



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/10/2026

Time: 09:15 AM

Location: CR 016 & Videoconference

Committee: JDC

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB2871, RELATING TO DISCRIMINATION.

Purpose of Bill: Prohibits discrimination based on: (1) The perception that a person possesses certain characteristics; (2) The perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) The intersection or combination of two or more specified characteristics in relation to a person.

Department's Position:

The Hawaii State Department of Education (Department) respectfully offers comments and concerns regarding SB 2871, which seeks to prohibit discrimination based on: (1) The perception that a person possesses certain characteristics; (2) The perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) The intersection or combination of two or more specified characteristics in relation to a person.

While the Department fully supports the intent of fostering an inclusive and safe learning environment for all students and employees, there may be significant operational and litigation risks arising from the "gray areas" created by the bill's current language. Unlike actual characteristics, discrimination based on "perception" is inherently subjective. The Department would like to ensure a clear understanding of the proposed definitions prior to offering full support on this bill. For example, regarding the prohibition of discrimination based on a person's association with another, the Department requests clarification on what constitutes an "association" as they could range from familial or domestic relationships to professional or social affiliations.

The Department seeks further clarification regarding the evidentiary framework for proving discrimination based on the "intersection" of protected characteristics. Specifically, whether a person would be required to demonstrate that the alleged discrimination was uniquely tied to the *combination* of factors, or was simply that multiple individual factors were present. Without a clear metric for measuring intersectional bias, the Department faces significant challenges in developing consistent internal investigative protocols.

Finally, the Department also suggests stating explicitly that the measure does not

create new protected classes but rather clarifies how existing protections apply. These suggestions do not change the bill's intent and are offered only to improve consistent application.

For these reasons, the Department respectfully offers these comments on SB 2871 and appreciates the Legislature's continued commitment to equity and inclusion in Hawaii's public education system.

Thank you for the opportunity to provide testimony on SB 2871.



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KIWILA O HAWAI‘I**

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 · PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Tuesday, February 10, 2026 9:15 a.m.
Conference Room 016 & Videoconference
State Capitol, 415 South Beretania Street

To: [COMMITTEE ON JUDICIARY](#)

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

From: Alphonso Braggs, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. 2871 Relating to Discrimination
Testimony in SUPPORT

The Hawai‘i Civil Rights Commission (HCRC) carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5. HCRC has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment (Chapter 378, Part I, HRS), housing (Chapter 515, HRS), public accommodations (Chapter 489, HRS), and access to state and state-funded services (HRS § 368-1.5).

S.B. 2871 amends the statutes prohibiting discrimination in employment, housing, public accommodations, and covered educational programs (Chapter 368D, over which the HCRC does not have jurisdiction), and clarifies that 1) intersectional claims are protected, 2) expands the prohibition of discriminatory actions based on the perception that an individual is a member of a protected class, as identified in 368-1, HRS, and 3) and expands the prohibition of

discriminatory actions based on the perception that an individual is perceived to associated with a person who is a member of a protected class, as identified in 368-1, HRS. These amendments would strengthen protections for those with intersectional claims by preventing the possible erosion of legal protections in the courts, and broaden the scope of protection for individuals within our state.

Intersectional Claims:

The HCRC has historically acknowledged and continues to protect individuals with intersectional claims, recognizing the unique challenges many individuals may face when there are multiple protected classes involved. The Ninth Circuit Court of Appeals in *Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir. 1994), recognized that individuals often cannot be neatly boxed into distinct categories when experiencing discriminatory treatment:

As other courts have recognized, where two bases for discrimination exist, they cannot be neatly reduced to distinct components. Rather than aiding the decisional process, **the attempt to bisect a person's identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences.**¹

As examples, an Asian woman may be treated differently in the workplace when compared with an Asian man, just a black woman in the workplace may have a very different experience than a black man. Stereotypes often group multiple characteristics and cannot be easily separated. However, while these protections for intersectional claims exist in practice, there is a real threat that courts may overrule the recognition of these rights. S.B. 2871 would strengthen these protections by codifying intersectional claims.

¹ *Lam v. U. of Hawai'i*, 40 F.3d 1551, 1562 (9th Cir. 1994), as amended (Nov. 21, 1994), as amended (Dec. 14, 1994) (internal citations omitted) (emphasis added).

“Perceived As” Discrimination:

S.B. 2871 would also expand protections to prohibit discriminatory practices based on the perception that an individual is of a protected class or has protected characteristics, whether or not the aggrieved individual is actually a part of the class. At the federal level under Title VII, there have been awful decisions where a supervisor getting a stereotype wrong about a characteristic of a protected class left no remedy for the aggrieved employee if the employee was not a member of the stereotyped protected class.² The intent to treat differently based on a protected class might have been undisputed, but the bad actors just placed the stereotypes on the wrong individual. This should not leave the aggrieved individual without remedy. S.B. 2871 would prohibit adverse actions against an individual based on a perception that the individual is a part of the protected class, even if inaccurate. This is in line with purpose and intent of the nondiscrimination laws, to prohibit discrimination because of characteristics of a protected class.

While the laws prohibiting discrimination would be expanded by S.B. 2871 to include prohibition of discriminatory actions based *on the perception* that an individual is a member of a protected class as identified in 368-1, HRS, the framework for analysis is not new.

Discrimination on the basis of disability has always prohibited adverse action taken because an individual is “*regarded as having such an impairment*” or disability.³ Usually this presents as

² “As defendant points out, Title VII protects those persons that belong to a protected class, [] and says nothing about protection of persons who are *perceived* to belong to a protected class” Butler v. Potter, 345 F. Supp. 2d 844, 850 (E.D. Tenn. 2004) (internal citations omitted) (emphasis in original) (employee alleged that he was harassed because his supervisors believed he was Middle Eastern or Arab and questioned him about his prominent nose, however, the employee was Caucasian. Defendant was granted summary judgment).

³ See HAR § 12-46-182, definitions “Being regarded as having such an impairment”.

someone treating an individual differently because they believe that the individual has physical or mental limitations based on assumptions and/or stereotypes, whether or not that individual has a disability.⁴ An example of this would be an employer who refuses to hire an applicant because of skin graft scars, believing that the applicant has higher medical needs and would likely request more accommodations at work is considered as “regarded as” discrimination.

In a similar vein, the analysis for *perceived as* part of a protected class or having protected characteristics would involve statements or other evidence of stereotypes or assumptions of characteristics of a protected class and adverse actions taken because of those stereotypes or assumptions, whether or not the perception is accurate.

“Perceived to associate” with a protected group discrimination:

While S.B. 2871’s prohibition of discrimination based on the perception that an individual associates with individuals of a protected group as listed in HRS § 368-1 would expand protections (similar to “perceived as” discrimination) the analytical framework already exists. Under HRS § 378-2, discriminatory practices prohibited in employment, it is unlawful for any covered entity to discriminate against an individual “because of the known disability of an individual with whom the qualified individual is known to *have a relationship or association.*”

Additionally, under HAR §§ 12-46-1, 12-46-171, and 12-46-302, prohibited discrimination based on ancestry includes taking adverse action based on an individual’s

- (1) Marriage to or association with persons of an ancestral group;
- (2) Membership in or association with an organization identified with or seeking to promote the interests of an ancestral group;
- (3) Attendance or participation in schools, churches, temples, or mosques, generally used by persons of an ancestral group; or

⁴ Generally speaking, disability is defined as a mental or physical impairment that substantially limits one or more life activities.

(4) Because an individual's name or spouse's name is associated with an ancestral group.

For both disability and ancestry, unlawful discriminatory practices based on the individual's association with individuals or organizations of the protected class is prohibited, whether by marriage, familial ties, or membership in a cultural group. S.B. 2871 would expand these protected beyond disability and ancestry so that association with individuals or organizations of all the protected classes enumerated in HRS § 368-1, and the perceived association with protected individuals and groups, would be protected.

Mahalo for the opportunity to testify in support of S.B. 2871.



Hawai'i State Lesbian, Gay, Bisexual, Transgender, Queer Plus Commission



Advocating for the Hawai'i LGBTQIA+ Community

Mailing Address: LGBTQ+ Commission, c/o The Department of Human Services,
P.O. Box 339, Honolulu, Hawai'i 96809-0339

Email: hawaiistatelgbtqpluscommission@gmail.com
Web: <https://humanservices.hawaii.gov/lgbtq-commission/>

February 5, 2026

Senate's Committee on Judiciary
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

Hearing: Tuesday, February 10, 2026, at 10:00 AM

RE: Strong Support for Senate Bill 2871

Aloha Chair Rhoads, Vice Chair Gabbard and fellow committee members,

I am writing in strong support of Senate Bill 2871 on behalf of the Hawai'i State Lesbian, Gay, Bisexual, Transgender, Queer Plus (LGBTQ+) Commission, which was established by the 2022 Hawai'i State Legislature to

“improve the State's interface with members of the lesbian, gay, bisexual, transgender, queer, plus community; identify the short- and long-range needs of its members; and ensure that there is an effective means of researching, planning, and advocating for the equity of this population in all aspects of state government.”

The **Hawai'i State LGBTQ+ Commission strongly supports Senate Bill 2871**, which strengthens our state's civil rights protections by explicitly prohibiting discrimination based on perceived characteristics, perceived association with protected classes, and the intersection or combination of multiple protected characteristics.

SB 2871 is a critical and timely measure that reflects the lived realities of many people in Hawai'i, particularly māhū, transgender, nonbinary, LGBTQIA+, Native Hawaiian, Pacific Islander, immigrant, and disabled communities, who routinely experience discrimination not only for who they are, but for who others *think* they are, who they are *associated with*, or how multiple aspects of their identity intersect.

Discrimination is often rooted in assumption and bias, not fact. Individuals are denied housing, employment, healthcare, and public accommodations because of how they look, sound, dress, worship, love, or who they are seen with. For example, a person may be targeted because they are perceived to be transgender, because they accompany a same-gender partner, or because their racial, cultural, gender, and sexual identities intersect in ways that expose them to compounded harm. SB 2871 closes critical gaps by ensuring that such conduct is clearly unlawful.

Proudly established pursuant to Hawai'i Revised Statutes Chapter 369, as enacted through Act 41, Session Laws of Hawai'i 2022

HI State LGBTQ+ Commission Testimony in Support of SB 2871

Importantly, this bill acknowledges intersectionality, the reality that people do not experience discrimination in isolated silos. Māhū and LGBTQIA+ individuals who are also Native Hawaiian, Pacific Islander, immigrants, youth, elders, and/or people with disabilities often face layered and intensified discrimination. Explicitly recognizing intersectional discrimination aligns Hawai'i law with modern civil rights principles and strengthens enforcement by providing clarity to courts, agencies, employers, and the public.

At a time when federal protections are being weakened and marginalized communities are increasingly targeted, Hawai'i has both the opportunity and responsibility to reaffirm its commitment to equity, dignity, and aloha for all. SB 2871 reflects Hawai'i's long-standing values of inclusion and fairness and sends a clear message that discrimination, whether based on perception, association, or intersecting identities, has no place in the Aloha state.

For these reasons, the Hawai'i State LGBTQ+ Commission urges the Committee to pass Senate Bill 2871. Mahalo for the opportunity to provide testimony and for your continued leadership in advancing civil rights in Hawai'i.

If you or any member of your staff has any questions regarding my testimony you can reach me at hawaiistatelgbtqpluscommission@gmail.com.

Mahalo nui loa for your time and consideration,

Sandy Harjo Livingston (he/him/they/them)

Chair

[Hawai'i State LGBTQ+ Commission](#)



To: Senate Judiciary Committee

Re: Testimony in STRONG SUPPORT/SUPPORT of SB 2871

Dear Chair Rhoads, Vice Chair Gabbards, and the Members of Senate Judiciary Committee,

Members of AAUW of Hawai'i thank you for this opportunity to testify in strong support of SB 2871, which prohibits discrimination based on: (1) the perception that a person possesses certain characteristics; (2) the perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) the intersection or combination of two or more specified characteristics in relation to a person.

SB 2871 is critically important because it seeks to expand anti-discrimination protections at the state-level during a time when there are rollbacks in federal protections. Specifically, SB 2871 recognizes that discrimination can happen based on a combination of protected characteristics (i.e., intersectionality) and not based on just a single protected basis (i.e., race, sex, age, marital status, disability, etc.).

SB 2871 will affirm longstanding federal caselaw Lam v. Univ. of Hawaii, 40 F.3d 1551 (9th Cir. 1994), which found that discrimination may be based on a combination of protected categories and not just on a single protected category. In Lam v. Univ. of Hawaii, plaintiff was not hired for a law professor position because she did not fit the stereotype of a meek, subservient Asian woman. Still, the defendant argued that there was no discrimination given that the law school employed both Asians and women. However, the court found that race and sex could not be separated in this discriminatory hiring context, giving rise to the legal concept of intersectional discrimination.

SB 2871 understands that in the real world discrimination often does not occur in isolation and is not a single basis-claim. SB 2871 will help people seeking justice and hold discriminatory actors accountable.

With a shifting federal landscape, SB 2871 will provide certainty for both employers seeking to maintain compliant practices and employees relying on established protections without having to guess about possibly changing federal protections under the current federal administration and evolving federal courts.

AAUW of Hawai'i again thanks you for hearing SB 2871 and urges you to pass SB 2871 out of your Committee.

Sincerely,

Sandy Ma, Esq.

AAUW of Hawai'i Public Policy Committee

The American Association of University Women (AAUW) of Hawai'i is an all-volunteer, statewide chapter of a national organization with close to 4,000 members and supporters across all four counties - Hawai'i, Honolulu, Kaua'i, and Maui. AAUW has state chapters in all 50 states and our mission is to advance gender equity through education and advocacy. Economic security for women is our goal.



February 5, 2026

Senate's Committee on Judiciary
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

Hearing: Tuesday, January 10, 2026 at 9:15 AM

RE: **STRONG SUPPORT for Senate Bill 2871**

Aloha Chair Rhoads, Vice-Chair Gabbard and fellow committee members,

Pride at Work – Hawai'i is an official chapter of [Pride at Work](#) which is a national nonprofit organization that represents LGBTQIA+ union members and their allies. We are an officially recognized constituency group of the AFL-CIO that organizes mutual support between the organized Labor Movement and the LGBTQIA+ Community to further social and economic justice. We write in **strong support of Senate Bill 2871**.

Pride at Work – Hawai'i strongly supports Senate Bill 2871, which modernizes and strengthens Hawai'i's anti-discrimination laws by explicitly prohibiting discrimination based on perceived characteristics, perceived association with protected classes, and the intersection of multiple protected characteristics.

As a labor organization committed to advancing the rights, safety, and dignity of LGBTQIA+ workers, we know that discrimination in the workplace is rarely limited to a single identity or based solely on fact. Workers are often disciplined, denied promotions, harassed, or terminated because of assumptions about who they are, who they love, how they express their gender, or who they are seen with—rather than their actual job performance. SB 2871 directly addresses these realities.

Perception-based discrimination is especially prevalent in employment settings. LGBTQIA+ workers, māhū workers, and gender nonconforming workers are frequently targeted because they are *perceived* to be transgender or queer, regardless of their actual identity. Similarly, workers may face retaliation or harassment simply for supporting māhū or LGBTQIA+ coworkers, having same-gender partners, or being associated with communities that are marginalized. These harms undermine worker morale, economic stability, and workplace safety.

SB 2871's explicit recognition of intersectional discrimination is also critical for working people in Hawai'i. Many workers hold multiple identities—such as being Native Hawaiian, Pacific Islander, immigrant, disabled, or women—while also being māhū or LGBTQIA+. These intersecting identities often expose workers to compounded discrimination that current law does not always adequately address. By naming and prohibiting intersectional discrimination, this bill provides clarity for employers and stronger protections for workers.

Pride at Work – Hawai'i's Testimony in STRONG SUPPORT of Re: SB 2871

Strong anti-discrimination laws are essential to ensuring fair wages, safe workplaces, and equal opportunity. They also promote labor stability by reducing turnover, improving productivity, and fostering workplaces where all workers can show up as their full selves without fear. SB 2871 supports these goals while aligning Hawai'i law with the realities of today's workforce.

At a time when māhū, LGBTQIA+, and gender non-conforming workers are facing increased hostility and rollbacks of protections at the federal level, Hawai'i must continue to lead by affirming that discrimination, whether based on perception, association, or intersecting identities, will not be tolerated.

For these reasons, Pride at Work – Hawai'i urges the Committee to pass Senate Bill 2871.

Mahalo for the opportunity to testify and for your commitment to protecting workers and advancing equity in Hawai'i.

In Solidarity,

Michael Golojuch, Jr. (he/him)

President

[Pride at Work – Hawai'i](#)



HA'AHEO, 'OHANA, KAULIKE, UI
Pride Family Justice Activate
WHERE PRIDE BECOMES POLITICAL POWER

Website: www.hokupac.org ♦ Email: info@hokupac.org

February 5, 2026

Senate's Committee on Judiciary
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

Hearing: Tuesday, February 10, 2026 at 9:15 AM

RE: STRONG SUPPORT for Senate Bill 2871 –Relating to RELATING TO DISCRIMINATION

Aloha Chair Rhoads, Vice-Chair Gabbard, and fellow committee members,

This testimony on behalf of **HOKU PAC**, Hawai'i's mähū and LGBTQIA+ focused political action committee dedicated to building queer political power and advancing policies that protect our communities. We write in **strong support of Senate Bill 2871**.

HOKU PAC strongly supports Senate Bill 2871, which strengthens Hawai'i's civil rights framework by explicitly prohibiting discrimination based on perceived characteristics, perceived association with protected classes, and the intersection of multiple protected characteristics.

As a political action committee dedicated to building power for mähū, LGBTQIA+, and QTPI+ communities, we know that discrimination is not only a personal harm, it is a systemic barrier to full civic participation. When people are targeted because of assumptions about who they are, who they are associated with, or how multiple identities intersect, they are less likely to engage in public life, access government services, seek leadership roles, or participate in the democratic process.

Perception-based discrimination is particularly insidious because it does not rely on truth, **ONLY BIAS**. Mähū, transgender, and gender-diverse people are frequently subjected to harassment, exclusion, or retaliation based solely on appearance or gender expression. Likewise, individuals who advocate for, support, or are associated with marginalized communities are often penalized simply for standing in solidarity. SB 2871 makes clear that such discrimination is unacceptable under Hawai'i law.

Equally important is the bill's recognition of intersectional discrimination. Many members of our communities live at the intersection of multiple marginalized identities, including Native Hawaiian, Pacific Islander, immigrant, youth, elder, disabled, and LGBTQIA+ identities. These intersections often result in compounded discrimination that current legal frameworks do not always fully capture. By explicitly addressing intersectionality, SB 2871 brings Hawai'i's civil rights protections into alignment with lived experience.

At a time when coordinated efforts at the national level seek to erase mähū, transgender, and gender nonconforming people from public life, Hawai'i must continue to stand firm in its commitment to dignity, equity, and inclusion. SB 2871 sends a clear message that discrimination—whether rooted in perception, association, or intersecting identities—has no place in our communities or our democracy.

Paid for by HOKU PAC – Not Authorized by any Candidate or Candidate Committee

**HOKU PAC Testimony in support of SB 2871:
RELATING TO DISCRIMINATION**

For these reasons, HOKU PAC urges the Committee to pass Senate Bill 2871. Mahalo for the opportunity to provide testimony and for your leadership in protecting civil rights and strengthening democracy in Hawai'i.

For these reasons, **HOKU PAC urges your strong support of SB 2871.**

Me ke aloha,

HOKU PAC

SB-2871

Submitted on: 2/8/2026 10:54:56 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Honolulu Hawaii NAACP	Testifying for NAACP	Support	Written Testimony Only

Comments:

Senate Committee on Judiciary

Tuesday, February 10, 2026, 9:15 AM, Room 016

Re: Testimony of SB 2871, RELATING TO DISCRIMINATION

Chair Rhodes, Vice Chair Gabbard, and Members of the Committee:

The NAACP submits this testimony in strong support of SB 2871, which codifies protections against intersectional discrimination into Hawai'i law. Hawai'i has been at the forefront of civil rights protections above and beyond federal laws and this bill continues that tradition.

SB 2871 codifies *Lam v. University of Hawai'i*'s holding into state law, extending it beyond federal employment discrimination to cover state-law protections in employment, housing, public accommodations, and educational programs. This bill transforms judicial precedent into statutory certainty, ensuring that Hawai'i residents have explicit, durable protections regardless of shifts in federal interpretation and affirms that discrimination based on a perception is not beyond the law's reach, simply because it involves more than one protected characteristic.

The bill provides protection that reflects how discrimination actually functions in workplaces, housing, and public life and ensures this protection is permanent, explicit, and immune from federal erosion. It fulfills Hawai'i's constitutional promise of equality under our state ERA and equal protection clause. It provides certainty for employers, justice for employees, and leadership for Hawai'i in protecting civil rights.

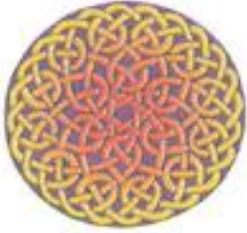
We urge you to pass SB 2871.

Mahalo for the opportunity to testify.

Sincerely,

Alphonso Braggs

President



Fujiwara & Rosenbaum, LLC

*Alahea Corporate Tower
1100 Alahea St., Fl. 20, Suite B
Honolulu, Hawai'i 96813*

Senate Committee on Judiciary

Tuesday, February 10, 2026, 9:15 AM, Room 016

Re: Fujiwara & Rosenbaum Testimony in Strong Support of S.B. No. 2871, RELATING TO DISCRIMINATION

Chair Rhodes, Vice Chair Gabbard, and Members of the Committee:

As a civil rights attorney I have practiced employment discrimination law with a particular focus on race and sex discrimination for about 40 years. I submit this testimony in **strong support** of S.B. No. 2871, which codifies protections against intersectional discrimination into Hawai'i law.

Hawai'i's Constitutional Commitment to Equality

Hawai'i has long been a national leader in constitutional protections against discrimination. On November 7, 1972, Hawai'i voters overwhelmingly adopted the state **Equal Rights Amendment** by a margin of 251,822 to 55,689—making Hawai'i one of the first states to enshrine **sex equality** in its constitution. **Article I, Section 3** of the Hawai'i Constitution provides: "Equality of rights under the law shall not be denied or abridged by the State on account of sex."

Hawai'i's equal protection guarantee goes even further. **Article I, Section 5** explicitly prohibits denying any person "the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of **race, religion, sex or ancestry**." Unlike the federal constitution, **Hawai'i's equal protection** clause expressly enumerates protected categories—a deliberate choice to *provide heightened protection*.

The Hawai'i Supreme Court has applied **strict scrutiny** to sex-based classifications under our state ERA, requiring the government to demonstrate compelling state interests and narrow tailoring to justify any sex-based distinctions. This is a more rigorous standard than federal intermediate scrutiny. **Hawai'i courts** have explicitly recognized their authority to *provide greater protections under the state constitution than the federal constitution requires*.

S.B. No. 2871 honors this constitutional tradition by ensuring that Hawai'i's statutory protections are as robust and forward-looking as our foundational charter demands.

The Critical Need for Intersectional Discrimination Protections

Discrimination does not operate in isolation. Real people experience bias through the lens of *multiple, overlapping identities*—identities that interact in ways that **create unique forms of harm**. **Intersectionality** recognizes this lived reality: that a Native Hawai'ian woman faces discrimination that is not simply the sum of being Native Hawai'ian *plus* being a woman, but rather **a distinct form of bias directed at Native Hawai'ian women specifically**.

Traditional single-axis frameworks force complainants into an impossible choice: prove you were discriminated against because of race *or* sex, but not both. This artificial division *fails to capture how discrimination actually operates*. An **employer who targets older women differently than older men or younger women cannot be held accountable under a framework that examines only age or only sex in isolation**.

In **Lam v. University of Hawai'i**, 40 F.3d 1551 (9th Cir. 1994), the Ninth Circuit held that when analyzing discrimination claims based on multiple protected characteristics, courts must determine whether the discrimination occurred based on the combination of those factors, not just on any single characteristic in isolation. This decision has been the bedrock of intersectional discrimination analysis in our jurisdiction for over thirty years.

For over 30 years I have litigated hundreds of cases where intersectional analysis made the difference between justice and dismissal. Since the Ninth Circuit's decision in **Lam** I have used that precedent to help judges and juries understand how discrimination operates when it targets a Filipina woman, an older woman, a disabled Puerto Rican woman, a Black woman, darker-skinned than other Blacks at work or a woman who is Okinawan but darker-skinned than other Asian-Americans typically perceived in Hawai'i, a disabled man, an older man, a Tongan man. Time and again, **Lam** has provided the legal foundation to explain to factfinders that discrimination targeting someone *because* of the combination of their protected characteristics is real, harmful, and unlawful. Without this framework, countless meritorious claims would have failed—not because discrimination didn't occur, but because a legal system refused to acknowledge how it actually manifests.

The practical **difference** is profound. A jury that understands intersectional discrimination can recognize that a supervisor who makes comments about "old ladies" is **not engaged in simple age or sex discrimination**, but in discrimination that *targets the specific intersection of age and sex*. That clarity produces just outcomes.

Lam v. University of Hawai'i and Its Enduring Importance

S.B. No. 2871 codifies **Lam's** holding into Hawai'i state law, extending it beyond federal employment discrimination to cover state-law protections in employment, housing, public accommodations, and educational programs. This bill transforms judicial precedent into statutory certainty, ensuring that Hawai'i residents have explicit, durable protections **regardless of shifts in federal interpretation**.

The Federal Landscape Demands State Action

We are witnessing an *unprecedented rollback of federal civil rights protections*. Federal agencies are reinterpreting longstanding precedents, and reliance on federal law alone has become a precarious foundation for protecting Hawai'i's workers and residents. **State codification is not merely duplicative—it is a necessary safeguard against federal uncertainty**.

California recognized this urgency in 2024 by codifying that unlawful discriminatory practices may include "any combination" of protected characteristics. Hawai'i must follow suit. This legislation ensures that regardless of what happens at the federal level, Hawai'i

residents have robust, enforceable protections grounded in state law and aligned with our state constitutional values.

Given Hawai'i's distinctive constitutional protections—including our state ERA and explicit equal protection guarantees—we have an obligation to ensure our statutory framework fully implements these constitutional commitments. Our constitution demands more than the federal floor. S.B. No. 2871 ensures our statutes meet that higher standard.

Benefits for All Stakeholders

For employers, S.B. No. 2871 provides clarity and predictability. Rather than navigating ambiguous standards or waiting for case-by-case judicial interpretation, employers will have clear statutory guidance on prohibited conduct. This **reduces litigation risk and provides a stable compliance framework. Employers benefit when the rules are explicit and consistent.**

For employees, this bill recognizes the **reality of their experiences**. It affirms that discrimination based on being an older Asian woman, a disabled Native Hawai'ian man, or a young Filipina with a perceived accent is not beyond the law's reach simply because it involves more than one protected characteristic. The bill provides robust protection that reflects how discrimination actually functions in workplaces, housing, and public life.

Call to Action

This Act conforms law to practice. For over thirty years, Hawai'i courts have applied *Lam's* intersectional framework. S.B. No. 2871 ensures this protection is permanent, explicit, and immune from federal erosion. It fulfills Hawai'i's constitutional promise of equality under our state ERA and equal protection clause. It provides certainty for employers, justice for employees, and leadership for Hawai'i in protecting civil rights.

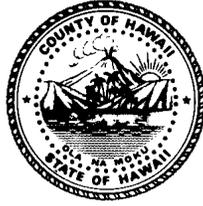
I urge the Committee to pass S.B. No. 2871 and send a clear message that Hawai'i will not leave its residents' civil rights vulnerable to federal instability. This is practical, proven, and constitutionally grounded legislation.

Mahalo for the opportunity to testify.

Respectfully submitted,

Elizabeth Jubin Fujiwara

Jennifer Kagiwada
Council Member District 2 South Hilo



Office: (808) 961-8272
jennifer.kagiwada@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL - DISTRICT 2

25 Aupuni Street • Hilo, Hawai'i 96720

DATE: February 6, 2026
TO: Senate Committee on Judiciary
FROM: Jennifer Kagiwada, Council Member
Council District 2
SUBJECT: SB 2871

Aloha Chair Rhoads, Vice Chair Gabbard, and esteemed Committee Members,

I respectfully ask for your support of SB 2871. Discrimination comes in many forms and often has an element of intersectionality. Regardless of the form of discrimination, its impact can result in devastating and lasting long-term effects. This bill prohibits discrimination based on a perception that a person possesses certain characteristics or is associated with someone perceived to possess certain characteristics or the combination of two or more specified characteristics. This additional language helps to protect more of our most vulnerable and marginalized populations against potential discrimination and helps provide for a more uniform enforcement of our state's discrimination laws.

Mahalo for your time and consideration of this measure.

Mahalo,

A handwritten signature in black ink, appearing to read 'Jenn Kagiwada', written over a white background.

Jenn Kagiwada

Committee: Judiciary
Hearing Date/Time: Tuesday, February 10, 2026, at 9:15am
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of SB2871
Relating to Discrimination**

Dear Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The ACLU of Hawai'i strongly supports SB2871, which prohibits discrimination based on (1) the perception that a person possesses certain characteristics; (2) the perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) the intersection or combination of two or more specified characteristics in relation to a person.

The ACLU has a long history of standing up against discrimination in our state and in our country. In such an ethnic and culturally diverse place as Hawaii, this is especially important.

As the bill highlights, the Ninth Circuit ruling in *Lam v. University of Hawaii* indicated that people cannot neatly be put into distinctly identifiable boxes. Individuals are complex and have complex backgrounds, racial and ethnic roots. Similarly gender identify and sexual orientation cannot be easily parsed.¹

The state must combat discrimination as completely as possible while acknowledging that perception is also complex. The law must reflect this complexity and include mechanisms to respond accordingly.

SB2871 does exactly that by declaring:

“that the practice of discrimination based on a perception that a person possesses any particular characteristic or characteristics listed [...] or that the person is associated with a person who possesses, or is perceived to possess, any particular characteristic or characteristics listed [...] is against public policy.”

As the complex diversity of Hawaii changes, so too must our laws. This bill is significant and timely.

¹ *Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir. 1994). <https://law.justia.com/cases/federal/appellate-courts/F3/40/1551/507676/>

Adopting SB2871 will help ensure people are treated equitably and fairly and will strengthen our anti-discrimination laws.

Mahalo,

Josh Frost

Josh Frost

Policy Assistant

ACLU of Hawai'i

jfrost@acluhawaii.org

With more than 4,000 Hawaii-based members, the mission of the American Civil Liberties Union of Hawai'i is to protect the fundamental freedoms enshrined in the United States and Hawai'i State Constitutions through legislative, litigation, and public education work. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving our communities in Hawai'i for over 60 years.

LATE

SB-2871

Submitted on: 2/9/2026 5:09:40 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
HSDWC	Testifying for Hawai'i State Women's Coalition	Support	Written Testimony Only

Comments:

For: Committe on Judiciary

Aloha Chair Rhodes, Vice Chair Gabbard and Members,

The State Democratic Women's Caucus is in strong support of this measure.

While the concept of intersectionality may seem abstract, in practice is a very real to those who are victims of discrimination. They are whole people who are often discriminated against because of more than one characteristic. For example a women may experience pay discrimination not simply because she is a woman, but also because she a senior.

As one prominent civil rights attorney has testified "For over 30 years I have litigated hundreds of cases where intersectional analysis made the difference between justice and dismissal." So it is clear the courts recognize this as a reality. This measure would codify the law to be in sync with actual practice.

Mahalo,

Ann S. Freed, Co-Chair Hawai'i State Democratic Women's Caucus



LATE

LAMBDA LAW HAWAI'I
WILLIAM S. RICHARDSON SCHOOL OF LAW

TESTIMONY IN SUPPORT OF [SB2871](#)

Senate Committee on Judiciary
February 9th, 2025

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committees,

Lambda Law Hawai'i, a Law Student Association at the William S. Richardson School of Law, at the University of Hawai'i at Mānoa, **strongly supports SB2871** to prohibit discrimination on the basis of perceived characteristics.

Mahalo for the opportunity to testify,

Lambda Law Hawai'i, a Law Student Association at the William S. Richardson School of Law
Mission: To advance equal rights for LGBTQIA+ individuals at WSRSL and beyond.

SB-2871

Submitted on: 2/5/2026 12:02:33 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE this bill. The rights of an American citizen is already protected under the Constitution of the United States and under the Civil Rights Act of 1964. This proposal is not only UNNECESSARY, it does NOT address individuals with mental illness and zero moral standards needed to properly function in society.

SB-2871

Submitted on: 2/5/2026 2:31:39 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Elizabeth Hansen	Individual	Support	Written Testimony Only

Comments:

As an active member of AAUW, I am requesting that you support this bill. Mahalo

Elizabeth Hansen

Hakalau HI 96710

SB-2871

Submitted on: 2/5/2026 2:53:42 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Robin Wurtzel	Individual	Support	Written Testimony Only

Comments:

I am submitting testimony in support of S.B. 2871. The bill adds more protections against discrimination by prohibiting discrimination based on: (1) The perception that a person possesses certain characteristics; (2) The perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) The intersection or combination of two or more specified characteristics in relation to a person.

Discrimination based on perception, even if incorrect, is just as harmful to the person as if they had the characteristic in question. Such discrimination, if not prohibited, permits harassers to continue discriminatory behavior which is harmful to society as a whole.

I support S.B. 2871, and recommend passage.

Aloha Chair Rhoads and member of this Committee,

My name is Dale VanderBrink. I am a member of the Ala Moana Kaka'ako Neighborhood Board but this is my personal testimony.

I write this in support of SB2871.

When someone is discriminated against, it is not often due to a single factor, so why should the law treat them as single direct causes unlinked from one another? With the melting pot that is the communities of our islands, we should help ensure that our anti discrimination laws are equally adapted to contend with such an environment.

Please support SB2871

Mahalo

Dale

SB-2871

Submitted on: 2/6/2026 5:05:30 AM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Caroline Kunitake	Individual	Support	Written Testimony Only

Comments:

I support SB 2871.

SB-2871

Submitted on: 2/6/2026 9:08:02 AM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Wendy Dame	Individual	Support	Written Testimony Only

Comments:

Hawaii MUST reaffirm its anti-discrimination protections, given all that is happening on the federal level that has resulted in the roll back of many federal protections against discrimination. Let Hawaii with all its wonderful diversity be the model for the country.

Thank you for supporting this bill.

SB-2871

Submitted on: 2/6/2026 12:01:46 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S Velasquez	Individual	Support	Written Testimony Only

Comments:

at first i found the bill hard to read but after thinking about it makes sense and reflects what happens in the real world, that is people are assumed to

e gay or lesbian , assumed to be jewish or muslim, assumed to be an inter/racial couple and sometimes are members of more than one affected group, like a black disabled woman, this law wil protect them from discrimination

Hearing Date: Tuesday, February 10, 2026 9:15 am, Room 016

To: Senate Committee on Judiciary
Chair, Senator Karl Rhoads
Vice Chair, Senator Mike Gabbard

From: Jean Evans, (Individual)

**Re: TESTIMONY IN SUPPORT OF SB 2871 RELATING TO
DISCRIMINATION**

My name is Jean Evans. I retired after 40 years holding executive positions in Hawaii non-profit agencies. I am also a member of AAUW Hawaii.

I support of SB 2871 Relating to Discrimination

SB 2871 extends anti-discrimination protections in employment, housing, education, and public accommodations to cover a combination of characteristics and not just a single protected category.

In Hawaii we have a very diverse population, where many individuals fall into more than one protected category including race, age and gender. In 1994 the federal 9th Circuit case, Lam v. Univ. of Hawaii, 40 F.3d 1551, found that discrimination may be based on a combination of protected categories and not just a single protected category. SB 2871 will codify this ruling into our State Laws.

Let Hawaii continue it's leadership in preventing discrimination by passing this measure.

Mahalo for allowing me to submit my testimony today.

SB-2871

Submitted on: 2/6/2026 3:41:17 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
David Fukuzawa	Individual	Oppose	Written Testimony Only

Comments:

Dear Honorable Senators:

I read the law that you are trying to change. What you have written as a change is so confusing, that the normal person reading this would not even understand what it was you were trying to state.

As such, I have to respectfully oppose this change, and ask that you go back and have it either rewritten or leave the law as it is already written. The way the discrimination statute is written is clear enough. It can be enforced the way it is written, and if it does have a loophole, close it with better language.

Sincerely,

David J Fukuzawa

SB-2871

Submitted on: 2/7/2026 11:52:57 AM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Younghee Overly	Individual	Support	Written Testimony Only

Comments:

Thank you for hearing SB2871 which would provide certainty for both employers and employees relying on established protections without having to guess about changing federal protections.

Younghee Overly, a member of AAUW of Hawaii

SB-2871

Submitted on: 2/7/2026 11:53:49 AM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Philip Steinbacher	Individual	Support	Written Testimony Only

Comments:

As the Kaua'i representative to the Hawai'i LGBTQ+ Advisory Commission, I am writing in strong support of SB2871 prohibiting discrimination based on: (1) The perception that a person possesses certain characteristics; (2) The perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) The intersection or combination of two or more specified characteristics in relation to a person. While our anti-discrimination laws are among the strongest in the U.S., Hawai'i must remain vigilant in strengthening, maintaining, and upholding the Aloha spirit indigenous to our islands. I urge your support of this critical and compassionate legislation.

SB-2871

Submitted on: 2/8/2026 1:06:18 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Anna Myers	Individual	Support	Written Testimony Only

Comments:

I can't believe someone introduced this bill. It would be so discriminatory to enforce any of it.

SB-2871

Submitted on: 2/8/2026 1:41:57 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Eileen M Gawrys	Individual	Support	Written Testimony Only

Comments:

It is a critical time to reaffirm Hawai'i's anti-discrimination measures.

eileen gawrys

ewa beach, HI

Oahu

AAUW member

COMMITTEE ON JUDICIARY
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice Chair

HEARING:

Tuesday, February 10, 2026 at 9:15 AM
Conference Room 016 & Videoconference
State Capitol
415 South Beretania Street

TESTIMONY IN SUPPORT: SB 2871 RELATING TO DISCRIMINATION.

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

My name is Christine Andrews, and I am a long-term resident of Wailuku, Maui, and have been an attorney licensed in Hawai'i for over 25 years. I write you today in **support of SB 2871**, Relating to Discrimination, which prohibits discrimination based on: (1) The perception that a person possesses certain characteristics; (2) The perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) The intersection or combination of two or more specified characteristics in relation to a person.

Senate Bill 2871 recognizes that discrimination can happen based on an intersection or combination of protected characteristics, and codifies that discrimination may be based on a combination of protected categories and not just a single protected category. There is currently a considerable amount of uncertainty as the result of the current U.S. Supreme Court issuing decisions that reject what had formerly been established law, such as overruling Roe v Wade in 2022, and, more recently in September, overturning established precedent to allow the use of racial profiling as cause for detention by federal immigration agents. Due to the uncertainty resulting from the U.S. Supreme Court, many states are codifying rights as a protective measure, which is why SB 2871 is an important measure at this critical time to reaffirm Hawaii's anti-discrimination protections.

Senate Bill 2871 will provide certainty for both employers seeking to maintain compliant practices and employees relying on established protections without having to guess about possibly changing federal protections under the current federal administration and evolving federal courts. I humbly request that the Committee protect Hawai'i antidiscrimination law through your **support of SB 2871**.

Mahalo,

Christine Andrews, JD
Wailuku, Maui

SB-2871

Submitted on: 2/8/2026 6:01:19 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Janet Morse	Individual	Support	Written Testimony Only

Comments:

- SB2871 will strengthen Hawaii’s anti-discrimination protections by affirming federal case law that discrimination can happen based on an intersection or combination of protected characteristics.
- The bill will provide certainty for both employers seeking to maintain compliant practices and employees relying on established protections.
- Passage of this bill may provide protection from the rollbacks of federal precedent by the current federal administration.
- This legislation is both timely and needed and I support its passage.

Thank you for the opportunity to express my support and to thank Senator Lee for introducing it.

Janet Morse, Kaneohe

Member of AAUW Hawaii

SB-2871

Submitted on: 2/9/2026 9:04:08 AM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Carson	Individual	Support	Written Testimony Only

Comments:

I support this bill to help clarify our discrimination laws and enhance effectiveness.

LATE

SB-2871

Submitted on: 2/9/2026 9:49:14 AM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Beth Anderson	Individual	Support	Written Testimony Only

Comments:

I support SB 2871, relating to discrimination. I am aware there are laws in place that prohibit discrimination based on race, gender, and disability. I support any Bill that strengthens prohibitions against discrimination, so I support SB 2871 because it prohibits discrimination based on perception that a person possesses certain characteristics, as well as prohibition of discrimination based on the perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics.

Some clearer definitions as to what association is defined as, as well as what characteristics beyond race, gender, and disability are being defined as by this bill would be appreciated. I think there are some gray areas regarding "association" as well as gray areas around race, gender and disability.

Discrimination and attacks against citizens associated with their race, gender and disability have increased substantially in our country and the greatest perpetrators are among our highest levels of our government. Discrimination laws in place are not being enforced and are routinely broken now by government agents.

I have family members who face discrimination every day. Any protections for them are welcome.

I appreciate and support any effort to strengthen protections against discrimination, as Bill SB 2871 intends to do. Any protections that support inclusion, diversity, and equality in our society are positive steps toward preventing discrimination and toward building a better society.

Thank you for considering my views,

Beth Anderson

LATE

SB-2871

Submitted on: 2/9/2026 3:14:03 PM

Testimony for JDC on 2/10/2026 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Noelle Lindenmann	Individual	Support	Written Testimony Only

Comments:

Dear Chair, Vice Chair, and Committee Members:

I write in support of SB2871.

This bill modernizes and strengthens Hawai‘i’s anti-discrimination laws by explicitly prohibiting discrimination based on perceived characteristics, perceived association with protected classes, and the intersection of multiple protected characteristics.

Perception-based discrimination is especially prevalent in employment settings. LGBTQIA+ workers, māhū workers, and gender nonconforming workers are frequently targeted because they are perceived to be transgender or queer, regardless of their actual identity. Similarly, workers may face retaliation or harassment simply for supporting māhū or LGBTQIA+ coworkers, having same-gender partners, or being associated with communities that are marginalized. These harms undermine worker morale, economic stability, and workplace safety.

SB 2871’s explicit recognition of intersectional discrimination is also critical for working people in Hawai‘i. Many workers hold multiple identities—such as being Native Hawaiian, Pacific Islander, immigrant, disabled, or women—while also being māhū or LGBTQIA+. These intersecting identities often expose workers to compounded discrimination that current law does not always adequately address. By naming and prohibiting intersectional discrimination, this bill provides clarity for employers and stronger protections for workers and our community.

At a time when māhū, LGBTQIA+, and gender non-conforming community members are facing increased hostility and rollbacks of protections at the federal level, Hawai‘i must continue to lead by affirming that discrimination, whether based on perception, association, or intersecting identities, will not be tolerated.

Mahalo for the opportunity to provide testimony today.

Noelle Lindenmann, Kailua-Kona