

COPY

DEPT. COMM. NO. 227



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

November 27, 2020

Email Transmittal, Hard Copy to Follow by Mail or Delivery

Senate President Ronald D. Kouchi
Hawai'i State Senate
Hawai'i State Capitol, Room 409
415 South Beretania Street
Honolulu, HI 96813
Email senkouchi@Capitol.hawaii.gov

RE: Hawai'i Civil Rights Commission Resolution URGING THE STATE OF HAWAI'I TO DEMONSTRATE ITS HISTORICAL AND CONTINUING COMMITMENT TO CIVIL RIGHTS, GIVING MEANING TO STRONG STATE CIVIL RIGHTS LAWS BY REBUILDING CAPACITY, MAINTAINING AND RESTORING RESOURCES FOR STATE CIVIL RIGHTS LAW ENFORCEMENT.

Dear Senate President Kouchi:

The Commissioners of the Hawai'i Civil Rights Commission (HCRC) wanted the enclosed resolution, adopted on November 12, 2020, to be transmitted to you.

The HCRC understands the unprecedented state budget crisis that we face, and that painful decisions will be required on the role of state government and our priorities going forward. The Commission resolution informs this difficult discussion, by trying to capture Hawai'i's historical commitment to civil rights and the continuing importance of strong, meaningful civil rights law enforcement.

Thank you for your consideration.

Aloha,

William D. Hoshijo
Executive Director



HAWAI'I CIVIL RIGHTS COMMISSION

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URGING THE STATE OF HAWAI'I TO DEMONSTRATE ITS HISTORICAL AND CONTINUING COMMITMENT TO CIVIL RIGHTS, GIVING MEANING TO STRONG STATE CIVIL RIGHTS LAWS BY REBUILDING CAPACITY, MAINTAINING AND RESTORING RESOURCES FOR STATE CIVIL RIGHTS LAW ENFORCEMENT.

WHEREAS, Hawai'i has a proud civil rights history of our own civil rights movement that paralleled the civil rights movement on the US continent; and

HAWAI'I'S HISTORY OF RACIAL AND ANCESTRY-BASED DISCRIMINATION

WHEREAS, Hawai'i has a history of racial and ancestry-based segregation dating back to the Kingdom of Hawai'i, when a ruling oligarchy brought in foreign laborers to work on sugar plantations; and

WHEREAS, In 1850, the Masters and Servants Act created a contract labor system, a form of indentured servitude; with annexation in 1898, the Masters and Servants Act was prohibited by the Organic Act, imposing the post-Civil War 13th Amendment prohibition against slavery and peonage; and

WHEREAS, Hawai'i has a history of race and ethnicity-based occupational stratification with roots deep in the plantation system, with private sector employment largely segregated along similar lines through World War II; and

WHEREAS, Hawai'i has similar histories of segregation in housing, from segregated plantation camps to segregated neighborhoods, reinforced by restrictive racial covenants, education, implemented both through exclusive private institutions and the English standard school system, and private clubs; and

WHEREAS, Of the 47 men executed in Hawai'i between 1827 and 1957, before the abolition of the death penalty, 24 (51%) were Filipino, 10 (21%) were Japanese, and only 1 was Haole; and

HAWAI'I'S CIVIL RIGHTS MOVEMENT AND COMMITMENT TO STRONG CIVIL RIGHTS LAWS

WHEREAS, This historical context set the stage for the civil rights movement in Hawai'i that followed World War II, with a confluence of forces that created the dramatic changes that followed: the history of organizing, strikes, struggles and successes of the ILWU and organized labor; the return of nisei veterans; and the 1954 Democratic Party revolution; and

WHEREAS, Hawai'i's civil rights movement was directly tied to the progress of organized labor and the ILWU, who in efforts to organize plantation workers won

important victories securing: the right to vote; the right to assemble and associate; the right to trial by jury of peers; and the rights to free speech and due process; and

WHEREAS, As a result of its civil rights movement, Hawai'i historically has had stronger civil rights protections than federal law, which is a "floor" beneath which state law protections against discrimination cannot drop, rather than a "ceiling" above which state law protections cannot rise; and

WHEREAS, The foundation of our state civil rights laws is found in Art. I § 5 of the Hawai'i Constitution which states that "[n]o person . . . shall be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex, or ancestry," the provision granting our citizens the fundamental right to be free from race, religion, sex or ancestry discrimination, first adopted by the Constitutional Convention of 1950 (ratified as Article I, § 4), prior to Hawai'i becoming a state; and

WHEREAS, The delegates to the Constitutional Convention of 1950 were motivated by their collective experience, Hawai'i's history of *de jure* (in law) and *de facto* (in fact) discrimination, which spawned a commitment to civil rights and a civil rights movement much like that which would transform the American south and the nation; and

WHEREAS, In 1963, a year before the passage of the Civil Rights Act of 1964, Hawai'i enacted its state fair employment law, as an integral part of a platform of laws enacted to protect the rights, economic well-being, productivity, safety, and dignity of Hawai'i's workers, including abolishment of the death penalty, labor laws protecting the right to organize, minimum wage, workers compensation, temporary disability insurance, unemployment insurance, occupational health and safety, and pre-paid health; and

WHEREAS, The Hawai'i Supreme Court has recognized that "[t]he public policy of the State of Hawaii disfavoring . . . discrimination is embodied in our statutes and our Constitution" and that "[t]he strength of this expressed public policy against . . . discrimination is beyond question." [*State v. Hoshijo Ex Rel. White*, 102 Hawai'i 307, 317 (2003), quoting *Hyatt Corp. v. Honolulu Liquor Comm'n*, 69 Hawai'i 238, 244 (1987)]; and

HAWAI'I CIVIL RIGHTS COMMISSION ESTABLISHED FOR MEANINGFUL ENFORCEMENT OF CIVIL RIGHTS LAWS

WHEREAS, The Hawai'i Civil Rights Commission (HCRC) was established by Act 219, L. 1988, and Acts 386 and 387, L. 1989, organized in 1990, and opened its doors in 1991; and

WHEREAS, The HCRC has an important constitutional and statutory mandate because Hawai'i has a compelling state interest in civil rights law enforcement, protecting the right of all people in the State to be free from unlawful discrimination; and

WHEREAS, Prior to the establishment of the HCRC, jurisdiction over state anti-discrimination laws was split among several state departments, with limited and sporadic enforcement, and state prosecution of discrimination complaints was virtually non-existent; and

WHEREAS, Prior to the establishment of the HCRC, complainants who could not afford private attorneys to seek remedies in court had no administrative process to adjudicate their claims, few employment discrimination cases were brought to court under state law, and there were few court interpretations of state law anti-discrimination laws; and

WHEREAS, The intent of the legislature in creating the HCRC was "...to establish a strong and viable commission with sufficient ... enforcement powers to effectuate the State's commitment to preserving the civil rights of all individuals;" and

WHEREAS, The cornerstone of the HCRC statutory scheme was the establishment of a uniform procedure "...designed to provide a forum which is accessible to anyone who suffers an act of discrimination;" and

WHEREAS, The HCRC's enabling statute, H.R.S. Chapter 368, declares that discrimination because of race, color, religion, age, sex (including gender identity and expression), sexual orientation, national origin, ancestry, or disability in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy; and

WHEREAS, The HCRC exercises jurisdiction over Hawai'i's laws prohibiting discrimination in employment (H.R.S. Chapter 378, Part I), housing (H.R.S. Chapter 515), public accommodations (H.R.S. Chapter 489), and access to state and state-funded services (H.R.S. § 368-1.5) ; and

WHEREAS, Under its statutory mandate, the HCRC receives, investigates, conciliates, litigates, and adjudicates complaints of discrimination, providing a uniform procedure for the enforcement of the state's discrimination laws; and

WHEREAS, Under the doctrine of exhaustion of administrative remedies, state courts require the filing of HCRC complaints before resort to court action, with statutory exceptions for fair housing complaints and civil actions for sexual harassment or sexual assault; and

HAWAII CIVIL RIGHTS IN CRISIS: THE IMPACT OF THE COVID-19 PANDEMIC EMERGENCY

WHEREAS, Governor David Y. Ige issued an emergency proclamation on March 4, 2020, marking the beginning of the unprecedented COVID-19 pandemic emergency that has touched every aspect of the lives of Hawai'i's people - with resulting infections, hospitalizations, and lives lost; and

WHEREAS, In an effort to slow the spread of COVID-19, subsequent emergency proclamations have imposed stay-at-home directives, shut downs of high-risk businesses and public parks, limits on gatherings, social distancing mandates, mandatory quarantines, and other safety measures; and

WHEREAS, The pandemic emergency has taken a heavy toll on the financial well-being of people and families, in the form of job loss, business closures, inability to pay rent or mortgages, and food insecurity; and

WHEREAS, The catastrophic impact of the COVID-19 pandemic on the state economy will have a direct impact on state tax revenues, with a projected budget shortfall of \$ 2.3 billion for FY 2020 and FY 2021, requiring state general fund budget cuts, which could include furloughs, reductions in force (RIFs), and targeted vertical cuts to state programs; and

WHEREAS, The HCRC has federal contracts with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO), both of which require maintenance of state effort and prohibit unilateral reduction in state funding for investigation of dual-filed fair employment and fair housing complaints, respectively; and

WHEREAS, Even before the COVID-19 pandemic emergency, the HCRC was understaffed as a result of cuts imposed in 2009-2010, when in response to the Great Recession, the HCRC lost 3 of 11 permanent investigator positions, a loss of 27% of investigator capacity which was never restored; and

WHEREAS, Of the HCRC's remaining 8 permanent investigator positions, 2 were vacant in mid-March 2020 when the COVID-19 pandemic emergency broke - those vacant positions have been frozen and defunded, leaving the HCRC with only 6 funded, filled permanent investigator positions at the end of October 2020, or 55% of investigator capacity in 2009; and

WHEREAS, Additional targeted cuts to the HCRC's general fund budget will require cuts to the remaining 6 investigator positions or 3 permanent enforcement attorney positions, going to the heart of the HCRC civil rights law enforcement capacity; and

WHEREAS, Targeted cuts to the HCRC's general fund staffing will affect every stage of the HCRC process, intake and filing, investigation, conciliation, litigation, and

adjudication of complaints of discrimination complaints, eviscerating the HCRC's capacity to effectively perform its civil rights law enforcement functions; and

HAWAI'I CIVIL RIGHTS COMMISSION PROVIDES ACCESS TO JUSTICE FOR HAWAI'I'S PEOPLE THROUGH STRONG CIVIL RIGHTS LAW ENFORCEMENT

WHEREAS, The HCRC is the only state agency where anyone who believes that they have suffered from discrimination in their place of employment, in housing, or in a place of public accommodation (e.g., a store or hotel) can seek vindication of their rights under state law; and

WHEREAS, The HCRC statutory enforcement mechanism provides the only effective means to pursue justice for those who cannot afford a private attorney, particularly in cases in which damages are not substantial enough to retain a private attorney, and in cases which present difficult issues or require extensive investigation; and

WHEREAS, Without effective enforcement, state anti-discrimination laws would be rendered meaningless; **now, therefore, be it**

RESOLVED, That the Hawai'i Civil Rights Commission urges the State of Hawai'i to reaffirm its historical commitment to civil rights for all Hawai'i's people, strong civil rights laws, and strong civil rights law enforcement, vindicating the compelling state interest in eliminating discrimination by, even in this difficult time, maintaining support and resources to build the capacity required to give meaning to that commitment; and be it further

RESOLVED, That copies of this Resolution be transmitted to Governor David Y. Ige, Senate President Ronald D. Kouchi, House Speaker Scott Saiki, Chair Donovan M. Dela Cruz of the Senate Committee on Ways and Means, Chair Sylvia Luke of the House Committee on Finance, Chair Brian T. Taniguchi of the Senate Committee on Labor, Culture and the Arts, Chair Richard H.K. Onishi of the House Committee on Labor & Tourism, Director of Labor and Industrial Relations Anne Perreira-Estaquio, and Director of Finance Craig K. Hirai.

DATED: November 12, 2020

LIANN EBESUGAWA
CHAIR

JOAN LEWIS
COMMISSIONER

WILLIAM J. PUETTE
COMMISSIONER

JON MATSUOKA
COMMISSIONER