to expire June 30, 2017, seconded by Senator Taniguchi.

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

"Since those previous remarks were not on the record, I just want to rise in strong support for Gov. Msg. Nos. 6, 7, 14, 18, 20, and 32. These are all Governor's Messages for members of boards and commissions that are part of the Division of Professional and Vocational Licensing in the Department of Commerce and Consumer Affairs. All of these men and women are either licensees or public members and are well-qualified for the positions for which they have been appointed. We are very fortunate to have their knowledge, expertise, and willingness to serve. Thank you, Madam President."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 5 (Gov. Msg. No. 14):

Senator Baker moved that Stand. Com. Rep. No. 5 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of DENNIS NAGATA to the Board of Dental Examiners, term to expire June 30, 2017, seconded by Senator Taniguchi.

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

“Since those previous remarks were not on the record, I just want to rise in strong support for Gov. Msg. Nos. 6, 7, 14, 18, 20, and 32. These are all Governor’s Messages for members of boards and commissions that are part of the Division of Professional and Vocational Licensing in the Department of Commerce and Consumer Affairs. All of these men and women are either licensees or public members and are well-qualified for the positions for which they have been appointed. We are very fortunate to have their knowledge, expertise, and willingness to serve. Thank you, Madam President.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 6 (Gov. Msg. No. 18):

Senator Baker moved that Stand. Com. Rep. No. 6 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of MARY JO KEEFE to the Board of Pharmacy, term to expire June 30, 2017, seconded by Senator Taniguchi.

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

“Since those previous remarks were not on the record, I just want to rise in strong support for Gov. Msg. Nos. 6, 7, 14, 18, 20, and 32. These are all Governor’s Messages for members of boards and commissions that are part of the Division of Professional and Vocational Licensing in the Department of Commerce and Consumer Affairs. All of these men and women are either licensees or public members and are well-qualified for the positions for which they have been appointed. We are very fortunate to have their knowledge, expertise, and willingness to serve. Thank you, Madam President.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 7 (Gov. Msg. No. 20):

Senator Baker moved that Stand. Com. Rep. No. 7 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of QUENTON BROWN to the State Boxing Commission of Hawai’i, term to expire June 30, 2016, seconded by Senator Taniguchi.

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

“Since those previous remarks were not on the record, I just want to rise in strong support for Gov. Msg. Nos. 6, 7, 14, 18, 20, and 32. These are all Governor’s Messages for members of

boards and commissions that are part of the Division of Professional and Vocational Licensing in the Department of Commerce and Consumer Affairs. All of these men and women are either licensees or public members and are well-qualified for the positions for which they have been appointed. We are very fortunate to have their knowledge, expertise, and willingness to serve. Thank you, Madam President.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 8 (Gov. Msg. No. 32):

Senator Baker moved that Stand. Com. Rep. No. 8 be received and placed on file, seconded by Senator Taniguchi and carried.

Senator Baker then moved that the Senate advise and consent to the nomination of KENNETH CHANG to the Board of Private Detectives and Guards, term to expire June 30, 2017, seconded by Senator Taniguchi.

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

“Since those previous remarks were not on the record, I just want to rise in strong support for Gov. Msg. Nos. 6, 7, 14, 18, 20, and 32. These are all Governor’s Messages for members of boards and commissions that are part of the Division of Professional and Vocational Licensing in the Department of Commerce and Consumer Affairs. All of these men and women are either licensees or public members and are well-qualified for the positions for which they have been appointed. We are very fortunate to have their knowledge, expertise, and willingness to serve. Thank you, Madam President.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 9 (Gov. Msg. Nos. 35 and 36):

Senator Espero moved that Stand. Com. Rep. No. 9 be received and placed on file, seconded by Senator Baker and carried.

Senator Espero then moved that the Senate advise and consent to the nominations to the Civil Process Server Working Group of the following:

DANIEL TOYAMA, term to expire June 30, 2015 (Gov. Msg. No. 35); and

RICHARD MITCHELL, term to expire June 30, 2015 (Gov. Msg. No. 36),

seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 10 (Gov. Msg. No. 29):

Senator Nishihara moved that Stand. Com. Rep. No. 10 be received and placed on file, seconded by Senator Kouchi and carried.

Senator Nishihara then moved that the Senate advise and consent to the nomination of DOUGLAS SCHENK to the Board of Directors of the Agribusiness Development Corporation, term to expire June 30, 2017, seconded by Senator Kouchi.

Senator Keith-Agaran rose to make the following inquiry:

“Madam President, I’d like a ruling on a possible conflict regarding Gov. Msg. Nos. 29 and 30. Both of those gentlemen are officers of a company that my law firm represents.”

The Chair responded that there was no conflict.

Senator Nishihara rose to speak in support of the nominee as follows:

“I’d like to give my strong support to Gov. Msg. No. 29.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 11 (Gov. Msg. No. 30):

Senator Nishihara moved that Stand. Com. Rep. No. 11 be received and placed on file, seconded by Senator Kouchi and carried.

Senator Nishihara then moved that the Senate advise and consent to the nomination of L. DOUGLAS MACCLUER to the Advisory Committee on Pesticides, term to expire June 30, 2016, seconded by Senator Kouchi.

Senator Keith-Agaran rose to make the following inquiry:

“Madam President, I’d like a ruling on a possible conflict regarding Gov. Msg. Nos. 29 and 30. Both of those gentlemen are officers of a company that my law firm represents.”

The Chair responded that there was no conflict.

Senator Nishihara rose to speak in support of the nominee as follows:

“I’d like to give my strong support to Gov. Msg. No. 30.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 12 (Gov. Msg. No. 17):

Senator Dela Cruz moved that Stand. Com. Rep. No. 12 be received and placed on file, seconded by Senator Slom and carried.

Senator Dela Cruz then moved that the Senate advise and consent to the nomination of MARK WONG to the Enhanced 911 Board, term to expire June 30, 2017, seconded by Senator Slom.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 13 (Gov. Msg. No. 19):

Senator Chun Oakland moved that Stand. Com. Rep. No. 13 be received and placed on file, seconded by Senator Green and carried.

Senator Chun Oakland then moved that the Senate advise and consent to the nomination of MYOUNG OH to the Board of Directors of the Hawai’i Public Housing Authority, term to expire June 30, 2014, seconded by Senator Green.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 14 (Gov. Msg. Nos. 4 and 5):

Senator Shimabukuro moved that Stand. Com. Rep. No. 14 be received and placed on file, seconded by Senator Hee and carried.

Senator Shimabukuro then moved that the Senate advise and consent to the nominations to the Hawaiian Homes Commission of the following:

WALLACE ISHIBASHI, JR., term to expire June 30, 2017 (Gov. Msg. No. 4); and

PATRICIA SHEEHAN, term to expire June 30, 2017 (Gov. Msg. No. 5),

seconded by Senator Hee.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 15 (Gov. Msg. No. 16):

Senator Solomon moved that Stand. Com. Rep. No. 15 be received and placed on file, seconded by Senator Galuteria and carried.

Senator Solomon then moved that the Senate advise and consent to the nomination of JERRY KALUHIWA to the Kaneohe Bay Regional Council, term to expire June 30, 2017, seconded by Senator Galuteria.

Senator Solomon rose to speak in support of the nominee as follows:

“I, too, would like to submit some remarks for the Journal in strong support for Gov. Msg. Nos. 16, 23, 24, and 25.” (The Chair so ordered.)

The Chair having so ordered, Senator Solomon’s remarks read as follows:

“I am in full support of Jerry Kaluhiwa as a member of the Kaneohe Bay Regional Council within the Department of Land and Natural Resources.

“Mr. Kaluhiwa is self-employed doing special effects for various film projects. He also has experience in operating heavy equipment for numerous construction companies. He is very involved within his community including involvement in limu research and restoration at Kaneohe Bay; the Ho’ohuli Program, which builds skills in students and bridge gaps to help them achieve career goals, earn a high school diploma, or enter community college; and Project Holomua, which works with youth in transition from elementary to high school through non-school hour activities.

“Mr. Kaluhiwa has extensive community involvement in Native Hawaiian cultural and community organizations, including Kako’o O’iwi as President and Board Member (Konohiki of Kupuna Council), Na Iwi Ola o He’eia Kea; Pae Pae o He’eia Fishpond; Ko’olaupoko Hawaiian Civic Club; Keahiakahoe Canoe Club; Congress of Hawaiian People; Aloha Association; Friends of He’eia State Park; Ahupua’a Restoration Council of He’eia; and He’eia Kea and Meadowlands Community Association. He has also been a member of the AFL-CIO Union and Operating Engineers Union.

“Mr. Kaluhiwa sees his role on the Kaneohe Bay Regional Council as one to develop and support the implementation of the Kaneohe Bay Master Plan and to consider improvements to the master plan as needed, and to represent the interests and concerns of the Kahalu’u Neighborhood Board.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 16 (Gov. Msg. No. 23):

Senator Solomon moved that Stand. Com. Rep. No. 16 be received and placed on file, seconded by Senator Galuteria and carried.

Senator Solomon then moved that the Senate advise and consent to the nomination of HOKULANI HOLT-PADILLA to the Kaho'olawe Island Reserve Commission, term to expire June 30, 2016, seconded by Senator Galuteria.

Senator Solomon rose to speak in support of the nominee as follows:

"I, too, would like to submit some remarks for the Journal in strong support for Gov. Msg. Nos. 16, 23, 24, and 25." (The Chair so ordered.)

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

"I am in full support of Hokulani Holt-Padilla as a commissioner for the Kaho'olawe Island Reserve Commission within the Department of Land and Natural Resources.

"Ms. Holt-Padilla is kumu hula of Pa'u o Hi'iaka and teaches traditional and contemporary hula as well as Hawaiian history, culture and language. She is currently the Culture Programs Director at the Maui Arts & Cultural Center and a Lecturer at the University of Hawai'i Maui College in Hawaiian language and culture.

"Ms. Holt-Padilla's previous experience includes serving as Culture and Education Manager for the Kaho'olawe Island Reserve Commission, Site Coordinator for Na Pua No'eau Center for Gifted and Talented Native Hawaiian Children, and Director of the Punana Leo O Maui Hawaiian Language Preschool. She has also worked within her community serving as President of Kauahea Inc., and Vice President of Lalakea Foundation and on the Community Advisory Board of the Kamehameha Schools Bishop Estate, as well as on the Hawaiian Culture Advisory Committee of the Hawaii Visitors and Convention Bureau, and Council for Native Hawaii Advancement.

"Ms. Holt-Padilla sees her role on the Commission as one who looks to the needs of the 'aina. She believes that if we are to be good stewards of the land then we must use all means possible to bring together great minds and great passion for the benefit of Kaho'olawe."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 17 (Gov. Msg. No. 24):

Senator Solomon moved that Stand. Com. Rep. No. 17 be received and placed on file, seconded by Senator Galuteria and carried.

Senator Solomon then moved that the Senate advise and consent to the nomination of ULALIA WOODSIDE to the Natural Area Reserves System Commission, term to expire June 30, 2016, seconded by Senator Galuteria.

Senator Solomon rose to speak in support of the nominee as follows:

"I, too, would like to submit some remarks for the Journal in strong support for Gov. Msg. Nos. 16, 23, 24, and 25." (The Chair so ordered.)

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

"I am in full support of Ulalia Woodside as a commissioner for the Natural Area Reserves System Commission within the Department of Land and Natural Resources.

"Ms. Woodside's background as a kumu hula, having completed the 'uniki rites and requirements, and her work as Regional Asset Manager for the Endowment Group – Land Assets Division at Kamehameha Schools with a property portfolio of 190,000 acres provides her with extensive experience in various Hawaiian cultural, artistic, and historical activities and organizations.

"Ms. Woodside sees her role on the Commission as one that requires her to understand the condition of native ecosystems and habitats in order to provide guidance and recommendations for the development of policies for the proper management of the natural reserve system."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 18 (Gov. Msg. Nos. 8 and 9):

Senator Green moved that Stand. Com. Rep. No. 18 be received and placed on file, seconded by Senator Baker and carried.

Senator Green then moved that the Senate advise and consent to the nominations to the Disability and Communication Access Board of the following:

PAULINE AUGHE, term to expire June 30, 2015 (Gov. Msg. No. 8); and

BRYANT YABUI, term to expire June 30, 2017 (Gov. Msg. No. 9),

seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 19 (Gov. Msg. No. 10):

Senator Green moved that Stand. Com. Rep. No. 19 be received and placed on file, seconded by Senator Baker and carried.

Senator Green then moved that the Senate advise and consent to the nomination of FRANCES LYONS to the Mental Health and Substance Abuse, Hawai'i Service Area Board, term to expire June 30, 2014, seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 20 (Gov. Msg. No. 15):

Senator Green moved that Stand. Com. Rep. No. 20 be received and placed on file, seconded by Senator Baker and carried.

Senator Green then moved that the Senate advise and consent to the nomination of JANE GREENWOOD to the Emergency Medical Services Advisory Committee, term to expire June 30, 2016, seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 21 (Gov. Msg. No. 21):

Senator Green moved that Stand. Com. Rep. No. 21 be received and placed on file, seconded by Senator Baker and carried.

Senator Green then moved that the Senate advise and consent to the nomination of REBECA ZAMORA to the Language Access Advisory Council, term to expire June 30, 2017, seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 22 (Gov. Msg. Nos. 2 and 3):

Senator Tokuda moved that Stand. Com. Rep. No. 22 be received and placed on file, seconded by Senator Kidani and carried.

Senator Tokuda then moved that the Senate advise and consent to the nominations to the Hawai'i Teacher Standards Board of the following:

LISA DELONG, term to expire June 30, 2016 (Gov. Msg. No. 2); and

SCOTT PARKER, term to expire June 30, 2016 (Gov. Msg. No. 3),

seconded by Senator Kidani.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 23 (Gov. Msg. Nos. 12 and 13):

Senator Tokuda moved that Stand. Com. Rep. No. 23 be received and placed on file, seconded by Senator Kidani and carried.

Senator Tokuda then moved that the Senate advise and consent to the nominations to the Board of Education of the following:

AMY ASSELBAYE, term to expire June 30, 2016 (Gov. Msg. No. 12); and

PATRICIA HALAGAO, term to expire June 30, 2016 (Gov. Msg. No. 13),

seconded by Senator Kidani.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 24 (Gov. Msg. Nos. 25, 26, and 27):

Senator Chun Oakland moved that Stand. Com. Rep. No. 24 be received and placed on file, seconded by Senator Green and carried.

Senator Chun Oakland then moved that the Senate advise and consent to the nominations to the State Rehabilitation Council of the following:

DAVID FRAY, term to expire June 30, 2016 (Gov. Msg. No. 25);

ROLAND PRIETO, term to expire June 30, 2016 (Gov. Msg. No. 26); and

JOHN KUWAYE, term to expire June 30, 2016 (Gov. Msg. No. 27),

seconded by Senator Green.

Senator Solomon rose to speak in support of the nominee under Gov. Msg. No. 25 as follows:

"I, too, would like to submit some remarks for the Journal in strong support for Gov. Msg. Nos. 16, 23, 24, and 25." (The Chair so ordered.)

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

"I am in strong support of Dr. David Fray who is an experienced health educator, special needs dentist, risk management consultant, and healthcare administrator.

"He has served as Director of the dental clinic for the Anthony Jordan Health Center and Chief of the Developmental Disabilities Division for the Hawaii Department of Health for over ten years.

"His past experiences include teaching courses in developmental dentistry as a faculty member at several institutions, including the University of Hawaii, University of Phoenix, and University of Oklahoma as well as working as a dentist for international health teams in Honduras, Nicaragua, Mexico, Romania, the Philippines, and Serbia.

"Dr. Fray's extensive involvement in several boards and commissions such as the Special Education Advisory Committee for the Hawaii Department of Education, Hawaii Neurotrauma Advisory Board, Hawaii State Traumatic Head Injury Advisory Board, and the Hawaii Homeless Task Force provide him with vast knowledge in the field of dentistry, developmental disabilities, and health. His continuing commitment to serve on various boards and committees will be a great asset to the State Rehabilitation Council."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

Stand. Com. Rep. No. 25 (Gov. Msg. No. 11):

Senator Green moved that Stand. Com. Rep. No. 25 be received and placed on file, seconded by Senator Baker and carried.

Senator Green then moved that the Senate advise and consent to the nomination of ROBERT COLLESANO to the Mental Health and Substance Abuse, Maui Service Area Board, term to expire June 30, 2014, seconded by Senator Baker.

Senator Green rose to speak on a point of information as follows:

"I'd like to note for the record that there was an error in the term expiration date listed on Gov. Msg. No. 11. We confirmed with the Governor's office that the term expiration date should be June 30, 2014, and the correct date is reflected in the standing committee report."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Ihara).

At this time, Senator Espero introduced Amy Asselbaye, newly confirmed member of the Board of Education who was seated in the gallery.

Senator Solomon extended an additional welcome to Uncle Jerry Kaluhiwa and Auntie Rocky, thanked him for his willingness to serve, and noted that it was Auntie Rocky's lā hānau.

Senator Espero rose to request that the Senate adjourn on a rising vote, to observe a moment of silence for Senator Wakai's mother Ruth Wakai.

Senator Wakai rose to speak on a point of personal privilege as follows:

"I just wanted to thank everyone here, my colleagues especially, as well as the staff here of the Senate, for the warm embrace I had following my mother's passing. I apologize for missing perhaps one of the biggest political votes of my political career. Very few things are more important than that vote, and one of those was my mother. She lived 85 wonderful years, and raised myself as well as my sister. She was battling Alzheimer's for the past two years, and finally succumbed to that disease 30 minutes before we convened in session on Wednesday. I was glad that she waited until then, because I came back from Nepal on a medical mission just a day prior. So, that's the silver lining for me. It's never a moment that you prepare for mentally when you see your mother or father or loved one pass, but I was grateful for the fact that she held on until I was able to return from that mission to Nepal.

"I want to just convey to my colleagues here, thank you very much for being patient, being understanding, and just really being warm and kind to me during this difficult point in my life. I'm glad that I have this wonderful job and work with such wonderful people here at the State Capitol, here in the Senate, and also with my former colleagues in the House, I acknowledge their generous kindness to me as well. Thank you, Madam President, and thank you very much to each and every single one of you here."

The Chair extended sympathies to Senator Wakai and his family on behalf of the Senate.

STANDING COMMITTEE REPORTS

On motion by Senator Espero, seconded by Senator Slom and carried, the Senate authorized the Clerk to receive standing committee reports. In consequence thereof, and subsequent to its recessing at 11:58 a.m., on a rising vote to observe a moment of silence for Ruth Wakai, mother of State Senator Glenn Wakai, the Senate took the following actions:

Senator Wakai, for the Committee on Technology and the Arts, presented a report (Stand. Com. Rep. No. 28) recommending that the Senate advise and consent to the nomination of ALLICYN TASAKA to the Design Selection Committee for Art Work to Honor United States Representative Patsy T. Mink, in accordance with Gov. Msg. No. 33.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 28 and Gov. Msg. No. 33 was deferred until Monday, November 4, 2013.

Senator Wakai, for the Committee on Technology and the Arts, presented a report (Stand. Com. Rep. No. 29) recommending that the Senate advise and consent to the nomination of MAY CAZIMERO to the Design Selection Committee for Art Work to Honor United States Senator Daniel K. Inouye, in accordance with Gov. Msg. No. 34.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 29 and Gov. Msg. No. 34 was deferred until Monday, November 4, 2013.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 30) recommending that the Senate advise and consent to the nomination of CLINT SAIKI to the Hawai'i Employer-Union Health Benefits Trust Fund Task Force, in accordance with Gov. Msg. No. 37.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 30 and Gov. Msg. No. 37 was deferred until Monday, November 4, 2013.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 31) recommending that the Senate consent to the nomination of LLOYD A. POELMAN to the District Court of the Second Circuit, State of Hawaii, in accordance with Jud. Com. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 31 and Jud. Com. No. 1 was deferred until Monday, November 4, 2013.

ADJOURNMENT

At 4:30 p.m., the Senate adjourned until 11:30 a.m., Monday, November 4, 2013.

SIXTH DAY

Monday, November 4, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:35 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Gabbard and Shimabukuro who were excused.

The President announced that she had read and approved the Journal of the Fifth Day.

STANDING COMMITTEE REPORT

Senators Green and Ige, for the majority of the Committee on Health and the majority of the Committee on Ways and Means, presented a joint report (Stand. Com. Rep. No. 32) recommending that H.B. No. 3, H.D. 1 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the majority of the Committees was adopted and H.B. No. 3, H.D. 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 on Tuesday, November 5, 2013.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 28 (Gov. Msg. No. 33):

Senator Wakai moved that Stand. Com. Rep. No. 28 be received and placed on file, seconded by Senator Nishihara and carried.

Senator Wakai then moved that the Senate advise and consent to the nomination of ALLICYN TASAKA to the Design Selection Committee for Art Work to Honor United States Representative Patsy T. Mink, term to expire June 30, 2017, seconded by Senator Nishihara.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (English, Gabbard, Ige, Shimabukuro).

Stand. Com. Rep. No. 29 (Gov. Msg. No. 34):

Senator Wakai moved that Stand. Com. Rep. No. 29 be received and placed on file, seconded by Senator Nishihara and carried.

Senator Wakai then moved that the Senate advise and consent to the nomination of MAY CAZIMERO to the Design Selection Committee for Art Work to Honor United States Senator Daniel K. Inouye, term to expire June 30, 2017, seconded by Senator Nishihara.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (English, Gabbard, Ige, Shimabukuro).

Stand. Com. Rep. No. 30 (Gov. Msg. No. 37):

Senator Hee moved that Stand. Com. Rep. No. 30 be received and placed on file, seconded by Senator Galuteria and carried.

Senator Hee then moved that the Senate advise and consent to the nomination of CLINT SAIKI to the Hawai'i Employer-Union Health Benefits Trust Fund Task Force, term to expire June 30, 2014, seconded by Senator Galuteria.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 21. Noes, none. Excused, 4 (English, Gabbard, Ige, Shimabukuro).

Stand. Com. Rep. No. 31 (Jud. Com. No. 1):

Senator Hee moved that Stand. Com. Rep. No. 31 be received and placed on file, seconded by Senator Galuteria.

Senator Hee then moved that the Senate consent to the nomination of LLOYD A. POELMAN to the District Court of the Second Circuit, State of Hawaii, for a term of six years, seconded by Senator Galuteria.

Senator Hee rose to speak in support of the nominee as follows:

"Mr. Poelman went through what I would consider a fairly good scrutiny of his qualifications, given that the special session allowed us the privilege of time. We learned a lot about him beyond the fact that he graduated magna cum laude and earned his Bachelor of Arts degree in Dutch language skills at the University of Utah, and later his J.D. from Reuben Clark Law School at Brigham Young University. More than the fact that Mr. Poelman since 2005 has served as a per diem judge for the Second Circuit, and has taken on the challenges. As many of you know, family court has been said countless times as bringing out the worst in good people. The emotions are not quantifiable and the heartache is on both sides of the equation, the plaintiff and the defendant. In fact, part of that was why the committee allowed for me to take a one-day recess, so that I could work with one in opposition (it was the only one). Having had the privilege of working with her one evening at 6:00 p.m. in my office, it became clear to me that the disagreement that she registered had more to do with the child custody issue and the follow-up by Child Protective Services than it did to do with the ruling from the bench.

"Mr. Poelman brings an interesting facet to the bench. He made it clear to me that his mentor in life was his great-grandfather, in his words, who walked from Missouri to Salt Lake City in establishing the Mormon church. Mr. Poelman shared with me that his grandfather went to Europe on a mission with the Mormon church, and also had two wives. When he was, if I understand correctly, to be prosecuted he went to Mexico. As you can tell, Mr. Poelman comes from a religious background. That notwithstanding, I believe, having had several discussions with him, that he understands what suffering is. He understands what discrimination is. He understands what it means to be bullied and to be belittled for his choice of lifestyle. He brings to the bench, in my opinion, a new dimension to family court, not unlike the new dimension that Justice Sabrina McKenna brought to the Hawai'i Supreme Court as a justice. It's interesting that when we were confirming Justice McKenna, we did so on the same day that this Senate passed the civil unions law. Here we are in similar circumstances that I am honored and I am absolutely confident that per diem Judge Lloyd Poelman will serve this state and her people with great dignity, with great fairness, and will serve the County of Maui and her people with very exemplary judgment from the bench. It is my honor to consent to the nomination of Lloyd Poelman as District Court Judge of the Second Circuit. Thank you, Madam President."

Senator Slom rose to speak in support of the nominee as follows:

"I appreciate the remarks and the amplification of background by the Senate Judiciary Chairman. I think that it should be very clear, however, that when we're talking about justices that we're not talking about religion or lifestyle; we're talking about their experience, we're talking about their abilities, and we're talking about temperament, and in all cases, the nominee more than passed the test. We know that the District Court is usually the entry point for most of our citizens to our judiciary system, and it's most important to have people of good character and patience and people with good experience. Also, the family court, unfortunately, has more and more contentious issues, and we need people of good character, again, good experience, and a lot of patience, and the nominee brings that. So, it is my pleasure to give him full support, and I ask for my colleagues to approve him unanimously. Thank you, Madam President."

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

"I know that my sentiments will be echoed by the two other members of the Maui delegation because we are all in solid support of Mr. Poelman."

"I did not know him until I had an opportunity to visit with him in his office on Maui and talk story. So, I also wanted to look to see what other kinds of folks were supporting him because one of the areas that family court decides upon are temporary restraining orders and issues of domestic violence. I was most pleased when I got an email, unsolicited, from a friend who works in this area on Maui; she's the regional director for Parents Attentive to Children Together Hawaii. They do a lot of TROs and they work with families that have been torn apart by domestic violence. She wrote me that:

Mr. Poelman will make an excellent judge in our Second Circuit. His values include the need to have community intervention for offenders of domestic violence, rather than wait until the problems escalate and we are faced with the tragedy that just occurred on Moloka'i last March or others like it. We have observed him in court as a per diem judge in our TRO hearings being extremely sensitive to the needs of the survivors, and this is so important to minimize their trauma. It is not a person's gender that makes a difference in the court, but their understanding and sensitive handling of the many complex cases that come before them. We believe Mr. Poelman will make a difference in our community and make it safer for all.

"That email alone would've been enough for me to stand in strong support, but I also looked at some of the other testimony from colleagues that started out with him back in the day in Salt Lake, who said that not only would he receive their recommendation 'for his skills as a lawyer, but also for his temperament and character. Lloyd has everything it takes to be an outstanding family court judge. [...As such, he] will be unpretentious and fair.' That's very high praise for somebody who has known Lloyd for 30 years. Other colleagues also talked about his consistent and continual approach to the law with a desire to quickly identify the issues at hand and efficiently work to a fair and just result. I think those are the kind of qualities we want in our judges.

"But the other thing that struck me was another colleague on Maui who talked about his background as really being very important and relevant to family court. I certainly had my horizons broadened regarding what family court entailed when reading this recommendation; it says:

Mr. Poelman stands out especially because he would bring to the Family Court of the Second Circuit a comfortable background in financial, real property and commercial property matters, filling a void in this area of many years' standing in the Maui family court. We may think of family court judges primarily as arbiters in abuse cases and custody battles, and as I said, I have seen Judge Poelman handle such cases with sensitivity and common sense. But the family court portfolio requires a gamut of expertise from its judges, especially on Maui where there are only two family court slots.

Many working class and professional persons have their first encounter with the judicial system when they need a divorce, and rely on the court to adjudicate financial issues that will change their lives. Routinely, the family court is required to evaluate the credibility of claims of gross income and net income for child and spousal support, and consider whether claims for expenses are realistic or inflated. [...] I believe Maui would gain in Mr. Poelman a judge who is comfortable with this range of financial issues, and does not shy away from probing and understanding an income statement or a balance sheet.

"Joy Yanagida, an attorney on Maui, concludes, 'He is committed. He is hardworking. He is caring.'

"For all of these reasons and others, from a middle school teacher who's worked with Mr. Poelman to one of several attorneys who have been on the opposite side of his ruling, I think Maui is very fortunate to have someone of Mr. Poelman's interests, expertise, and character to offer himself to go from being a per diem to a full-time judge, and I'm pleased, on behalf of my Maui colleagues, to stand in full support and ask all my colleagues to support him as well. Mahalo."

Senator Kahele rose to speak in support of the nominee as follows:

"Thank you, Madam President. I rise in support of the nominee, and would like the Journal to reflect the comments made by the Senate Judiciary Chair as if they were my own. Thank you." (The Chair so ordered, by reference only.)

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Gabbard, Shimabukuro).

At this time, Senator Hee introduced Judge Lloyd A. Poelman and his partner Rick Velina.

At 11:51 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:58 a.m.

THIRD READING

H.B. No. 1:

Senator Hee moved that H.B. No. 1, having been read throughout, pass Third Reading, seconded by Senator Ige.

Senator Slom rose to speak in opposition to the measure as follows:

"The impact of this bill will be \$14.8 million. Again, I question why we're doing this in a special session. It is for UPW union Unit 10, and it represents a pay and health insurance premium increase. Just to note and make sure we know for the record, it was Unit 10 that refused and was exempted from the 2011-2013 five percent pay reduction and

the change in health insurance. This is something that, as I say, first of all should wait for regular session; and secondly, we should not be paying for it. Thank you.”

The motion was put by the Chair and carried, H.B. No. 1, entitled: “A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 1 (Slom). Excused, 2 (Gabbard, Shimabukuro).

H.B. No. 2:

Senator Hee moved that H.B. No. 2, having been read throughout, pass Third Reading, seconded by Senator Ige.

Senator Slom rose to speak in opposition to the measure as follows:

“This bill would allocate \$59.3 million for Unit 13 for pay increases and for health benefits. Again, it’s a large expenditure. Again, it does not really require action during the special session. It shows that only special interests and the special unions deserve our support, and not discussion about our economy, which continues to tumble; about the cost of living, which is affecting every person in this state; and the other important issues that we have. Thank you.”

The motion was put by the Chair and carried, H.B. No. 2, entitled: “A BILL FOR AN ACT MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, 1 (Slom). Excused, 2 (Gabbard, Shimabukuro).

At this time, Senator Hee rose to speak on a point of personal privilege as follows:

“I received a call from the White House at 10:35 this morning through, if I understood her correctly, Valerie Jarrett. The President wanted to extend his congratulations and best wishes to the Senate for acting decisively on S.B. No. 1. She indicated that he has an interest in what we do in Hawai‘i, as well as what is being done in Illinois. Finally, she said that – I have no idea what’s being done in Illinois with this effort, but based on their assessment, it appears that if things are right that Hawai‘i will become the 15th state; and he wanted to extend his best wishes and congratulations to the members of the Senate. Thank you, Madam President.”

ADJOURNMENT

At 12:02 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, November 5, 2013.

SEVENTH DAY

Tuesday, November 5, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:35 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Gabbard, Ruderman, Shimabukuro, and Solomon who were excused.

The President announced that she had read and approved the Journal of the Sixth Day.

ORDER OF THE DAY

THIRD READING

H.B. No. 3, H.D. 1:

Senator Green moved that H.B. No. 3, H.D. 1, having been read throughout, pass Third Reading, seconded by Senator Ige.

Senator Slom rose to speak in opposition to the measure as follows:

"We had a healthy discussion in Ways and Means on Friday about this measure, but I have continuing concerns about our practice of continuing to bail out the Hawai'i Health Systems Corporation. It has run deficits for decades. It has been the subject of audits about management conditions. In terms of the financial part that the taxpayers have to pay in this situation, we had an appropriation during this 2013 session of more than \$12 million. This amended version of this bill now seeks an additional \$7.3 million in so-called 'emergency appropriations'. The corporation had also borrowed another \$2 million from the profitable Maui Regional Center. But with all of that, Madam President, the new CEO of the HHSC said that they're still \$8 million in debt; and come 2014, they're going to seek another \$25 million.

"When do we say no? When do we say you've got to get your house in order? Now, they testified that they're looking into cost cutting. They testified that they're looking into reorganization, but this hasn't gone on for one year or two years or five years or ten years. No private business could survive this way without making changes. No individual, no family could survive this way without making changes. And yet, it seems we give a free pass. Now, I'm all for helping out organizations, even state organizations, if there is truly an emergency, but coming back and asking for more money every year to me is not an emergency.

"Also, the discussion centered around the bill that we had during 2013 that sought a public-private partnership, and I was assured that negotiations are ongoing, but I have to admit I have my skepticism. I asked the question, 'Of the total amount of money that goes to HHSC, how much goes for labor union compensation and benefits?' The answer was 70 percent. This is supposed to be about health, but again, like yesterday's bills on collective bargaining, it seems to be more about unions and organized labor.

"So, I continue to say we've got to hold them accountable, we have to insist on changes, and we can't keep giving them more money because it's not our money – it's the taxpayers'. Thank you, Madam President."

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

"I find it most ironic that the harangue we just heard from the minority leader, who lives on O'ahu and has access to a variety of different health care choices, would berate the health care

system that those of us on the neighbor islands use. Health care has been the subject of wild inflation costs in everything from transportation to equipment to salaries. Yet, these are the systems that those of us on the neighbor islands access and use because, at least on Maui, they're the only system. On Lana'i, Moloka'i, Maui, on the Big Island primarily, and on Kaua'i, they make up a very important and robust part of the landscape. I think all of us would like to see health care costs brought under control, but to say to an organization, 'You don't deserve funding. You don't deserve to have your collective bargaining costs covered,' when they are state employees – and we've covered the costs in virtually every other department of government and every other agency of government – really defies logic. Yes, some of us supported last year an effort to bring a public-private partnership together, but that means changes in the law, and the last time I checked it takes both the House and the Senate to do that. Until we can come together as a collective body to look at how we can perhaps streamline organizations and make some appropriate changes, to say on this floor that those organizations that provide vital services on the neighbor islands (and some services here on O'ahu in terms of long term care) do not deserve to have funding just gives me heartburn, to say the least.

"So, this is an important measure. It is an emergency. Fortunately, Maui had some resources that they could share; fortunately, the corporation had some resources that they can share. But I would venture to say that the bulk of what happens in our hospitals is delivered by employees – by nurses, by techs, by people that work in the laundry, by people that work in the cafeteria, by people that provide maintenance – and for HHSC, these are all union workers. They have a benefit package that must be paid. It is negotiated, it survives arbitration, and it needs to be funded. To deny folks that are delivering health care services on the neighbor islands that kind of support I think is unwise, unfortunate, and mean-spirited. I urge all my colleagues to vote in favor of the measure. Thank you."

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

"I take to heart the comments of both of the two previous speakers. Just a couple of points for the members' edification: For health care, especially on the neighbor islands and in our rural communities, the payer mix is 70 percent Medicare/Medicaid and 30 percent private. For instance, the Big Island is 50 percent Medicaid. What does that mean? That means that the reimbursement from Medicaid is about 60 cents on the dollar compared to the private sector pay; for Medicare, it's about 80 percent on the dollar compared to the private sector. So what does that translate to? It translates to a really serious challenge for any facility. The private hospital, North Hawaii Community Hospital, lost a lot of money. Hilo and Kona are challenged. I'm not going to argue with the minority leader about change; there has to be change for the better, always. However, because we have a commitment in our country to take care of people – those who are elderly, on Medicare, those who have severe financial challenges for their families on Medicaid living below poverty – you're going to have these shortfalls no matter what.

"Now, is it ideal? It's a policy call. Do we want to take care of everyone and give them health care access, or not? If we don't, I can tell you as a physician that disease spirals upward. People get much sicker; they end up on dialysis, they end up costing society much more, and they suffer. So, if we were not to fund our community safety net, our HHSC system, what you would see would be severe illness on the neighbor islands. People couldn't live there; they would get transferred to

hospitals in renal failure, with severe pneumonia. It would cost infinitely more. We would then be bailing people out with taxpayer dollars after they've suffered. So, we have to find a healthy balance here in the Legislature on what we're willing to invest.

"I do believe there will be changes in the union contracts to accommodate better budgets. I think that those are reasonable approaches. Perhaps the private-public partnership will be something that we will pass over time and will be a reasonable solution, but I can tell you that there is going to be shortfall in health care facility costs and health care services as long as the country – and Hawai'i included – has a significant mix of Medicaid and Medicare. It's a fundamental commitment to care.

"I would say finally that I'm not trying to be an ideologue here, but I could also frame it a different way. We all focus on our budget. Our Medicaid budget is about \$2 billion a year. Our Medicaid budget doesn't pay these bills adequately to keep everything funded adequately. If tomorrow I told you our Medicaid budget was \$2.08 billion next year, we would challenge those assumptions, we would be concerned, we would work through it, and we would decide okay, is that adequate support for our people who have extreme poverty and need? At that same point, I would say, 'Hey, good news, everyone. HHSC was whole this year.' That's because we actually paid an adequate amount of the bills; and not just to HHSC, but at North Hawaii Community Hospital, at Queen's they wouldn't have losses, at Hawaii Pacific Health. We would then see a health care system that did not require subsidy. Instead, we would see a system from government, from us here in the Senate and in the House, that showed a stronger commitment to those who are really suffering. Then we would be celebrating that there was no shortfall at all because we actually paid an adequate amount to provide those services on Kaua'i, on Lana'i, in Kona, in Hilo.

"So, these are things to mull over, but if we don't appropriate these moneys, not only will people suffer but facilities will close and we would see much larger costs for society. So, I commend you on your votes if you vote 'yes' today. Thank you, members."

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

"I just would like to point out that if we did not make this appropriation, then the two facilities on Kaua'i, in all likelihood, would close. I do know that there are many of us that understand that the Hawaii Health Systems Corporation is not sustainable and have been working to implement changes. We have a commitment from the new CEO; they fired the old CEO. The new CEO is committed to reviewing the costs and the operations at Kaua'i. This funding just takes them through the early part of next year. They are going to be required to return to the Senate with a plan that would be more sustainable for the future. So, I encourage all of you to vote in support.

"In addition, Madam President, I do have some comments I'd like inserted in the Journal regarding a couple of technical matters on this bill. Thank you." (The Chair so ordered.)

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

"LEGISLATIVE INTENT REGARDING \$7.3 MILLION APPROPRIATION FOR HHSC KAUAI IN HB 3, HD1

"This \$7.3 million appropriation for the current fiscal year for HHSC's Kauai region is intended to provide stopgap funding beyond the start of the 2014 regular session. During the regular session, the Legislature intends to consider any emergency appropriation request submitted for additional funding for the current fiscal year for the Kauai region.

"At this time, no commitment may be made that additional funding for the current fiscal year will be appropriated to the Kauai region. Therefore, the Kauai region should be prudent in its expenditure of the appropriation in this bill."

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

"I feel that people need to be accountable, and I also believe and know that the Kaua'i people are very conscientious. Health care, by its nature, is people-intensive. They are taking care of people and their health care needs, and the State of Hawai'i has a really longstanding commitment to the health care and health of everyone across the state. So, thank you very much for the support, and also Senator Kouchi and everyone that represents Kaua'i for the great job that they are doing there. Thank you."

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

"When I first saw it, I was taken aback by the situation. I didn't realize how dire it was over on Kaua'i. I would like the Journal to reflect the words of the previous speakers who stood in support of this, and to thank the chairman of the Health Committee and also the Ways and Means chairman. Thank you very much."

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

"On behalf of the Kaua'i delegation, I just wanted to express my support for my colleagues who have risen to speak in favor of this measure. The one thing I would like to clarify is that the Kauai region has a new CEO. The former CEO was not fired, but chose to submit his resignation. So, I just wanted to clear that up for the record. Thank you."

Senator Thielen rose to speak in support of the measure with reservations as follows:

"I rise in support, but would like to express some reservations. I'd like to back up the comments of the chair of the Senate Ways and Means Committee. I do recognize what was said earlier by many of the Senators here about the needs for rural health care are very true on the neighbor islands. But I also understand on Kaua'i the situation is a little different. The only reason I'm expressing the reservations is I want to encourage the new CEO to take seriously the requirement to come back to the Legislature at the beginning of next session with some meaningful changes that are going to address the problems there. Thank you."

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

"This situation we're confronted with today is eerily similar to the situation regarding Kahuku Medical Center. If some of you who were here recall, Kahuku Medical Center went bankrupt. The board of directors, for fear of lawsuit, gave the state the keys and said, 'Do with it what you wish.' The Legislature responded, and today, after significant changes as HHSC rightly knows, Kahuku Hospital is in the black. It's led by a young lady, a graduate from the Kamehameha Schools and an attorney, Stephany Nihipali Vaiioleti, who was born and raised on the windward coast of the North Shore and has turned that hospital around.

"Having resided and still owning a home on Moloka'i, I can tell you that while most of us, if we were in the situation, would prefer to get on a plane and come to a facility on O'ahu, the fact of the matter is most neighbor islanders cannot afford that luxury. To that extent, we know, as neighbor islanders would know, that there have been cases, certainly on Moloka'i, where people who are on dialysis simply chose to die because they

could not afford the plane fare to get to Honolulu three times per week for dialysis treatment. Times have changed, and we owe it to the people we represent statewide to invest in them, to look to good examples like the Kahuku Medical Center, and to try to emulate what they did and what other hospitals do in order to right the ship. I stand in full support. Thank you.”

Senator Slom rose to speak in rebuttal as follows:

“Just a brief rebuttal, so that the people up in the gallery don’t think that I am ‘mean-spirited,’ as was said by the Maui Senator. I didn’t say that I opposed funding. I said that I opposed excessive funding and lack of change, and that’s what we’re talking about here. That is our responsibility. If it were our money that we were giving, that’s fine. We’d stand up along the wall there and reach into our pockets and give the money. But we’re spending money of the taxpayers, who are already overburdened.

“It’s not that I oppose medical services for the neighbor islands, because I do not; I’ve supported bills in the past and will continue to do so. What we’re talking about here is the lack of responsibility and accountability by a statewide organization over a period of nearly two decades. It’s not just me saying this; it’s been the Legislative Auditor, and the recommendations have been ignored. What I’m saying is that it is our responsibility, instead of continuing to dole out more money for bad behavior. It is like enabling a drug addict or someone else who needs the help but is not getting the help, but getting the resources to do more.

“I’m reminded of what happened during the last several months here in Honolulu with the symphony. We lost the symphony to bankruptcy; and then a group of individual citizens, led by the former First Lady, put together a group to try to resuscitate the symphony. And in fact, they did; and one of the things that they did was to lop off more than 35 percent of a bloated budget before. They made changes, they made people come together, and now we have a symphony, and that’s good news.

“We can do that with health care. We must do it with health care. But also, we have to do a better job of prioritizing. If we want health care to be as important or more important than social welfare, then we have to say so. If we want it to be as important or more important than education, we have to say so. If we have to make it to be more important than a two-week wasted not-so-special special session, then we have to say so. The problem is we can’t keep funding everything with other people’s money because it’s just not there.

“And by the way, the good Senator from Maui said she had heartburn. Please see me in my office; I have some Tums for you, and it will not cost the taxpayers anything. Thank you.”

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

“I thought I heard such kind things said by my colleagues, so that I wouldn’t have to go into detail about the emergency appropriation, but to address the concerns that have been raised, I just want to be clear: The discussion, both in front of the House committees as well as our joint committee, was that the emergency appropriation of \$7.3 billion is not the amount needed to keep the hospitals open through the end of the fiscal year. That number was higher, but I had stated at both the House as well as the Senate committees that this is as much money as I felt comfortable supporting in good conscience. This gives our hospitals an opportunity to continue to keep the doors open, provide the level of medical services for the rural communities that each and every citizen of this state deserves, while at the same time to start proceeding on some of the promised changes. By not giving the full amount, the hospitals are required to come back and provide us with evidence that the

changes were more than just talk, that they were reality, and that they deserve to get future support.

“The other thing that I felt was important by limiting the appropriation was with new leaders going into an existing culture that needs change, the people could say, ‘We’re not going to choose to change because we will get bailed out anyway.’ Now they are required to go back and say, ‘We asked for the bailout. We didn’t get it all. We need to submit a report about the programs and changes that we’ve implemented to be more cost-effective and more cost-efficient, and if we don’t present these reports and changes, we’re not going to get additional funding.’ I believe that the amount of money appropriated will serve as a tool for the new management team and board members to help create some of the change that is so difficult to achieve in the system that we have.

“For all of my colleagues that are voting in support, thank you very much. I hope that by the time we get into regular session, the minority leader and I will be in 100 percent agreement. Thank you.”

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

“In closing, I just would like to thank all of the previous speakers for your reflections. I remind our minority leader that the taxpayers he champions so well will probably be those that benefit from the appropriation. Thank you very much.”

The motion was put by the Chair and carried, H.B. No. 3, H.D. 1, entitled: “A BILL FOR AN ACT MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION,” having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 20; Ayes with Reservations (Thielen). Noes, 1 (Slom). Excused, 4 (Gabbard, Ruderman, Shimabukuro, Solomon).

At this time, Senator Espero, on behalf of Senator Gabbard, introduced a group of eighth-grade students from Kapolei.

ADJOURNMENT

At 11:59 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Wednesday, November 6, 2013.

EIGHTH DAY**Wednesday, November 6, 2013**

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:33 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Dela Cruz, Gabbard, Ihara, Ruderman, Shimabukuro, Solomon, and Taniguchi who were excused.

The President announced that she had read and approved the Journal of the Seventh Day.

At this time, Senator Galuteria rose to wish Senator Espero a happy birthday on behalf of the members of the Senate.

Senator Ige rose to announce that the Committee on Ways and Means would be continuing its informational briefing on the tax system modernization at 1:15 p.m. that afternoon in Conference Room 211.

Senator Hee rose to announce that the attorney general's office would be available for questions from the majority following the next day's session.

The Chair announced that floor session on Tuesday, November 12, 2013, would convene at 10:00 a.m.

ADJOURNMENT

At 11:36 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Thursday, November 7, 2013.

NINTH DAY

Thursday, November 7, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:37 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Dela Cruz, English, Gabbard, Kahele, Keith-Agaran, Kouchi, and Solomon who were excused.

The President announced that she had read and approved the Journal of the Eighth Day.

At this time, Senator Baker rose to wish Senator Taniguchi a happy birthday on behalf of the members of the Senate.

Senator Hee rose to announce a majority caucus meeting following session with the attorney general and Civil Rights Commission.

The Chair humorously noted that the House of Representatives, in jest, requested that the members of the Senate attend its floor session the following day to observe the entire Third Reading proceedings.

ADJOURNMENT

At 11:40 a.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Friday, November 8, 2013.

TENTH DAY**Friday, November 8, 2013**

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 11:40 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Dela Cruz, English, Green, Kahele, Keith-Agaran, Kouchi, Ruderman, and Shimabukuro who were excused.

The President announced that she had read and approved the Journal of the Ninth Day.

At this time, Senator Taniguchi rose to speak on a point of inquiry as follows:

"Would it be legally permissible for the Senate to take action on Senate Bill No. 1, H.D. 1 immediately after the House passes it on Third Reading and returns the bill to the Senate? Say, for example, if the House passes the bill at 9:00 p.m. tonight, could the Senate reconvene at 10:00 p.m. and take action at that time?"

The Chair responded:

"Yes, pursuant to the Senate's past practice and our interpretation of the Constitutional requirements for passage, we would be able to take action on this measure upon receipt of the bill from the House. However, due to the important nature of the measure before us, Senate leadership and the caucus have decided that we will take this matter up on Tuesday should the House pass the bill on Third Reading."

At 11:42 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:47 a.m.

HOUSE COMMUNICATION

On motion by Senator Espero, seconded by Senator Slom and carried unanimously, the Senate authorized the Clerk to receive S.B. No. 1, H.D. 1 until 10:00 a.m. on Sunday, November 10, 2013, for further action on Tuesday, November 12, 2013. In consequence thereof and subsequent to its recessing at 11:48 a.m., the Senate took the following actions:

Hse. Com. No. 4, transmitting S.B. No. 1, as amended in H.D. 1, which passed Third Reading in the House of Representatives on Friday, November 8, 2013, was placed on file.

By unanimous consent, action on S.B. No. 1 (H.D. 1), entitled: "A BILL FOR AN ACT RELATING TO EQUAL RIGHTS," was deferred until Tuesday, November 12, 2013.

ADJOURNMENT

At 10:16 p.m., the Senate adjourned until 10:00 a.m., Tuesday, November 12, 2013.

ELEVENTH DAY

Tuesday, November 12, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, convened at 10:06 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Dela Cruz and Taniguchi who were excused.

The President announced that she had read and approved the Journal of the Tenth Day.

At this time, Senator Baker introduced former staff member Ann Freed and neighbor island constituent Eileen Makee who were seated in the gallery.

Senator Thielen noted that her mother, State Representative Cynthia Thielen, was also present in the gallery.

Senator Galuteria welcomed former State Senator and current Kaua'i County Councilmember Gary Hooser.

The Chair then made the following announcement:

"Before we get started, I'd like to remind the members of the public in the gallery that they are here as guests of the Senate and must act with proper decorum. Any audible conversations or demonstrations of approval or disapproval of these proceedings, either verbal or gestures, is in violation of the rules of the Senate and state law."

ORDER OF THE DAY

AGREE/DISAGREE

MATTER DEFERRED FROM
FRIDAY NOVEMBER 8, 2013

S.B. No. 1 (H.D. 1):

Senator Hee moved that the Senate agree to the amendments proposed by the House to S.B. No. 1, seconded by Senator Galuteria.

Senator Hee noted:

"I would like to offer to the members present that although the House moved to broaden the S.B. No. 1 in its application of section 489-2, the public accommodations law, although I would've preferred a more narrow version, it is in my view that the erosion of the public accommodations by the House are not overly broad.

"That said, I would note that the practical reality of those amendments, regardless of whether they were passed or not passed by the House, is that instinctively people do not go, do not cater, and instinctively do not patronize facilities or institutions where they are not welcome, regardless of their sexual orientation. The practical reality is it is my firm belief that if a couple who were married and were gay in Hawai'i as a result of the passage of this measure, it is doubtful in my mind that they would go and seek out either a solemnization ceremony or a place to celebrate their solemnization where they were not wanted. That to me is the reality; and so in my view it is prudent for us today to agree to the amendments made by the House to S.B. No. 1.

"I would offer, in closing, that I am greatly appreciative for the House, for as anyone who has witnessed the proceedings of the last two weeks would agree it has not been easy for them, and so I offer to them my congratulations on moving this measure forward. Thank you."

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

"Madam President, I rise to stand in strong support of this bill.

"'Kekahi i Kekahi,' I would hear my Tutu say. Love one another. It was a saying I remember from the early days of my barefoot youth growing up in the 1940s in the Hawaiian fishing village of Miloli'i, South Kona.

"It was a simple time back then. The Territory of Hawai'i, although robbed of its innocence on December 7, was still a place where the words 'Aloha' and 'E Komo Mai' were meant to describe an openness and a caring for everybody, no matter if you were a stranger or a non-Hawaiian. Miloli'i and my tutus always welcomed everyone. It is a value I still carry with me to this day, 72 years later.

"As one of six members in this chamber of the only recognized indigenous, aboriginal, maoli people of this State, it is with great pride that I stand here today. It is because, as my colleague from Maui, Senator English, pointed out last week, same-sex relationships are part of the very fabric of the Hawaiian peoples, my ancestors, history: the Ai Kāne.

"Although not commonly known or taught in today's history classes, the journals from Captain Cook's Third Voyage include extensive eyewitness accounts of the Hawaiian people and their culture that described a social class of Ai Kāne, men who were attached to the court of the Ali'i and High Chiefs who served as social, sexual, and political intermediaries. The Ai Kāne refers to relationships beyond the 'Hoa' or 'Friends' which binds people on intimate levels of love and companionship. These relationships were not only reserved for men but for women as well, as the word 'Ai Kāne' can be commonly found in the mo'olelo of the goddess Pele.

"One legend tells that Pele is spelled by a hula and trapped in the spirit world. Pele's sister Hi'iaka asks her Ai Kāne Hopoe (her female friend) to surrender their last kiss before Hi'iaka is sent on a mission to dance for her sister so that she can awaken. Many of Hawaii's famous warriors had Ai Kāne as was the chief Umi who reigned from the legacy of his father Liloa. These concubines of the Ali'i were said to have laid with Chief Umi to gain the trust between his closest warriors to ensure their alliance in war.

"Even Kamehameha the Great, who united these islands, had Ai Kāne. This was an accepted part of ancient Hawaiian society.

"Only after western contact, the arrival of the missionaries in 1820, and the fall of the Kāpu system did the Ai Kāne become an outcast in their own land. Many of our old customs, traditions, and culture were abolished as was our language and our hula.

"As the Hawaiian renaissance of the 1970s gave birth to a rediscovery of our native cultural heritage, language, and dance, an interestingly overlooked component of Hawaiian culture, heavily influenced by outside cultures, has degraded the importance and meaning of sex and more specifically same-sex relationships, in the history and culture of Hawai'i.

"For example, calling someone 'Mahū' to a local was like calling someone from the mainland a 'Haole.'

"If this renaissance is to be fully honest with its past, it's important to recognize all the aspects of the native indigenous peoples history."

"On August 21, 1959, Hawai'i became the 50th state of the United States of America. Our Country was only 183 years old, slavery had been abolished by the 13th Amendment, women were given the right to vote but the seeds of racial inequality were brewing in the South. The lodge stone of the American dream, written by our founding fathers on the Declaration meant to stand the test of time was about to be tested.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the Pursuit of Happiness."

"In 1962 as a young United States Marine I got an assignment for training in the South. My destination was the Marine Corps Base Camp Lejeune, North Carolina. After a brief stop in St. Louis to visit my brother I continued through the southern states, passing through Kentucky, Tennessee, and Georgia. As a young Hawaiian man passing through the South the first thing I noticed was the black man was treated differently than the white man. Restaurants, bathrooms, and waiting areas at the bus terminals were all segregated. Signs that read 'Whites Only' were commonplace and I didn't know at the time if that also included me. At those stops, I looked the other way and continued on to North Carolina, but that experience coming from Hawaii, the land of Aloha, had a profound effect on the way I viewed and treated others especially those of minority.

"At a very early age, I realized that everyone in this country has a right to be treated fairly, to be given equal opportunities, equal rights, to treat others the way you would want to be treated, with dignity, respect, and humility. The Civil Rights Act of 1964 and the sacrifices of Martin Luther King, Jr., President John F. Kennedy, his brother Senator Robert Kennedy, just to name a few, paved the way for so many others, myself included.

"It is my belief that the issue before this chamber, to grant marriage equality to gay and lesbian couples is of equal magnitude. It is a decision that rests in our hands, the elected representatives of this great State, as has been many other issues that have come before previous legislatures in the past. It is cemented by the United States Supreme Court decision this summer that the Defense of Marriage Act is unconstitutional, that you cannot discriminate against same-sex couples and deny them the rights and benefits afforded to heterosexual couples.

"In this chamber there are 24 Democrats and 1 Republican. And although we don't agree on everything, I respect the beliefs and values of each member of this Senate, including my colleague from Hawai'i Kai, even though I may at times disagree with your various positions. However, my return to Charlotte, North Carolina, for a once-in-a-lifetime trip to the Democratic National Convention last year highlighted what it means to me to be a Democrat. As a personal side note, who would have thought – I didn't think at the time when I was passing through Charlotte – that 50 years later I would be sitting less than 50 feet away from the President of the United States of America, our nation's first African American President, Barack Obama, a true keiki o ka 'āina who was born within the confines of Kapi'olani Hospital. I distinctly recall our First Lady Michelle Obama saying, 'If you want to get to know my husband, go to Hawai'i.' As Democrats we are guided by our national platform which in 2012 was titled 'Moving America Forward.' In that platform is a section on 'Protecting Rights and Freedoms' and under 'Civil Rights' it says, 'We believe in an America where everybody gets a fair shot and everybody plays by the same rules. At the core of the Democratic Party is the principle that no one should face discrimination on the basis of race, ethnicity, national origin, language, religion, gender, sexual orientation, gender identity, or disability status. We support the right of all families, to have equal respect,

responsibilities, and protections under the law. We support marriage equality and support the movement to secure equal treatment under law for same-sex couples. We also support the freedom of churches and religious entities to decide how to administer marriage as a religious sacrament without government interference.' As Democrats, this is our platform. This is our guide, our compass. We should strive to uphold this even though it may at times conflict with our moral compass and values. Senators, this vote that each and every one of us is about to take, I truly believe, will be written in the history books as one of the most important votes in this legislative chamber's history.

"Senators, the time has come. It is time that the 'Aloha State' joins the other 14 States in this union on its path to marriage equality. And their time has come. What began with Justice Levinson and the Hawai'i State Supreme Court's ruling 20 years ago that reverberated through our country has come full circle today.

"Kekahi I Kekahi. It is time we have 'Aloha' for all. Mahalo."

The Chair reminded the members that Final Reading of S.B. No. 1 was to take place after the motion to agree to the amendments made by the House passes, and that members should wait until then to present their remarks on the measure.

The Chair then noted that the Senate received S.B. No. 1, H.D. 1, on Friday, November 8, 2013, at 10:16 p.m.

The motion to agree to the amendments proposed by the House was then put by the Chair and carried, with Senator Slom voting "No."

Senator Hee then moved that S.B. No. 1, H.D. 1, having been read throughout, pass Final Reading, seconded by Senator Shimabukuro.

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

"Before my formal remarks on this recommendation, I wish to thank the staff of the Senate and in particular the staffs of Senate Clerk Carol Taniguchi; the Sergeant-at-Arms Ben Villafior and his staff; the Sheriff Division under the leadership of Daryl Naauao; my staff including Andria Pakele, Diamond Grace, and Walden Au; and finally the many volunteers who assisted us by pulling the plow of special session called by the Governor of Hawai'i, the Aloha State, to broaden its meaning of just that word – Aloha. I wish to thank the members of the Legislature for bringing us to this moment. Most of all, I wish to thank the people for their participation in government and the civics lessons I will keep with me forever. The actions of this process and the citizen behavior, good and bad, are a constant reminder of the dynamics of democracy.

"So let me begin:

"The words above the entrance to the building where the United States Supreme Court meets are: 'Equal Justice Under Law.'

"Those four words reminds me that the sole purpose of the US Supreme Court is to uphold the US Constitution, that sacred document that unites and ties us together purposefully as citizens of one nation each of whom are guaranteed the equal justice of the law.

"And therein is why we are here on this important occasion.

"There was a time when gays were forbidden from working for the federal government, unless of course no one knew you were gay.

"There was a time when if you owned a company, you could only do business with the federal government on the condition that none of your employees were gay.

"And up until a mere five months ago, a gay married couple were not eligible for as many as 1,138 federal benefits that were permitted by law to opposite-sex married couples.

"Today, the law is different.

"That is because in June of this year the US Supreme Court found section 3 of the Defense of Marriage Act to be unconstitutional. As a result same-sex married couples are now entitled to the same benefits as opposite-sex couples. Those benefits include: Social Security benefits; military spousal benefits; family medical leave benefits; federal tax benefits; Temporary Assistance for Needy Families or TANF benefits; Medicaid and Medicare benefits; Private Employment benefits; Free Application for Federal Student Aid or (FAFSA) benefits; Bankruptcy benefits; Supplemental Security Income; Federal Employee benefits and Veteran Spousal Benefits.

"In short, the US Supreme Court concluded that the existence of an unequal two-tiered system of marriage existed resulting in the discrimination against gay people solely because they are gay in direct contravention of the US Constitution.

"And so it would be that Edith Windsor, the surviving spouse of Thea Spyer, would successfully challenge the United States government in 2009 that we are here today to enact legislation principled around the values of citizenship, equality, justice and courage.

"Edie Windsor, the widow whose same-sex spouse died in 2009, challenged the constitutionality of section 3 of the federal Defense of Marriage Act, or DOMA. Some of you may recall that the US Congress enacted this provision three years after the Hawaii Supreme Court's decision in Baehr v. Lewin, 20 years ago in 1993 but 'before any State had acted to permit it.' The 'it' being the legalization of same-sex marriages.

"Section 3's primary purpose and effect was to preclude lawfully married same-sex couples from being recognized as such by the federal government. As a result, Edie Windsor was denied the exact same benefits accrued to opposite-sex married couples in her situation.

"Ms. Windsor and her spouse were married in 2007 in Canada after spending 40 years together. Their marriage was recognized as valid by the laws of New York State, the state of their residence. Parenthetically, let me add here that they were married after 40 years of being together because Thea Spyer had multiple sclerosis. She asked Ms. Windsor, 'Would you still marry me?' And that is why they were married.

"After the death of her spouse two short years later, Ms. Windsor inherited all of her wife's property but was ineligible for the marital tax exemption from the federal estate tax. Accordingly, she was required to pay \$363,053 in federal taxes, a liability that she paid but ultimately challenged in the Federal District Court on the firm belief that section 3 of DOMA violated the equal protection guarantee that is binding on the federal government under the Fifth Amendment of the US Constitution.

"The US District Court agreed, finding section 3 unconstitutional and the Second Circuit upheld that ruling on appeal. And, as I indicated earlier, in June of 2013 the US Supreme Court held that section 3 as applied to same-sex couples in lawful marriages under state law, impermissibly 'violated basic due process and equal protection principles applicable to the Federal Government through the Fifth Amendment.'

"In writing for the majority, Justice Anthony Kennedy, nominated to the US Supreme Court by President Ronald Reagan in 1988, said there were four fundamental points:

"First, he noted that the nation's long history of treating the 'definition and regulation of marriage' as 'within the authority and realm of the separate states.' That is where our Hawai'i State Constitution is so important because it gives broad discretion to allow for same-sex marriage. Second, in the exercise of its 'sovereign authority,' New York State granted same-sex couples the right to marry as a 'powerful means of enhancing the recognition, dignity and protection of the class in their own community.'

"Third, Section 3 of DOMA's 'avowed purpose and practical effect was to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of each state.' In essence, by depriving only same-sex married couples of federal benefits and responsibilities, the law deliberately created and inequality between different classes of state-sanctioned marriages.

"And finally, fourth, as a law with the purpose and effect of singling out a disfavored class of people to bear an injury Section 3 violated both the broad guarantee of personal liberty under the Fifth Amendment and its more specific guarantee of equal protection.

"Madam President and fellow senators, we have witnessed during the past two weeks many communications asserting that this proposed legislation has been 'rushed' during this special session. Some have suggested that this is a 'done deal,' insinuating that the existence of colluding between us is ongoing.

"House Speaker Souki, you, Madam President, and I were first elected in 1982. Only Speaker Emeritus Say, Senator Taniguchi predate us in that regard. Many of us here have been members of the legislature well over a decade. As such, most legislators know that this special session has been anything but rushed.

"You and I know that in 2013, the Senate Committee on Judiciary and Labor, which I serve as the chairman, was referred 850 bills. Your JDL committee was given five weeks to reduce that number to whatever was possible under our rules. In 2013, that number became just under 300 measures that survived.

"Each member of this chamber knows intimately that this measure with all of its emotion would not have been given the hours of focused attention had this been proposed in the 2014 regular session. Anyone who disagrees is uninformed and disagreeable.

"Governor Abercrombie first posted the legislative proposal of marriage equity on August 22, 2013. The proposal has been modified and transformed into Senate Bill 1, 'Relating to Equal Rights.' While the title changed from its original posting, the reason is self-evident and I will get into that a bit later. The Judiciary and Labor committee first heard the bill on October 28 – a full 10 weeks from its first posting by Governor Abercrombie. Moreover, at your suggestion, the committee posted S.B. 1 on October 22 when, by our own rules, the legislation could have been posted on October 25.

"The truth of the matter is that the discussion on same-sex marriage really began 20 years ago in 1993 with the decision of the Hawai'i Supreme Court in the lawsuit brought against the state by a same-sex couple denied a marriage license.

"Therefore, it has either been 10 weeks since the posting of the bill by the governor to the first hearing by your committee on October 28, or a full 20 years if one elects to acknowledge

that this discussion on same-sex marriage was first brought up in 1993. Either way, to say this legislation is rushed is simply untrue.

“The second matter of collusion is absolute garbage. Unless someone wishes to name names, facts, dates, locations, or any other information, this scurrilous remark does not deserve a response.

“What is accurate is that the legislature has heard two full weeks of passionate testimonies and communications from many people who took the time from their busy schedules to have this discussion on same-sex marriage. Many of the people are Christians who firmly believe Senate Bill 1 is an abomination according to their God. And we have received communication from other Christians and clergy who just as passionately believe that their God supports this legislation. Whose Christian God is correct? Which people are we to believe, and on what basis?

“All of us have received communications from others beyond the Christian belief that have also contributed to this discussion. Congresspersons Tulsi Gabbard, a Hindu; Colleen Hanabusa, a Buddhist; and Senators Brian Schatz, a Jew; and Mazie Hirono, a Buddhist, each support same-sex marriage. Former US Senators Daniel Inouye, a Methodist; and Daniel Akaka of Kawaiaha‘o Church also support same-sex marriage.

“So what is it, then, that every one of us, the Christians who oppose Senate Bill, 1 the Christians who support this legislation, our congressional delegation – each of whom are not of the Christian faith – and former Christian US senators have in common?

“It is the US Constitution, that governing document rooted firmly in the beliefs of fairness and impartiality that binds us all as Americans regardless of our passionate convictions one way or the other. The US Constitution frames our system of government, it is the foundation of our republic, it is the underpinning of our democracy, and it is who Americans turn to for justice, fairness and equality.

“The US and Hawai‘i Constitution is why I will vote in support of Senate Bill 1, House Draft 1. Both governing documents of Hawai‘i and the United States remind me that in the midst of confusion, in the presence of misunderstanding and misperceptions, in the manifestation of zealous and obsessive disagreements, the Constitution is where clarity and purpose reside. The US Constitution directs and provides all Americans with logic, reason, judgment, and a rational sensibility firmly rooted in equality, fairness, dignity, respect, and devotion.

“Finally, but not last, the US Constitution and Hawai‘i Constitution represents those four words above the entrance to the US Supreme Court Building in our nation’s capitol: ‘Equal Justice Under Law.’

“I would like to close with two emails I received a few days ago. Both are from women deeply concerned about this issue, and both of whom I have never met. The first is from Ele Mattiuchi. She says:

I am not gay. Many would call me a staunch Republican. Let gay people get married. They are born gay and if they are born that way, then God made them that way. If God made them that way then they should have the same EXACT equal rights as a person born black, white, brown, yellow, male, female etc....etc....etc.

We elect our representatives to enact legislation that is fair and wise. Sometimes that is not what the majority may seem fit to accept at the time. If we simply always did ‘majority rules’ type of voting we

could well still have slaves or women may not be able to vote.

“The second is a letter I received from none other than Edith Windsor herself. She says:

Dear Senator Hee:

My name is Edie Windsor. I am the NYC lesbian widow who happened to sue the United States of America because of DOMA. Fortunately, we won and now the marriages of gay Americans throughout this country have the right to equal respect under federal law.

But because it is the states, not the federal government, who marry people, the first step for most gay couples is to have the ability to get married in the states in which they live. I understand that you’ve been leading the charge to bring marriage equality to Hawai‘i. [That’s not true, but I appreciate her comment.] I want to thank you from the bottom of my heart for your efforts.

I’ve heard that there’s a debate about the scope of religious exemptions in the law and that you believe that religious institutions should have to play by the same rules as everyone else. While I agree with your position, I’m writing to ask you to do whatever it takes to get a bill passed no matter what, even a law with religious exemptions. If no equal marriage law passes in Hawaii, it will surely be a loss for Hawaii. But it will also be a loss for the rest of the country since we need to keep building momentum toward full equality – state by state by state.

So please, do whatever you can to make sure that some bill passes in Hawaii, even if an imperfect one, so that gay couples in Hawaii can have the same rights that I have in New York and so that Hawaii becomes the 16th state to join the marriage equality ‘club.’

With the greatest respect,
Edie Windsor

“Members of the Senate, some have said that this is the wrong time to bring this matter up. Dr. Martin Luther King, Jr. once said, ‘There is no wrong time to seek justice.’

“So join with me and bend the arc of moral justice by conferring on all Americans equal treatment under the law. Let us confirm that all marriages are equal, regardless that they may be straight or gay, as the US and Hawai‘i Constitutions provide.

“Thank you, Madam President.”

Senator Gabbard rose to speak in opposition to the measure as follows:

“Colleagues, I would first like to sincerely apologize if my remarks offend you in any way.

“Frankly, I’m disappointed and dismayed that a contentious issue of this magnitude was crammed into an extremely short special session. As you know, we had about a 12-hour hearing in the Senate and a 56-hour hearing over 5 days in the House. When you tally up more than 26,000 pieces of testimony in both chambers, over 60 percent were opposed. With these kinds of numbers – the longest hearings, the most testimony ever received on an issue ever in Hawai‘i’s history – one would think that we as elected officials would slow down and pause, realizing how important this issue is to the people, and take more time to deliberate in order to make an informed decision. That’s our job, right? That’s what we’re supposed to do: gather

all the facts and make the informed decision that represents the people who hired us – our constituents.

“But the unfortunate fact is the Legislature has ignored the majority and instead chose to rush this incredibly divisive bill through a special session. The question I would have you ask yourselves is: Why the big rush? Let me go back and give you a little history in case you’ve forgotten: It was in 1990 that three same-sex couples applied for marriage licenses. In 1993, the Hawai‘i Supreme Court ruled in favor of those same-sex couples. In 1994, the Legislature passed a law defining marriage as between a man and a woman. In 1996, Judge Kevin Chang ruled that that law was unconstitutional. In 1997, the Legislature passed a constitutional amendment – unanimous in the Senate, the vote was 44 to 6 in the House – and then for about the next 18 months, there were town hall meetings, media campaigns by both sides, church meetings, talk on the golf course, at the farmer’s market. Everyone had time to talk story. In 1998, we the voters voted in November with about a 70 percent majority ratifying the constitutional amendment. So, for eight years, 1990 to 1998, we had an ongoing conversation about this obviously important issue that culminated in a constitutional amendment that left the decision on the definition of marriage up the Legislature, not the courts.

“Now, let’s fast forward to 2013. I am not saying that we should take eight years to decide the definition of marriage in Hawai‘i. What I am saying is that we should, at the very least, not pass this measure today. Compare what happened in the 90s to what we just went through. First, unbeknownst to many in the public is that the Judiciary and Labor Chair and I actually co-sponsored a Senate concurrent resolution, S.C.R. No. 166, last session that passed in both chambers, calling for a task force headed by the Dean of UH Law School to study the economic, social, and religious impacts of legalizing same-sex marriage in Hawai‘i, with a deadline of reporting back to the Legislature by November 1. The question is what happened? What were the findings of the task force? Surely with an issue of this magnitude, an issue that was hotly debated in our state for eight years, surely this would be important information to help us in our deliberations. The answer: The task force never met because the governor called a special session. Now, regardless of whether you’re for or against same-sex marriage, the very least we could’ve done is to have taken the time to really study the potential impacts of legalizing same-sex marriage in Hawai‘i.

“Secondly, the Legislature did not want a special session. As you well know, we needed two-thirds of the Senate and the House, and the votes weren’t there in the House to call a special session. So, our decision as a body was no special session; and then all of a sudden, out of nowhere, the governor decreed there will be a special session.

“So, we have two legislative decisions that we the Legislature made – the task force and no special session – that are overridden by the governor. That’s not democracy by any stretch of the imagination. That’s not pono by any stretch of the imagination. That’s one of the main reasons why the traditional marriage supporters are so outraged by what’s been going on for the last two weeks. That’s why thousands – not hundreds, as the *Star-Advertiser* reported – showed up at the rally on opening day of the session. That’s why so many people gave up their precious family time to slog down to the Capitol every day for the House hearing. We are dealing with the sacred institution of marriage that’s been around for thousands of years, and we, the elected officials – their representatives – are saying, ‘Uh, yes, let’s have a five-day special session and redefine marriage.’ This is crazy! There is no pressing reason why the governor needed to call us back into special session. The fact is the U.S. Supreme Court ruled that it is up to the states to continue deciding this issue; and contrary to what’s been said about

same-sex marriage being a civil right, the fact is no court has ruled ever that marriage is a civil right.

“Another reason not to rush this bill through and why we need more time to deliberate and debate: We’ve been hearing over and over again from the LGBT community and other proponents of S.B. No. 1 that all they want is marriage equity or marriage equality. Now, maybe I missed it in all of the testimony that was submitted, but I don’t think we heard from the ‘B’ in ‘LGBT’ – the bisexual community. For example, if Jack, Frank, and Mary are in a loving relationship, and we’re all for marriage equality, then why aren’t the three of them covered in S.B. No. 1? Why can’t they get married? If this is all about fairness, equity, and love, shouldn’t there be a friendly amendment introduced today to include them? That’s my point. In their haste to rush this bill through, the advocates seemed to have forgotten about their bisexual brothers and sisters. Or, will there be a challenge and lawsuit by bisexuals if S.B. No. 1 passes into law, with the claim that they are being discriminated against? These and other legitimate concerns such as how this will impact religious freedoms and the education of our keiki have not been resolved.

“Colleagues, in closing: I know the conventional wisdom says this is a done deal. I heard in the news last night and today that the vote is going to be 21 to 4, if every one of us are here – it looks like there are two absent, so maybe it’s going to be 19 to 4 today – and that the governor will be signing S.B. No. 1 later today. But, I’m asking one more time: Let’s wait until regular session. Let’s go out to the neighbor islands and give folks who could not come over for the special session the opportunity to share their mana‘o. Let’s take more time to sift through those 26,000 testimonies. Yes, much of it is repetitive, some of it downright off the wall, but who knows? Maybe buried in there somewhere is the thought, an idea, that will lead us to what I call the ‘aloha solution.’ I’m convinced that it’s there. Let’s take the time to find it so we can heal the divisiveness this issue has caused in our island paradise, so we can indeed live aloha. Yes, the vote may turn out the same, but it’s worth the effort. Your constituents who don’t agree with your ‘yes’ vote will at least feel that you respected them, that you heard them out. Let’s really consider the voice of the people and vote in the best interest of our state. Please join me in voting ‘no’ on this measure, and let’s revisit this when session starts in January. Yes, waiting is the fairest thing to do, otherwise this rancor, this discord, this divisiveness will linger and fester in our beloved Hawai‘i nei. Mahalo and Ke Akua me ke Aloha.”

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

“Much has been said on this issue in our chamber and in the House over the past two weeks – over the past two decades, really – so I found myself looking at pictures for inspiration on what to say today. While I was scrolling through the pictures taken by the *Star-Advertiser*, one of them really drove it home for me as to why we are here. It was a picture of Amina Peterson, a young African-American woman from Kāne‘ohe, wearing a bright red shirt with an equal sign, carrying a large homemade poster board in front of our state capitol. It wasn’t her bright red shirt or the fact that she was from Kāne‘ohe that made me pause on her picture. It was her sign: ‘Remember, the majority voted to keep me a slave.’

“Colleagues, we are, as our Judiciary and Labor Chair has stated, at a defining moment in our history. With the benefit of hindsight only history can afford us, we know that we are indeed at a crossroads, positioned in that proverbial time that John F. Kennedy referenced in his book *Profiles in Courage* as ‘the lag between our way of thought and our way of life.’ At so many of these points in our past, it was not the majority or popular vote that righted the wrongs and corrected the injustices

– it was leaders who did not merely listen to whose cries were the loudest or petitions the longest, judges and lawmakers who with their pens and collective votes were asked to exhibit great courage on behalf of the disenfranchised and minority voice. How we think today does not always match up with the way we want to live tomorrow or reflect the kind of society we want to be. Think about the fact that the popular majority once supported segregation in our schools. In 1942, public opinion polls showed an overwhelming majority, two-thirds polled, supported segregated schools. It wasn't until 1963 that a majority of Americans supported desegregation, and you'd have to wait until 1970 for public opinion to flip completely to the point where now an overwhelming majority, or two-thirds polled, now supported same schools for all of our children. And when Mildred Jeter and Richard Loving were breaking Virginia's miscegenation laws, the popular majority universally disapproved of interracial marriage. In 1959, only 4 percent polled approved marriages between white and 'colored' people – that was the term used then. While we are now at 87 percent in 2013 approving of marriages between whites and non-whites, which is now the term used, the more telling statistic is that the majority of Americans polled did not approve of such marriages until the late 1990s.

"So often during these proceedings, we have heard the phrase, 'Let the people vote. Let the people decide.' Well, yesterday, I was at the Veterans' Day ceremony at the Hawai'i State Veterans Cemetery, and Drusilla Tanaka came up to me and gave me a copy of the third volume of *Japanese Eyes, American Heart: Learning to Live in Hawaii*, and like most things, it got me thinking. Over 70 years ago, after the bombing of Pearl Harbor, public opinion polls were taken, as they often were; and while there were no doubt many motivations, there was widespread support for a number of actions, some of the most civil, believe it or not, being the internment of Japanese citizens. This is a case where public opinion did sway public policy makers, where you could say that the people did decide. And while there were some, even today, who will say it was the right decision and for the best, I don't know that my great-grandfather – who was flown from Hawai'i to Santa Fe, New Mexico to be interned while his son went off to boot camp to serve our country – or the over 120,000 others like him who were interned during the war, would agree. And yes, the way we think and the way we want to live did finally meet up in 1988 with the passage of the Civil Liberties Act, but that was over 40 years later.

"Looking back at some of these critical junctures in our past, we see that public opinion was often at odds with the granting or protection of the rights of others. This does not mean that we should stand idly by and wait for our collective conscience to catch up. This does not mean that in moving forward we are negating the rights or disrespecting the views of the voting majority. I would contend that we are simply serving the role history has afforded us serving as the bridge between the somewhat divided public sentiment of today and where we aspire to be as a society and a people tomorrow. And so I look forward to that day, and I hope it isn't in the too distant future, when the way we think meets up with the way we want to live like it did with our views on slavery, school segregation, and interracial marriage. Perhaps it will be our children, our grandchildren, maybe even our great-grandchildren that will sit down by our side to listen to us tell them stories of this day, and I know I will smile and sit back as they say, 'What took you so long?' Thank you."

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

"I'd like to read an editorial from this morning's *Star-Advertiser* by Richard Borreca:

When the 55 hours of testimony ended, when more than a thousand people had spoken, when Hawai'i's legislature was acting to make gay marriage legal, the most powerful words were spoken by 13-year-old Shylar Young.

The question of whether two people of the same gender can be a family with all that entails was answered in Shylar's testimony about her two mothers.

'President Abraham Lincoln believed that all men and women shall be treated equally. It is like how the black slaves fought for their rights, and now we, the gay families, are fighting for our rights,' she wrote.

'The Bible says that God created every man, woman, and child perfect. So that means that gay people were created perfect, too.'

Shylar is the daughter of Tambry and Suzanne Young, who have been a couple for 30 years. She is a remarkably poised young teen. In an interview during the House debate on gay marriage, Shylar talked about going with her parents as they attended meetings advocating for same-sex marriage.

'When I was little, I would not pay attention, play, and fall asleep under the table. As I grew older, I realized this is a really big problem for my moms,' she said. 'I realized I need to be more involved. I am so shy, but I think I need to break out of my shell and show the world what my family is all about.'

In her testimony, Shylar stated: 'What's the big deal!

'There's no reason how having two people of the same sex who love each other should be such a big deal. It's rude, it's crazy, and it's just not necessary for those who oppose same-sex marriage to fear it.

'It's none of their business how our family lives. But it is the government's business to ensure our family is treated the same as all other families and provided equal rights under the law as required by the US Constitution,' she said in her testimony.

To the demand repeatedly brought up during testimony that a child must have a mother and a father, Shylar answered: 'I hear people say you need a mom and dad. My friend, Will, had a dad and he lost his dad. So what about people like him?

'Are you saying they are going to be messed up even though they are part of a straight couple?'

Tambry Young, mother of Shylar, in her own legislative testimony, recalled precisely what it is like being a family.

'After we were married in Massachusetts, we purchased an item at a Boston mall and Shylar questioned Suzanne about why she was not signing her name as Suzanne Young because we got married yesterday and we are all Youngs now.

'This is when we realized that being married meant more than just being granted rights; it was, to Shylar, a symbol of what made us a family,' Tambry Young said.

With her concluding testimony, Shylar explained the gay marriage struggle and its inevitable triumph.

'Going to hell after you die is not based on what sex you love. It is based on if you were bad in your life.

'I find it mean and cruel that people think we will go to hell based on who we love. They just don't understand us.

'My family is a fire. Some flames may give up when the rain comes to put it out. But the true heat in the coals will never die.'

"Colleagues, if God, in his wisdom, created our gay brothers and sisters, why would He deny them love? God is love. Love is God. Mahalo and maluhia to Shylar Young. Mahalo and maluhia to all."

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

"Our greatest responsibility as a legislature is to protect the civil rights of everyone in Hawai'i, including both the rights to life, liberty and the pursuit of happiness, and the right of freedom of religion and freedom of worship.

"We worked very hard during this process to ensure that everyone's rights were protected in this legislation, and specifically that freedom of religion is respected and upheld as a cherished value in our society.

"It is for these reasons that this bill should become law."

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

"Colleagues, I mentioned, as the previous speaker mentioned, the arc of justice the last time I spoke on this bill. Dr. Martin Luther King, Jr. has been quoted once before in a previous speech that 'the arc of the moral universe is long, but it bends towards justice.' Madam President, I would submit to you that it does not bend on its own. The arc of justice bends because we put our hands on that arc and we bend it ourselves towards justice. And now with marriage equality, colleagues, we will be seeking to take our conscience vote one step further because we are part of a nation that has for so many years built a reputation for being tolerant, for being inclusive, and, above all, fair. This is about fairness for all, like the big social reforms that happened before it. As the Constitution was quoted earlier, the Preamble states, 'We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.' That means, colleagues, not to just half of ourselves or 75 percent of ourselves or even 99 percent of ourselves – it means the whole people.

"There are times that history and fate meet at a single time, at a single place to shape a turning point, and this is one of those points. Madam President, I would submit to a previous speaker, the good gentleman from Kapolei who said that we need more time: As a fellow composer, when is your song finished? When does that last stroke finish your portrait? When is the last word in your novel finished? When do you come to that decision? We have to end a song. We have to end a painting. We need to end a novel. That's what we're doing here today – we're finishing our history on this matter. You know, at times we rarely come to moments of great decision such as this. Yes, of course, we have great debates on great issues, but rarely at any time does an issue lay bare the secret heart of Hawai'i itself, and that's what it has shown – a lot of Hawai'i's heart, which is most interesting, Madam President, to watch and feel these past several days. Rarely are we met with a challenge of this nature; not that our biological growth that's been suggested, or our economic growth, or maybe our scientific growth, and certainly as issued in testimony and demonstration our spiritual growth. I think, rather, we challenge the values and the purposes and the meaning of our beloved Hawai'i. That's what we're doing right here, right now, today. The issue of equal rights for the LGBT

XYZ community, whatever that may be, is such an issue, and should we win on every other issue and be unfair on this issue, then we've lost. The great phrase of this nation, 'All men are created equal,' (and women, *kala mai*), those are not just clever words or an empty theory; those are words that are promised to every citizen. Now, I would say that issues of rights are complex, but about this there can be and should be no argument. Every citizen must be treated equally.

"Now, we've heard all the voices; we certainly have. You have not gone unheard. Voices in support, voices in opposition, voices of joy, voices of anger. And let me say this to the voices that have issued threats of ouster, Madam President; I say to you: Do what you must. But each one of these elected officials in both bodies, I will tell you, no matter how they voted and no matter how they intend to vote today, have a much larger body of work to stand on. For most, as the good Judiciary Chair would say, this is not our first rodeo. We're certainly not one-trick ponies. When we enter into these hallowed halls of our State Capitol, we do so with the knowledge that we must represent our communities and constituencies on every issue. Therefore, when the curtain goes down on this, my opponent on this issue may be my ally on the next issue, and the beat goes on. This time on this issue, though, colleagues, there must be no delay or no hesitation or no compromise with our purpose.

"So where do we go from here, Madam President? As you know, I was trying to figure out how we're going to wrap this thing up right. As you know, I've done radio work before; as a matter of fact, Madam President, so have you and so have other colleagues in this body. I hosted late night radio, afternoon radio, morning radio—with some great and talented partners, I might add. You establish a trust with your listeners. What you do is they let you in to their most private and intimate settings, that one hour drive from Kapolei, perhaps. It's a place that you share music and you share *mana'o*. It's a place of great responsibility because people are depending on you for information, for entertainment, and they're depending on you for a sense of security that the world is going to be okay or not.

"Well, Madam President, several days into the special session when the House had began their hearing and eventual floor debate, I received an email from two former radio colleagues of mine who are now hosting a radio show. I won't say who they are because their ratings may go up or down after this speech, but I'd like to quote the email:

Aloha, brother. We are getting all *kaumaha*, [which means heaviness or with grief or very sad] over all the goings-on at the Capitol, specifically what is happening outside with the two sides being so vicious towards each other, so much so there is a realization that trying to do anything from our radio standpoint other than just to cover the activity would be detrimental. But what will happen afterwards? Will there be a way to bring the two sides together? Yes, we have differences, but we can teach our children that we can still live together on the same island. Just some thoughts, just some *mana'o*. Don't know if there is a way or if it's too powerful and issue to do this with. Have a good morning. Aloha.

"Madam President, I responded with this:

Aloha. Mahalo for caring for our people. You are correct about your impact. Be skillful in how you proceed. Balance is the key to your credibility. You can present a calming voice in the midst and at the conclusion of this process. Calling for respect is a good thing. This has been an incredible example of civic engagement, warts and all. Not sure that moving to *ho'oponopono* quickly will or can help though; whenever we're done, a cooling off period

must take place. Whatever is decided here will be of both great joy and great disappointment. You can encourage aloha throughout, and when we're pau, encourage us all to get back to our daily lives. Enough for now; we'll get through this and the sun will come up tomorrow. Proceed with caution and aloha. Hope this helps, Brother Brick.

"Madam President, I'll conclude with this: I am honored to have introduced this bill for your consideration, and will follow the Judiciary Chair and his recommendation. Colleagues, I would ask that you join me in supporting S.B. No. 1, H.D. 1. Mahalo, Madam President."

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

"Members, as we all know, the recent decision by the United States Supreme Court in *United States v. Windsor* held that Section 3 of the Defense of Marriage Act 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.

"Members, I have had the honor and privilege to serve to represent my community for all of the period of the debate on same-sex marriage, and have been able to participate in all of those discussions. I just wanted to commend the Chair of the Committee on Judiciary and Labor and the chairs in the House as well. I do believe that the hearings that we've conducted over the past two weeks have given all of those in support of and in opposition to their opportunity to voice their concerns, raise the issues, and have questions asked and answered. I do believe that it is time for the State of Hawai'i to follow those others. I support S.B. No. 1, H.D. 1 because it provide to same-sex couples the same rights, benefits, protections, and responsibilities as opposite-sex couples under the law. At the same time, work has been done by those committee chairs to ensure that protection of the religious freedoms of churches, clergy, and other related organizations that are guaranteed by our Constitution and our laws.

"For those reasons, members, although we may not have chosen to convene at this point in time, we are here and we must do our job. I encourage all of you to vote in support of this measure. Thank you."

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

"Yesterday was Veterans Day. My father served 21 years in the Navy. I have a son who was recently promoted to captain in the Marine Corps. As I reflected about Veterans Day and attended ceremonies, we honor and recognize the veterans on the battlefield who fought and who died. They died for our freedom, for our country, for our nation – the greatest nation in the world, where millions of people come here and flock from other countries. You can see it in the gallery today the different ethnicities, the religious individuals, and their faiths and beliefs. We come to this great nation because of the freedoms that we have. Yesterday, I was remembering those veterans, those men and women, those soldiers who died for these freedoms – the freedoms of religion. Many of those who died were not only Christians; they were Jews, they were Hindus, they were Buddhists, and all the other religious faiths. There were many individuals who were not even believers who gave their lives for this country so that we may worship who we want, decide to vote or not to vote, live the way we want as long as we're not hurting other people, and love who we want to love.

"Now, many of the people have already stated that this has been a rushed session, but the Judiciary Chairman behind me so eloquently stated that this was not a rushed session. But more

importantly, the United States Supreme Court, the highest court in the land – there is no appeal to what the United States Supreme Court has stated in their decisions. The United States Supreme Court – the conservative United States Supreme Court – has opened the door to same-sex marriage, and that door will never close. Our society, our civilization is going through a transition. Yes, some say this is a redefinition of marriage; others say it doesn't change. But remember when it was normal to marry teenagers, not only in this country but in other countries, and it's still something that is happening in other countries, which our country and other civilized nations are trying to change. We do want to change marriage in some respect.

"This is about government acknowledging two individuals – government, not churches. The measure before us is very clear; churches and religious institutions will have exemptions and protections. Churches, religious organizations, nonprofit religious organizations will have exemptions and protections. If your church does not want to conduct a same-sex marriage, it does not have to conduct a same-sex marriage. No one is forcing it upon you. No one is making you go to a same-sex marriage if you do not want to go to a same-sex marriage. You can avoid it completely and you won't be arrested. You can avoid it completely and live your life the way you're living it today. Now, we have heard fears that have come in the thousands of hours of testimony, but I can truly tell you we would not be passing this measure if we thought those fears and concerns would happen. Collectively in this body, my esteemed colleagues, we have individuals who have served 10 years, 20 years, close to 30 years, and we have been looking out for the best interests of the people of Hawai'i to the best of our abilities. We know there are differences, and we cannot always please 100 percent of the people. But in this case, we've made that decision that to allow same-sex marriage will not be a major detriment to society like some people think. We reject that notion. That is why we are passing this bill. We will make certain that our children are taught what they must learn in school, and much of that will have to do with respect, tolerance, and differences that this gallery embodies – the differences of humanity, the difference of people.

"Many of us have friends and relatives who are LGBT. I do, and they are loving, caring individuals. They are productive members of our society. We've even heard it from the opponents who say, 'Yes, they are our friends. They are our family members. I love them. We love them. We want the best for them.' But if you want the best for them, how can you deny them the right to love and live with someone for the rest of their lives? How do you look a person in the eye and tell them, 'You're my equal, except for in marriage.' I don't understand that. I don't get that, especially when you hear the words of the senator from Mililani, 'God is love.' I remember a song growing up: 'And they'll know we are Christians by our love, by our love. Yes, they'll know we are Christians by our love.' It saddens me that we've had so much divisiveness, so much hate. I saw an email last night; a woman said that the typhoon in the Philippines was due to the sinners and the rebellions in the Philippines. My God, what are we thinking?

"When this bill passes, and we know it will, we must come together. We must continue this discussion, not necessarily here at the Capitol, but in community meetings, church meetings, dining halls, Zippy's, parks. We must understand that this is not going away. In 1998, zero states had same-sex marriage. Today, Hawai'i is poised to be the 16th state. The trend is continuing, ladies and gentlemen, citizens of Hawai'i. The thought process is moving forward. I predict that it will be fairly soon when you will have an additional 10 states, bringing it to 26 states – the majority of the state in the United States of America – that supports this notion while at the same time preserving religious freedom and the right to worship and believe what one wants to

believe. I know that when I die, God will not judge me on who I married, although I know that marriage is sacred and important, definitely. I sometimes wonder, though, is the first marriage as sacred as the second marriage, for some individuals? Or maybe the third marriage? Which is the most sacred? I wonder why, in some cases, it's fairly simple to get an annulment. But yes, marriage is sacred, but God will not judge me on who I married, but He will judge me on my works, He will judge us on our actions, He will judge us based on what is in our hearts, how we lived our lives. Did we live it in a way that God was pleased?

"Again, I want to thank the Judiciary Chairman for his work in his committee, and the House of Representatives for their hours of receiving and dissecting the testimonies. Colleagues, this is a monumental moment in Hawai'i. This is an historic occasion, whether you are for this or against it. We will look back on this day, on these last two weeks, and we will see that this vote was the right vote for Hawai'i and for our nation. Thank you very much."

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

"I am very happy that we're voting today on extending equal rights to gays and lesbians. This is one more step on our society's path toward liberty and justice for all. As we saw massive public input from both sides, my office did an analysis which I find revealing. Although total input was against marriage equality, input from my district was remarkably 80 percent in favor; in fact, it was more than 5 to 1. Is this because my district is more in favor than most, or because of more statewide mass mailings coordinated by a few organizations opposing equality? I believe it's both.

"I am proud of my colleagues for the courage to do what is right. I want to acknowledge the strong leadership of the Judiciary Chair and his colleague in the House, and thank him for helping bring us to this point. In the past two weeks, we've seen an outpouring of comments from both sides of this issue. This was expected and good for our democracy.

"What I did not expect was the coordinated expression of hatred and intolerance in the name of God and church. I have been shocked and saddened by this, and especially disturbed by the fact that some religious leaders taught a perversion of their faith and encouraged their flock to produce these hurtful passions instead of the true message of their faith. I believe the pastors who advocated this intolerance must now work to reverse the damage they have done to their congregations by now siding with love and teaching love. I deeply thank the many leaders and representatives from a variety of religious organizations, including many Christian churches urging us to side with love and acceptance. I'm the son of a religious scholar. As I understand the teachings of Jesus of Nazareth, the core of his message is love – love thy neighbor, love thy enemy, love thy God. Along with this, He practiced and preached tolerance, acceptance, and forgiveness, and gave us the golden rule – treat others as you would want to be treated. I tried to picture Jesus standing at the door of a temple, blocking the entrance to someone whose heart is filled with love. The image is absurd. On the contrary, I'm sure Jesus opens his arms in welcome to those with love in their hearts, and most especially to those who have faced persecution for their beliefs. If you heard someone preaching hatred, intolerance, and bigotry in his name, in his temple, that false leader would be evicted while welcoming all those who practice compassion, acceptance, and love. Let's just ask ourselves who would Jesus hate?

"So, here we are. It's true that we must now heal the divide in our community. I call upon those on both sides to help this healing. A few people on both sides have crossed the line of civility, and in some cases their lack of aloha has swayed

legislators in the opposite direction of that intent. Forgiveness and love will be needed to heal.

"I'm glad for the exemptions we have included so that we can move forward in the more important issue of basic equal rights. The ultimate way that healing will occur is for all individuals and organizations to put behind them this latest wave of intolerance. Yes, those churches that choose to do so can legally discriminate against gays and lesbians in the name of religious freedom, but there is no moral or ethical excuse for such discrimination, now or ever. If that's not clear, just insert any other category such as race in place of same-gender couples, and the indefensibility of the position becomes clear. When you are ready to correct this mistake, you will open your doors and teach your flock acceptance rather than intolerance, courage rather than fear, and love rather than hate. Then, our community will be healed from this rift, and then we can move forward as one. To those who could not accept gays and lesbians as members of your community yesterday, today is a bright new day and it is your time to learn to do so. We all stand ready to help each other in this growth. Now we can achieve and celebrate a great victory.

"I thank all the members of the House, Senate, and public who showed bravery in standing up for equal rights for all. I urge all my colleagues to vote yes and send a strong message of unity as we move forward. Today in the Aloha State, thank God love wins. Love is love. Thank you."

Senator Keith-Agaran rose to speak in support of the measure as follows:

"Passing this bill is what's consistent with fairness, equity and simple justice. My support for this bill is based on the basic American value that all citizens are entitled to equal treatment, and on the fundamental fairness that is a hallmark of our community. Over the past two weeks, we've seen that many of us have not evolved. I have not evolved. I voted for the Hawaii civil unions law as a member of the State House in 2010 and 2011.

"I've consistently supported the idea that government should encourage committed, loving relationships between adults as the basis of stronger families and healthy communities. That's not just a liberal idea. It's an American idea. Former U.S. Solicitor General and prominent conservative lawyer Ted Olson has explained:

Conservatives and liberals alike need to come together on principles that surely unite us. Certainly, we can agree on the value of strong families, lasting domestic relationships, and communities populated by persons with recognized and sanctioned bonds to one another. Confining some of our neighbors and friends who share these same values to an outlaw or second-class status undermines their sense of belonging and weakens their ties with the rest of us and what should be our common aspirations. Even those whose religious convictions preclude endorsement of what they may perceive as an unacceptable "lifestyle" should recognize that disapproval should not warrant stigmatization and unequal treatment.

When we refuse to accord this status to gays and lesbians, we discourage them from forming the same relationships we encourage for others. And we are also telling them, those who love them, and society as a whole that their relationships are less worthy, less legitimate, less permanent, and less valued. We demean their relationships and we demean them as individuals. I cannot imagine how we benefit as a society by doing so.

"That's a long quote but Ted Olson is a smart, thoughtful, and strong lawyer and advocate. Madam President, on those points, I find myself agreeing with Ted Olson. I find it shortsighted to pretend that the diversity of families and relationships we all know and value in our Hawai'i, simply don't exist. This bill acknowledges that equal treatment and equal rights must extend to those familial relationships in Hawai'i. We're today deciding that these intimate commitments and relationships are worthy of equal dignity and recognition.

"We've all taken an oath of office. In taking my oath of office, I agreed to look at every issue and to be willing to make a decision about those issues. In a representative democracy, we're neither simply mouthpieces for the loudest or the most voices in our community, nor are we completely independent actors. All of us were elected, or appointed, to take votes based on the information provided. We were not elected, or selected, to take public opinion polls on every issue that comes before us. The question of whether Hawai'i should recognize same sex marriage is before us this morning.

"The State Attorney General's office earlier confirmed in a letter to the majority policy leader that amending the Hawai'i marriage statute falls within the powers of the State Legislature under the State Constitution Article III, section 1. I don't know that the members of this chamber needed confirmation. I would guess most members of the Senate already knew that. It's certainly entirely consistent with the actions of the Legislature in the past. Perhaps the most obvious example comes from 1994 when the State Legislature, reacting to the 1993 Hawai'i Supreme Court decision on same sex marriage (*Baehr v. Lewin*), passed what became Act 217. Act 217 amended Hawai'i's marriage law to limit eligibility for a marriage license to opposite sex couples. In fact, the Legislature has amended the marriage statute many times, including adopting and recognizing no fault divorce principles for ending Hawai'i marriages. Today's Hawai'i marriage law is nothing like your grandparents' or your great-grandparents' marriage law.

"So let's be clear. The Legislature is dealing with the secular legal and statutory structure of what the state recognizes as "civil marriage." We are dealing with a state statute.

"I realize for many this is one of those issues where it is difficult to maintain a distinction between church and state. Each member of the Legislature brings his or her personal experiences and knowledge into the debate as well as their understanding of the views of their family, supporters, community leaders, and what people on the street, in Safeway or Long's Drugs or Tasaka's Guri Guri or Takamiya's tell them.

"I actually reject what some seem to argue: namely that we should – even if that were possible – divorce ourselves from our personal religious foundations. My own faith informs much of how I approach issues, but then people will say my church – the Episcopal church – has expressed support for treating all Hawai'i residents in an equal manner and supports passage of S.B. No. 1.

"Part of the challenge and controversy involving Hawai'i's marriage, civil unions, reciprocal beneficiaries and public accommodations law is the intersection between government legally recognizing relationships that confer some kind of additional obligations or benefits as a result of that legal status, and historical and traditional religious and moral views and beliefs about intimate, deeply personal relationships.

"The term 'marriage' is one of those difficult areas because the law – the government – continues to afford 'married' couples a certain legal status that it does not extend to other legal relationships, and marriage also holds specific meanings to many through religion, culture and tradition.

"I give great thanks to the Chair of the Judiciary Committee, as well as to the House, for the language they've crafted, but I have no illusions that the Legislature has been able to craft language for our statute governing 'marriage' that can address or satisfy concerns and fears about changing the historic, legal and moral understanding and meaning of 'marriage.' Under our constitutional form of government, the Bill of Rights, adopted as amendments to the U.S. Constitution at the federal level and included in the Hawai'i State Constitution, are meant in large part to protect dissenter rights. The free exercise clause in the First Amendment to the U.S. Constitution was written to ensure that the government does not infringe on religious freedom, especially the religious conscience of disfavored sects. But we must remember that all of the bundles of rights preserved in the bill of rights and other parts of the U.S. Constitution and in our State Constitution exist in a state of balance and tension with other rights, including the important rights conferred under the equal protection clause in both the U.S. Constitution and in the State Constitution.

"The debate in Hawai'i over same sex marriage did not begin this summer or in the past two weeks. All of us old enough to have been of voting age in the 1990s can remember the court cases and the political campaigns, and the legislative actions and elections which turned, in part, on same sex marriage. As both supporters and opponents of the legislation point out, Hawai'i has been debating the merits of same sex marriage since the *Baehr v. Lewin* lawsuit. Due to the governor's early announcement calling for a special session, supporters and opponents of same sex marriage have been providing input on the issue over the last month. In this special session, the Legislature has dedicated more time than would have been available in any regular session: almost 67 hours of testimony on one bill. But we should be equally frank and acknowledge that the arguments for and against remain essentially the same, unless you now believe that the devil is a Red Sox fan.

"It comes down to this: While I acknowledge the views of those who are opposed to same sex marriage due to religious or moral concerns, our secular laws conferring benefits to and imposing obligations on residents must be applied equally. Given the U.S. Supreme Court rulings indicating that only couples married under the laws of their state have access to federal rights and benefits, I support expanding Hawai'i's marriage law – a state statute – to include same gender couples as the beneficiaries of these federal rights and benefits.

"Our community no doubt will remain polarized on whether legal marriage should be expanded to include same-sex couples. Whether or not the Legislature approves the bill and the governor signs the bill into law, churches will be able to continue to sanction only the marriages they choose to recognize as religious sacraments or that otherwise conform with their religious and moral tenets. Both drafts of S.B. No. 1 ensure that. If the bill becomes law, however, the government will extend any benefits and obligations our laws confer on qualifying couples who choose to marry – whether married in a religious ceremony or not. And it will do so in a fair and equitable fashion.

"As I said briefly on Third Reading on this floor, legally recognizing same sex marriage will do nothing to affect my own marriage – my spouse and I remain responsible for maintaining the love and commitment required in our relationship and marriage, not whether we as a government, whether we as a legislature, and whether we as a community exclude or welcome other Hawai'i committed couples from entering into their marriages.

"Passing this bill is the result that fair application of civil law requires and is the result consistent with my oath to uphold the U.S. and the Hawai'i State Constitutions. I urge my colleagues to vote in favor of House draft 1."

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

"We are all elected by our respective communities and districts, but we are also required to decide on issues that concern the whole state. No bill is perfect in all regard. Like it was quoted as saying, the good should not fall victim to the perfect. The arc of history bends toward equal justice, treatment, and fairness. This is just a part of bending that arc in the direction to which our state and federal Constitutions called us to do. We cannot shirk that responsibility.

"As a final comment, just as the beautiful rainbow completes its arc amidst the clouds and rain, this bill, amidst the debate and hearings, it too will move to complete this arc of justice. I believe that we, as a state, will move toward that rainbow of justice.

"As a last comment, my wife and I have been married for 42 years. I do not believe passage of this law would diminish our relationship; and we also believe that we should not deny the possibility for those same-sex couples. Thank you."

Senator Slom rose to speak in opposition to the measure as follows:

"I feel so much love in the room today. We've heard so many remarks. Earlier, I was schooled on becoming part of the Democratic Party's rally, and of course this issue hasn't been politicized from the beginning. We were told that there's no rush; and yet, in fact, there was a rush. From the beginning, we were told that this was going to be a five-day session; and then it was extended, and now we're into our third week. The governor's hands are shaking; his pen is ready to sign as fast as he can so that we can beat Illinois. We were told by the majority leader, no less, that there will be no compromise, no delay; and then we learned that after we pass this bill into law, we'll all get together and have town meetings and discuss it and meet at Zippy's. I'm all for that; that's good. It reminds me of another piece of legislation – after we pass it, we'll read it, and then we'll find out what it's all about and what the unintended consequences are. Well, how's that working out for you with Obamacare?

"This is not a partisan issue because we have leaders in both parties, in both houses, that have spoken in opposition. And yet, those of us that do speak in opposition have been ridiculed, as have religious believers. We've been told basically that we're foolish (other words were used), and that our voices don't count. We were also told this morning that it is the hand of man that has bent the arc in the direction that man feels – or at least some men and women feel – it should go. Not the hand of God, not the divinity that many of us still believe in, but man will bend that arc. We were also told earlier that we will hear from the people. My kudos go to the House, too, for their strength, for their patience, for their determination, and for their strong bladders in all of the hearings. I believe it is incumbent upon all of us to listen to the people, to hear them, and then to act responsibly. Those of us that have different viewpoints, we have those viewpoints for various reasons, and you have heard many explanations this morning, none more important than another. But you've also heard the names of Martin Luther King, Jr. and John F. Kennedy and others banded about, and yet nowhere in my research have I found that any of these people came out for same-sex marriage. Love, yes. Compassion, yes. Equal rights, yes.

"As I had said a couple weeks ago and was reiterated by the good senator from Kapolei today, no court has ruled that marriage is a civil right. And yet, we continue to try to change the language and try to make something into something it is not. We have debated this issue and we have learned from people their different viewpoints, but in the end this is kind of like the

situation in the Middle East over thousands of years. You can try to force people to do something that they don't believe in, but it doesn't make it so.

"I agree with all my colleagues, however, that raised the issue of civility and respect. I think that should be paramount, and there have been losses on both sides. Not just one side; on both sides. There are organizations from the mainland and other places that have helped both sides, not one side. We are told that this is the wave, that this is our future. People, I think, are really surprised at the passion and the participation over the last couple of weeks here at our Capitol. Parenthetically, a ranking came out a week ago that listed the political and social involvement of people within a state, and Madam President, Hawai'i ranked last, as we so often do in all national rankings. We rank last in people participating. Well, obviously that survey was done earlier than three weeks ago because we've seen an outpouring of individuals at this Capitol like no other time in our history. I, for one, think it's a wonderful thing – people from both sides (or three sides or four sides) coming together and giving their point of view passionately because of principle and because of what they believe.

"I know that a lot of people do not understand those in the religious community who have been so fervent in their opposition to this legislation, but walk in their shoes for just a moment. Look over the last 10 or 15 years. Look at our nation. Look at our state. Look at, one by one, our traditions and our values stripped away, usually in the courts and based on legislation that was passed in prior sessions. We are told not to be afraid that nothing different is going to happen; it's not going to change our lives. And yet, that's very naïve because we've seen in the past other legislation on other issues that, in fact, have changed our lives, have changed our values, and this is no exception. This will do many of the things that those who testified said it will do in terms of education, business, religion, and social conduct because that is the aim of those folks who have continued over the decades to insist, unlike what was said earlier, to go where not just a question of not wanted but not legally entitled to until the laws were changed. And that's what we're doing – changing the laws and providing entitlement and privilege and license.

"We can have all the fine words in the world; we can describe other situations and we can, again, be very poetic about love, but this is not about love. We can talk about emotional instances, and this should not be about emotion. It should be about the law. I'm always interested in people that quote our Constitution, and even conservatives on one specific incident while the rest of the time they usually talk about how unimportant those people and that Constitution is. By the way, again, there was some misinformation early on about the Defense of Marriage Act. It was not repealed by the U.S. Supreme Court; Section 3 was repealed. The Supreme Court did not give its stamp of approval on same-sex marriages. By the way, just so you remember, the vote on that particular bill was 5 to 4; and remember, the individual who signed that bill into law was William Jefferson Clinton, a good, card-carrying Democrat.

"I was at a neighborhood board meeting the other night, and I was questioned on my report and my opinion of how the not-so-special special session was going. A young member of the board questioned me and said, 'Why do you keep talking about that vote in 1998? My God, that was 15 years ago.' I pointed out to her that the Constitution was over 200 years old, and that the constitutional amendment passed in Hawai'i in 1998 still has the force of law and still will after the vote today. The fact of the matter is the people that voted for that constitutional amendment – and I was one, as was pointed out by the Judiciary Chairman the other day; I think he neglected to mention that the entire Senate voted unanimously to support that constitutional amendment, which was drafted by a Democrat. In that vote,

people thought and were told and were led to believe and relied upon the government telling them, 'If you vote for this, you're voting for traditional marriage between one man and one woman.' That's why over 70 percent of the vote went the way it did. Now we're told we should evolve and we should change that and grab on to the wave that is coming and sweeping the nation. Yet, it's hard to believe from the testimony that we had over the last three weeks that there is a wave. It's not just people of one party. It's not just young people. It's not just religious people. People have differences, and you can't legislate morality. You can try, but you can't do it.

"One of the remarks today which was absolutely true was that you really can't take these votes personally because the person who was your biggest opponent yesterday may be your biggest supporter tomorrow. I do take issue with the statement, however, that was made a few moments ago that the Legislature has always done things for the people here, made life better, and this is supposed to be another example of that. If this legislature had acted for the people and listened to the people, we wouldn't have the second highest tax burden in the nation. We wouldn't have the highest welfare in the nation. We wouldn't have growing homelessness in our state. We wouldn't have an economy that is struggling and that we are doing nothing about. And then people – gay, straight, everyone – is having a harder and harder time to take care of their family and loved ones because of what we have done or not done in this State Capitol. So, to rely on us to be your moral compass after we've done such a poor job of being your economic compass is really asking an awful lot.

"The division among peoples is serious and it's saddening. Yes, we all have people within our family or friends who are homosexual or who are different in other ways, and yet we found a way to embrace them. But this in-your-face politics brought on by the governor and by certain leaders in this Legislature, to say, 'You are going to have this no matter what, and we're going to do it on our time schedule, and we don't care how many thousands of people come down because you're ignorant. You will oppose this legislation; you're ignorant, or you're stupid, or you don't like certain people.' Nothing is further from the truth. We're talking about an issue that really should not be a part of government; I've said that for two decades. The fact that 1,138 federal benefits are involved tells me that there are many, many, too many federal benefits involved, and that once you succumb to a benefit then you are going to be subject to the whims of politicians who can evolve and change their minds. We have, as a society, become too dependent on government. Those people that don't like the idea of individual states and states' rights forget our history and don't have a good read of the United States Constitution because the Declaration of Independence and the Constitution were all about limiting government, fear of government, intolerance of government, of government looking down on the people that support it and doing things in opposition. That attitude goes far beyond this single issue.

"I'm sorry that on Saturday a press conference between the Judiciary Chairman and the majority leader resulted in the statement that, 'Hey, we've got this under control; this will be done in an hour.' Sorry, we're going into two hours now. Was it rushed? You betcha. Was there an attempt to listen and to reach a compromise to bring people together? No! I was at that Veterans' Day ceremony yesterday, and it was wonderful because we all came together for veterans. We'll all come together to help the poor, ravaged Filipino people. These are things that we can see and we can agree upon, and nobody has to force us and nobody has to talk about a 'victory' – a victory over our own people, a victory over God, a victory over religion. And yet, that's what we're doing here.

"Among those unintended consequences, there's been debate over the last several weeks about what is going to happen in the schools. Will the schools change? Will the curriculum change? People were quick to say, 'Oh no, no, it's not going to have any effect at all.' In my own district in a very fine school, Niu Valley Intermediate, there has been a program introduced; it's called 'Pono Choices'. By its self-description it is 'a culturally-responsive teen pregnancy and STI prevention program.' That program has expended nearly \$1 million to date. If you read through the curriculum of that program, it brings up homosexuality. It has two scenarios of traditional marriage couples and one of same sex. The two scenarios of traditional marriage are given a negative response, whereas the same-sex scenario is a positive thing. Well, maybe I'm wrong and they're right because if they want to stop pregnancy, same-sex marriage is the way to do it. But this program, which has already started in my area, is due to roll out in 30 other schools. Will parents have the right to opt-out? No. Students? No. We can talk about that, but they haven't been given that right, and they won't be given that right.

"I got a lesson this morning on cultural history and homosexuality. It's amazing how in the last 15 years so many things have changed. I had a reporter ask me about that the other day: What do I think is different now than 15 years ago? Is it a wave of consciousness, everybody waking up and saying – just like interracial marriage, which was wrong and had nothing to do with this; just like slavery, which was wrong and nothing to do with this – that we've evolved and we've understood? I said, 'No, I don't think so. I think it's more of a political push.' There are dozens of organizations today that were not around in 1998. The news media – well, we had two papers then, but that was old-fashioned competition. Now we just have a monopoly. They're cheerleaders. They don't report the news; they try to 'bend that arc' and shape the news. You can see it in the pictures that they use, the descriptions, the underestimating of crowds. We have a lot of people who, for a lot of reasons, want to be in the face of others who have different beliefs. We should value those beliefs; that is part of what has made our country great, along with the civility and the respect.

"I have to tell you, Madam President, when we started having these enhanced security measures in the Capitol, I was not and am not happy seeing large numbers of sheriffs and other people, seeing our people separated outside by lines and fences, by being told where to sit. If you're pro-marriage, sit over here; if you're not pro-marriage, sit over here. What do the people do that are pro-gay or pro-love but don't happen to like that particular legislation? Where do they sit? It's so ridiculous we even had signs for same-sex marriage restrooms and non-same-sex marriage restrooms. How can we bring people together if it is the government that is forcing them apart? This morning when I was driving in, I saw the ambulances and the fire truck, and I understood that someone needed medical assistance and was taken in an ambulance. Will the ambulance drivers in the future be forced to say same-sex hospital or non-same-sex hospital? You laugh now; come back and talk to me three or four years. Because all of the things that people said years ago – 'Oh, that would never happen here. That couldn't happen. People of good judgment will make the right decision' – I'm here to tell you we failed.

"As I mentioned a couple weeks ago, the people that have come down here are to be congratulated and not to be discouraged; and those of us that do believe in the power of prayer, know that you don't always get the results you want on your prayer, but ultimately you will. Don't be frustrated, and never, ever, ever, ever, ever, ever give up. But I told you that you are among people in the only state in the union that has neither statewide initiative, statewide referendum, statewide recall, and statewide term limits. You're just good enough to

vote for us and to pay our bills – nothing else. You're not smart enough. If this was such an important issue – and I said from the outset I didn't think it was and it did not merit a special session. Economic recovery and our other problems do. If it were such an important issue, then yes, the people should decide. Or, the people who thought they decided 15 years ago will have a day in court because quite frankly they feel disillusioned and disenfranchised that their vote didn't count for anything. Was it mass stupidity? Did 70 percent of the people really not understand? Did they not understand what was presented and written by the state government and by other independent agencies? We'll have to think about that.

"In terms of majority vs. minority rights, no, the majority is not always right. But then again, in this body as the minority, I'm never listened to anyway so it doesn't matter. No majority, no minority. But the people are restless, nationally and locally, because despite the fact that we pat ourselves on the back and tell you how wonderful we are, the people don't understand that and don't believe that. There's going to come a time when there will be another revolution of thought and purpose and commitment. So the thousands of you that may feel disgruntled today because of our process, don't feel so. Get involved. I was sad to learn many of you were not even registered to vote. Register to vote. Go to meetings. Support a candidate. Run for yourself. If you don't like our positions, then work to replace us, whatever that position is. That is your right. That's what democracy is all about.

"But I would say, in summation, that all of the things that have been said are important, but not so important as working on the people's business. I took a lot of criticism a couple of weeks ago because I said at that point it was told how historic that day was going to be, and then the next day, and the next day. Now, today is historic again. I stand corrected; it is historic. I was reminded by my office manager today that the date is 11-12-13, and that sequence of numbers won't happen again for a long time, not in my lifetime. I was also told by majority leaders over the weekend, 'This is the most important vote you'll ever make. You will be defined by this vote today.' Well, yes and no. Yes, it will be an important vote. Yes, many of us will be defined by our vote today. But to say that this issue, that sexual orientation has risen above so many issues that we need to grapple with and have punted, I think does a great disservice, not only to this body but also to the people of this state. We are a great state. We are a great people. We can embrace our diversity, but that does not mean that we have to be in locked step. Look at what happened last week: A member of the House, a Democrat, was called out by the very loving and compassionate people who were urging same-sex marriage, and they condemned her because they said, 'My God, she is a homosexual and she didn't vote with us.' It was the same thing that happened to Clarence Thomas, an African-American brilliant jurist. He's black; why doesn't he vote with the rest of us? Independence of thought. Liberty. Standing up for what you believe. That's what our nation is all about. That's what our government should be all about. Not how long you served in office, not how many projects you brought home, or not how you voted today on same-sex marriage.

"So, I would say that, in passing, congratulations to the people. We have never had an outpouring like this. And yes, the Senate perhaps rushed, in cutting off people from the debate when the House did not. I don't know if more hours or more study would change anything because I don't think the votes have changed from before we had this session, but I do know it's going to have lasting and serious consequences. It is going to affect small businesses negatively, and education and parents, and religious organizations. I will stand by my words earlier; this religious exemption is not strong and is not positive. We will see right after this bill is signed into law attempts by those who do want to go into your face, who are not thinking about

loving relationships but how they can defeat somebody else and quell free speech. But let them know that we will still be ready, and as long as we can stand, and as long as we have a voice, and as long as we have a hand to vote, we will continue on this path because it is the right path.

"So, I urge all my members to rethink before they vote today. Think about those 29 amendments proposed in the House, many of them that the proponents of same-sex marriage had to admit were really good amendments, but they voted against them anyway. Why? Because they could. Just like when we passed reciprocal beneficiaries and many of us said it was flawed. It was. We had to come back afterwards. And after we passed civil unions, we said it was flawed; and it was, and we had to come back afterwards. So, by your vote today, you're not erasing history, you're not erasing unintended consequences, but you're not bringing people together and you're not doing the best you can do as a legislator and servant of the people. Madam President, I call for a Roll Call vote. Thank you." (The Chair so ordered.)

At this time, the Chair reminded the members of the public seated in the gallery to maintain decorum.

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

"Madam President, two years ago the Legislature provided to same-gender couples all the rights, benefits, protections, and responsibilities that married couples already had under state law.

"The State of Hawai'i cannot give same-sex couples any more rights, because we gave them all. Even if we wanted to provide more rights, there are no more to give.

"The U.S. Supreme Court has now required the United States government to recognize same-sex marriages, and it is time for Hawai'i to do the same. If we don't, Hawai'i's same-sex couples would have to travel to California, Washington, or other states to get married to receive many but not all of the available federal benefits.

"I don't believe the perceived harm to traditional marriage justifies denying federal benefits to same-sex couples. Nor does a lack of an exemption for personal religious conscience, which no state provides, justify denying federal benefits and the right to marry.

"On this issue, there is obviously no consensus among stakeholders. There is disagreement. And my vote today will make me part of that disagreement. Opponents may disagree with me, but this is what I believe:

- I believe I am no better than any of my gay or lesbian friends.
- I believe there is nothing wrong with my gay and lesbian friends, or myself for having that belief.
- I believe my gay and lesbian friends should have the same rights that I have.
- And, I believe I shouldn't have to say this and I have not done so until now, but I state these beliefs because of the disagreement on this issue.

"Madam President, I'd like to now address the matter of whether the Legislature has the power to allow same-sex marriage. Apparently, some people still don't understand that, but I'll try to explain."

The Chair responded:

"As long as you stay germane to the motion."

Senator Ihara continued:

"The attorney general's opinion on this issue is clear. The Legislature has always had the power to authorize same-sex marriage, under Article III, section 1, of the Constitution, which states in relevant part, 'The legislative power of the State shall be vested in a legislature... Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.'

"The 1998 constitutional amendment gave the Legislature an additional power: 'the power to reserve marriage to opposite-sex couples.' The 1998 constitutional amendment did not take away or limit any of the Legislature's powers, including that of authorizing same-sex marriage. Instead, the 1998 constitutional amendment only gave the Legislature a new power – the power to discriminate against same-sex couples in marriage. And even this new power is optional, not mandatory to use.

"Madam President, it is fitting that the final vote of this bill is here in the Senate. Today's vote closes the circle, the return of a boomerang that was launched here on April 29, 1997. But even before 1997, the Senate was a staunch supporter of equal rights. After the famous Levinson opinion in *Baehr v. Lewin* was issued in May 1993, pressure mounted steadily to pass a constitutional amendment in Hawai'i to ban same-sex marriage. Even under intense pressure in 1996, our then-Senate Judiciary Chair Rey Gaulty opposed any constitutional amendment to ban same-sex marriage. I want to today acknowledge Senator Gaulty because he stood up for equal rights, and paid the political price – the loss of his Senate seat that same year.

"I want to take us back to 1997, 16 years ago. I was the co-majority leader, and recall the general belief that a marriage constitutional amendment could no longer be blocked. The plaintiffs in the Baehr lawsuit had won a circuit court ruling in December 1996, and it was all but certain that the Hawai'i Supreme Court would confirm the lower court's ruling that legalized same-sex marriage in the state, unless the Legislature acted that year.

"That session, 1997, the Senate Judiciary Committee had co-chairs, Senators Avery Chumbley and Matt Matsunaga. The House had the veteran Judiciary Chair Terrence Tom.

"From beginning to end, the House position was to put on the ballot a constitutional amendment to limit marriage to opposite-sex couples. The Senate Judiciary Chairs proposed limiting marriage between a man and a woman, but only if it was not a violation of equal protection. They later proposed letting the Legislature decide whether to limit marriage to opposite-sex couples.

"A reciprocal beneficiaries bill was also part of the negotiations that year. In the end, Senators Chumbley and Matsunaga were able to get far fewer marriage rights and benefits than they had wanted for reciprocal beneficiaries, and the House agreed to give the Legislature the power to limit marriage to opposite-sex couples.

"The constitutional amendment debate was on H.B. No. 117 on April 29, the last day of the 1997 session. In his floor speech, House Judiciary Chair Tom said that if the constitutional amendment was approved by voters, there would be no need for further legislation. The Legislature would not have to reenact marriage legislation because the statutes already limited marriage to opposite-sex couples.

"So, as you recall, after the 1998 constitutional amendment was adopted, the Legislature took no action because the constitutional amendment basically allowed us to discriminate, and that's about all it did. Senator Norman Sakamoto, an opponent of same-sex marriage, stated, 'I support this bill because it gives voters a clear choice on whether or not the

Hawai'i Constitution should be amended and because the bill is easily understandable for the voters and will be fair to all. Passage of this measure will empower the Legislature, who are the elected representatives of the people, to take action, and not appointed judges to decide who can get married.'

"As Senator Sakamoto said, the 1998 constitutional amendment was clear and understandable.

"Back on the House floor on April 29, 1997, Representative Gene Ward stated in relevant parts:

...a few weeks ago Judge Moon rightly said that we have the trump card in this particular discussion... What I believe he forgot to say is that it's the people of Hawai'i that hold the trump card... and not those who wear the black robes. Unfortunately, the way the bill is written, however, it's those that sit in these seats [he was referring to legislators' seats] who will decide whether there is same-sex marriage in the future. The social order that this one relies upon are those who are in the Senate and the House to say as the words define the power to regulate marriage between opposite-sex couples. Not in the people's mind, but in the minds of those who are elected representatives.

"Representative Ward continued, 'As you know, Mr. Speaker, the first version had it that marriage would be defined in the State of Hawai'i as between one man and one woman... What we have here is something that I think, if the Senate or this House are so inclined in a matter of time, even next year, we're going to have same-sex marriage.' How prophetic.

"In 1997, Representative Ward and the rest of us knew that letting the people vote and adopt the 1998 constitutional amendment meant that the people empowered the Legislature to decide on marriage.

"He continues by saying, '...it seems as though the Senate apparently wanted it to be as it is because each election, Mr. Speaker, as we're asked what's our stand on education, or asked what your stand on crime is, sometimes it's abortion, it's going to be...well what's your stand on same-sex marriage?'

"Madam President, as a matter of fact, as you recall this past election last year, the *Star-Advertiser* did ask all legislative candidates that very same question, and I did state that I was for same-sex marriage.

"I should note that while Representative Ward was giving his speech, sitting a few feet away from him was Representative Bob McDermott, who spoke in support of the bill shortly after Representative Ward.

"Now back to today, we've come full circle, because instead of a constitutional amendment simply banning same-sex marriage, the voters reserved the power to the Legislature. And under Article III, section 1, of the Constitution, the Legislature is ready to authorize marriage between same-sex couples today.

"I would like to recognize and thank Senator Avery Chumbley and Senator Matt Matsunaga for their foresight and ingenious constitutional amendment they proposed back in 1997. It is because of them that we are able to vote today to allow same-sex marriage in Hawai'i.

"I also want to thank our current Judiciary Chair for his steadfast commitment for equal rights and for an excellent job in steering this bill forward.

"I'd like to close my remarks on a personal note. Not only is my marriage not threatened by same-sex marriages, my wife and I believe that our own marriage is enriched by allowing all

loving couples to marry. By passage of this bill, my wife and I will no longer be part of a privileged group allowed to marry. May our gay and lesbian friends enjoy all the rights and privileges, and joy, in being officially recognized in legal marriages. Thank you, Madam President."

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

"Good afternoon, Madam President.

"I stand in support of SBI, HDI. First of all, I wanted to thank members of the public for the phone calls, letters, visits, the one on one discussions I have had with people throughout the community, and for the over 8,000 emails I have received in support of and in opposition to same gender marriage. The sincerity in which most people communicated with me is truly appreciated. I am still not done responding to each person and family who has taken the time to share their thoughts with me, but want people to know that I am grateful to them for taking the time to be involved in our legislative process and for the contribution each person has made to provide the broadest possible views on this issue before we make our final decision.

"I am also thankful to our Senate President, Vice President, Speaker, Vice Speaker, House and Senate leadership teams, the Senate and House Judiciary Chairs and Vice Chairs, the House Finance Committee Chair and Vice Chair and their respective committee members, all of my Senate and House colleagues and our staff members, our Senate and House Clerks, Sergeant-at-Arms and their staff, the Majority and Minority research staff, other House and Senate support staff, the State Sheriffs, the Governor and staff from the Executive Branch, and many former legislative staff and volunteers for their time, professionalism and dedication to the people of Hawaii.

"As some may know, my ancestors and my husband's ancestors came to Hawaii seven generations ago. In the 1800s, my mother's relatives came to the islands as Christian missionaries to help and support many who worked on the plantation. Since that time, my and my husband's family members have contributed to our State as doctors, nurses, teachers, social workers, business owners, architects, engineers, artists, athletes, military and law enforcement officers, faith leaders, good parents, friends and neighbors to others and much more.

"I believe everyone here today and those not able to join us at the Capitol have rich histories and have made and continue to make wonderful contributions to our State. My hope is that the passion each of you have for this subject area will strengthen us as a community rather than divide us and that mutual respect and love we have for one another will prevail, that we will honor each other's differences and celebrate the life that we have together in Hawaii irrespective of the diverse views we hold on this subject. Life is too precious not to care for one another with compassion and respect.

"I grew up in a household where Christian and Buddhist practices and faith were alive and well and existed harmoniously. I am very blessed to have been raised in such a home and an environment where there is a deep and abiding respect and love for one another as unique human beings.

"In my 23 years of service as an elected official in the State Legislature, 20 of those years has provided me so many learning opportunities around the same gender marriage issue. In 1993, having no background on this issue, but being able to meet and discuss with people in longstanding, committed same gender relationships as well as attending every single hearing on the neighbor islands and Oahu on this topic with then House Judiciary Chair Terrence Tom and hearing from thousands of people statewide, truly provided a rare opportunity for me to develop a much deeper understanding of the complexities and

challenges people in same gender relationships have had to endure for so many years. I have learned from others the injustices they have had to face, many things which I and many of us take for granted as basic human rights and a part of a civil society.

"The bill before us provides this opportunity for the people of Hawaii to nurture a more compassionate and just society. The legislation before us embodies and expresses the deeply held value of our people to support loving and committed relationships and families. It also honors and protects the diverse religious beliefs of the people of Hawaii and the freedom of religion guaranteed under our State and Federal Constitutions. It also preserves the public accommodation laws that protects people from discrimination. This measure will enable same gendered married couples to enjoy the rights, privileges and responsibilities of married couples of the opposite gender. Finally, it symbolizes the faith we have in humankind and the love we have for one another.

"Thank you, Madam President, for the opportunity to speak and share from my heart."

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

"I rise in strong support of equal rights and S.B. No. 1, H.D. 1.

"I guess I'm surprised at all of the fear and almost hatred I hear from people who seem to be afraid of allowing others in committed relationships to be recognized under the law. I've always considered myself to be a Christian. I go to church on Sunday and play the organ. I keep asking myself, why are people so afraid of somebody else that's different or that may practice their religion a different way? Why are people so afraid of folks that they don't understand or know? I look back at what the Bible says Jesus preached when he was on the earth, and it really is about loving one another, having compassion, reaching out to people that may be outcasts or different and raising them up. Yet, that's not what I hear from some of the folks that are opposed to S.B. No. 1, H.D. 1, and it troubles me. I guess I would want to ask them in this day and age, what would Jesus do?

"I appreciate the majority policy leader taking us back to 1997 and laying the groundwork to explain why it is that we have the authority and the capability to make this change today. I don't see that providing equal treatment under the law is a bad thing, a negative thing, or is going to stop traditional marriage. I see it as augmenting marriage and actually including more people who are in stable relationships. We have a significant divorce rate – not the lowest, not the highest among the states – but I don't see same-sex marriage as the enemy of traditional marriage and creating more divorces. I see things like domestic violence, financial worries, drugs, alcohol, inability to communicate as the enemy of any kind of marriage, traditional or same-gender. It seems to me that justice delayed is justice denied, and it also seems to me that in Hawai'i, with our tradition of aloha and love for all, that there really is no room for hate in the 808.

"I've been looking through some of the email that we've received, and I want to close with these words from a gentleman who I'm assuming wrote to all senators. The email is dated today. To me, it sums up the basis for the reason I support for S.B. No. 1, H.D. 1. The author writes:

I look forward to the day when our children can grow up in a society of wholehearted acceptance. I'm an adult and my scars have hardened, and whatever happens today I am hopeful it will be the beginning of a new era of equality, unlike the experience that I've had for several decades and

lifetimes for those before me. With the continued support for S.B. No. 1, the children will not have to wear the scars we have for being who we are and loving who they love. May they live out their highest aspirations freely without fear of loss of life, dignity, and liberties promised by our Constitution. May it be so for this generation and all future generations.

“Mahalo, Madam President.”

Senator Slom rose to speak in rebuttal as follows:

“Since the attorney general has been brought up several times today, I just want to reiterate for those people that don’t know that the appointed attorney general is not the attorney for the people. He is the attorney for the governor; he is appointed by the governor. Judge Sakamoto last week, in reviewing the request for the TRO (which he denied but he kept the case open) said to those present that the opinions of the attorney general of Hawai‘i are given in this issue will not be controlling and will not be pressing. Thank you and aloha.”

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

“Members, today we are taking a very important vote of conscience. I want to say thank you to Senator Chumbley and Senator Matsunaga, who many years ago had the foresight to preserve this issue for us to vote on today.

“From a Hawaiian perspective, this is nothing more than the expansion of aloha in Hawai‘i. From a Hawaiian perspective, marriage has always been something that we recognized when people loved each other and chose to live with each other. It has taken a while for us to catch up with that notion, but today we stand on the brink of voting on that to expand civil rights to all people in Hawai‘i. I thank you for your positive vote today as we move forward to make Hawai‘i truly the Aloha State. Mahalo.”

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

“I was disturbed by some of the things that the Senator from Hawai‘i Kai said earlier, and I want to address my remarks to the people sitting in the gallery behind me – the people who came down here, day after day, with signs saying that they supported traditional marriage.

“The senator from Hawai‘i Kai said that we don’t understand people whose religious beliefs oppose same-sex marriage, that we call them stupid and we call them wrong. Speaking only for myself, I want to say he’s partly right and partly wrong. He’s partly right in that I don’t understand it. But he’s wrong in that I would never call them stupid or wrong. And I’ve never heard any other senators on this floor call them stupid or wrong. I accept that that is their religious belief. I accept that it is your First Amendment right to believe that.

“The provisions in this bill have eroded our longstanding public accommodations law to allow you to continue in your religious beliefs in that manner.

“The reason I’m voting to support this bill is best explained in this brief quote: ‘We are confronted primarily with a moral issue. It is as old as the Scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated.’ This is what John F. Kennedy said in his 1961 civil rights address.

“I want to thank the Reverend Heidel for opening today with a quote from President Lincoln in his second inaugural address. His words remind us that our country has been through far more

cataclysmic social change that has turned tradition on its head, and we made it through together to become a stronger nation.

“I want to ask the people sitting behind me to realize even though you may not understand the reason for my vote and for some of the other senators’ votes, to accept that they are being made with malice towards none. We need to work together to bind the wounds that have come up in this contentious debate. We need to accept each others’ differences in our beliefs, and to come together now to move forward. Our vote today is not the end of the discussion. Our state is going to continue the discussion on same-sex marriage for a long time, but hopefully we can do so in a respectful manner. Thank you, Madam President.”

Senator Kouchi rose to speak in opposition to the measure as follows:

“We need to state why we’re standing and how we’re voting on the bill, but the first two days of the special session I had the opportunity to serve as the presiding officer, and I feel I’d be remiss if I didn’t stand and publicly say, like the Judiciary Chair, what an outstanding job was done by our staff, the Sheriff Division, and all of the senators and the employees in what were certainly two trying days filled with a lot of emotion. I truly appreciate the support that I had and the people who worked together to make the process run smoothly in the Senate.

“I know where the votes are, and in a democracy we’re given the opportunity to express ourselves, but at the end of the day, the majority carries the day and we need to move forward. Much has been said about how do we come back together after such a divisive issue. I want to leave my colleagues with one of the memories that I’m going to be taking from these 15 days. This is, in particular, directed to the friends of the majority leader: On Halloween night, I sat in my office by myself and heard all of the noise out front. I decided to go down, and in what would’ve been the shadow of Father Damien’s statue stood by myself. On one side, the traditional marriage people were sign waving with great joy and emotion. On the other side, the equality marriage group, with the same kind of passion, was sign waving. Then, from the tent of the traditional marriage supporters where they had a loudspeaker and a sound system, *Hawai‘i ’78* came up with Brother Iz and his haunting lyrics. Both sides, ironically, embraced the lyrics as if they were the model of each of their causes. I stood there by myself, amazed at what the power of song and music can do.

“If we can agree that we love Brother Iz, and if we can agree that we all love our children, and if we can agree that we all love Hawai‘i, after today we need to agree to find where those common areas are. If you listen to my colleague from Hawai‘i Kai, there will be other amendments to be considered, there will be things that we need to look at about how whatever laws we have work best for everyone in Hawai‘i. What makes democracy great is that we create change by peaceful vote, and then we go forward and we show ourselves as an example to the world about how democracy works and how people can do it peacefully. I hope as we move forward that we can all find common ground in a peaceful manner. Thank you, Madam President.”

The Chair thanked Vice President Kouchi for presiding during the first two days of the special session.

Senator Galuteria called for the question, and the Chair ordered the Clerk to proceed with the Roll Call vote.

The motion was put by the Chair and carried, the Senate agreed to the amendments proposed by the House to S.B. No. 1, and S.B. No. 1, H.D. 1, entitled: “A BILL FOR AN ACT RELATING TO EQUAL RIGHTS,” having been read

throughout and Roll Call vote having been requested, passed Final Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 4 (Gabbard, Kim, Kouchi, Slom). Excused, 2 (Dela Cruz, Taniguchi).

At this time, the Chair reminded the members of the public seated in the gallery to maintain decorum.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 2 and 3) were read by the Clerk and were disposed of as follows:

S.R. No. 2: "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE ON THIS FINAL DAY OF THE SECOND SPECIAL SESSION OF 2013."

Offered by: Senators Galuteria, Slom.

On motion by Senator Espero, seconded by Senator Slom and carried, S.R. No. 2 was adopted.

S.R. No. 3: "SENATE RESOLUTION INFORMING THE HOUSE AND GOVERNOR THAT THE SENATE IS READY TO ADJOURN SINE DIE."

Offered by: Senators Galuteria, Slom.

On motion by Senator Espero, seconded by Senator Slom and carried, S.R. No. 3 was adopted.

At this time, the Chair made the following announcement:

"Members, in light of the devastation in the Philippines, I am proposing that the Senate conduct a drive to send support to the people affected in the Philippines. I hope we'll be unanimous in this voluntary effort. I would also like to ask that the Senate adjourn today on a rising vote to observe a moment of silence to honor the people of the Philippines who lost loved ones, their homes, and livelihoods, and are now working to recover from the devastation of Typhoon Haiyan. In our own way, I hope each of us will offer comfort to them in their time of need."

ADJOURNMENT

Senator Espero moved that the Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, adjourn Sine Die, on a rising vote to observe a moment of silence to honor the people of the Philippines in the wake of Typhoon Haiyan, seconded by Senator Slom and carried.

At 12:56 p.m., the President rapped her gavel and declared the Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Second Special Session of 2013, adjourned Sine Die.

**GOVERNOR'S MESSAGES RECEIVED AFTER THE ADJOURNMENT
OF THE SECOND SPECIAL SESSION OF THE LEGISLATURE SINE DIE**

Gov. Msg. No. 44, informing the Senate that on November 13, 2013, the Governor signed into law Senate Bill No. 1, H.D. 1 as Act 1, entitled: "RELATING TO EQUAL RIGHTS."

Gov. Msg. No. 45, informing the Senate that on November 14, 2013, the Governor signed into law House Bill No. 1 as Act 2, entitled: "MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS."

Gov. Msg. No. 46, informing the Senate that on November 14, 2013, the Governor signed into law House Bill No. 2 as Act 3, entitled: "MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS."

Gov. Msg. No. 47, informing the Senate that on November 14, 2013, the Governor signed into law House Bill No. 3, H.D. 1 as Act 4, entitled: "MAKING AN APPROPRIATION TO THE HAWAII HEALTH SYSTEMS CORPORATION."