



NEIL ABERCROMBIE  
GOVERNOR

EXECUTIVE CHAMBERS  
HONOLULU

Testimony in **support** of SB1  
Relating to Equal Rights

Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair

October 28, 2013  
10:30 am Auditorium

Chair Hee, Vice Chair Shimabukuro, and members of the Committee:

Thank you very much for scheduling this bill for a public hearing on this important issue. I would particularly like to acknowledge Chair Hee for the tremendous time, effort, and passion that he has put forward to bring marriage equity to the State of Hawaii.

In June of this year, the United States Supreme Court ruled that a portion of the Defense of Marriage Act (DOMA) unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal benefits and protections to those couples.

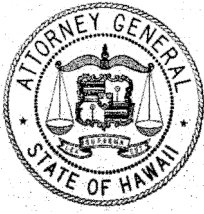
In light of the Supreme Court ruling, commencing October 1, 2013, federal agencies including the Department of Veterans Affairs, the Pentagon, the Internal Revenue Service, and the Department of Labor now recognize and extend federal benefits to married same-sex couples equal to the benefits that are offered to opposite-sex couples. I therefore asked for this special session to allow same-sex couples the opportunity to be afforded the same federal and state benefits and protections in the State of Hawaii as soon as possible.

Since I called for this special session on September 9<sup>th</sup>, the subject of this bill has generated continued discussion in our community about religious freedom. It is not the intent of the bill to force a member of the clergy to perform a wedding ceremony that goes against his or her religious beliefs. Similarly, it is not the intent of the bill to penalize a religious organization whose facilities are used for wedding ceremonies for their members and followers of their faith. I believe that the bill you are now considering is consistent with those ideals and is respectful of every individual's religious and personal beliefs.

While there are certainly a number of views on the issue of marriage, moving toward a path of equality is always the right thing to do.

I will defer to the State Attorney General, Hawaii Department of Health, and Hawaii Civil Rights Commission regarding legal issues, implementation issues, and details relating to public accommodations.

Mahalo for your time and attention to this very important issue.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE,  
SECOND SPECIAL SESSION 2013**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 1, RELATING TO EQUAL RIGHTS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Monday, October 28, 2013                      **TIME:** 10:30 a.m.

**LOCATION:** State Capitol, Auditorium

**TESTIFIER(S):** David M. Louie, Attorney General

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Chair Hee and Members of the Committee:

This bill will allow marriage between two individuals without regard to gender within the State of Hawaii. The Department of the Attorney General strongly supports this important measure and urges the Legislature to pass it. To assist this Committee, this testimony is submitted to summarize the important legal implications of the bill and how the bill's provisions relate to existing law. In the Department's view, no amendments are necessary for the bill to accomplish the bills stated intent and purpose.

*New Statutory Sections.* Section 2 of the bill would add six new sections to the marriage statutes in, chapter 572, Hawaii Revised Statutes (HRS).

New section 572-A<sup>1</sup> provides that couples who are presently in a civil union or a reciprocal beneficiary relationship are permitted to seek licenses to marry each other without terminating the civil union or reciprocal beneficiary relationship first. The solemnization of their marriage to each other would automatically terminate their civil union or reciprocal beneficiary relationship. There would be no gap in the legal protections of either status. This section also provides that any rights held by couples who transition from either a reciprocal beneficiary relationship or a civil union to a marriage are deemed to have begun with the earlier legal status. This provision is very similar to section 572B-4.5, HRS, which was enacted as part of Act 267, Session Laws of Hawaii 2012, amending the civil unions law.

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<sup>1</sup> The letter designation would be replaced by section numbers by the revisor of statutes if the bill becomes law.

New section 572-B provides that any gender-specific terms, such as "husband" or "wife," will be interpreted in a gender-neutral manner, when necessary to implement the rights, benefits, protections, and responsibilities of spouses under Hawaii law.

New section 572-C provides that parentage rights based on marriage shall be the same for all married persons regardless of the gender of the spouses. These rights include paternity, maternity, and parentage presumptions based on marriage.

New section 572-D provides that where state law relies on federal law defining marriage, same-sex spouses shall be treated for purposes of state law as if federal law treated them in the same manner as any other spouses. Before the United States Supreme Court's decision in United States v. Windsor, 133 S. Ct. 2675 (2013), the federal government did not recognize marriages between two individuals of the same sex. After Windsor, the federal government does recognize those marriages. Several federal agencies have determined that same-sex couples legally married in jurisdictions that recognize their marriages will be treated as married for purposes of federal benefits wherever they reside.<sup>2</sup> The implementation has been slower in some federal agencies than others. For that reason, this provision ensures that any cross-reference to federal law in Hawaii's laws does not deny same-sex spouses any right or privilege of marriage under State law.

New section 572-E provides that any clergy, minister, priest, or rabbi may refuse to solemnize any marriage, for any reason. In Hawaii, pursuant to section 572-12, HRS, all licensed solemnizers, except for state court judges, are members of the clergy and will be protected under this provision. Any person who refuses to solemnize any marriage under this section shall not be subject to any fine, penalty, injunction, administrative proceeding, or other civil liability. This provision recognizes and supports the constitutional right to free exercise of religion.

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<sup>2</sup> See, e.g., Rev. Rul. 2013-17, 2013-38 I.R.B. 201 (U.S. Internal Revenue Service ruling that same-sex couples, legally married in jurisdictions that recognize their marriage, will be treated as married for federal tax purposes); U.S. Department of Labor Technical Release 2013-04, at 1 (Sept. 18, 2013) (recognizing "marriages to include same-sex marriages that are legally recognized as marriages under any state law"); Memorandum for Secretaries of the Military Departments Under Secretary of Defense for Personnel and Readiness, dated August 13, 2013 (extending benefits to same-sex spouses of military members).



New section 572-F provides that notwithstanding any other law to the contrary, religious organizations are not subject to any fine, penalty, injunction, administrative proceeding or civil liability for refusing to make its facilities or grounds available "for the solemnization of any marriage celebration," provided that the religious organization does not make its facilities or grounds available to the general public for a profit. As we read it, this provision is primarily aimed at protecting the religious organizations that are not in the business of performing weddings.

***Amendments to Existing Sections.*** The bill would amend seven existing sections of the Hawaii Revised Statutes. Five of the amendments that address important legal points are discussed below:

Section 3 of the bill amends section 572-1, HRS. These amendments (1) remove the one-man-one-woman restriction, (2) expressly permit two individuals to marry without regard to gender, (3) make the prohibition on marrying close relatives gender neutral, and (4) provide that neither party to a marriage has a husband, wife, or civil union partner living, except as provided in new section 572-A (which allows current civil union partners or reciprocal beneficiaries to marry each other).

Section 4 of the bill amends section 572-3, HRS. This section governs the recognition of marriages performed elsewhere. This amendment clarifies that the State of Hawaii intends to recognize all marriages between two individuals of the same sex that are legal in the jurisdiction where they were entered. This would include marriages entered into in other States.

Section 7 of the bill amends section 572B-4, HRS, the refusal-to-solemnize provision from the civil unions law. This amendment removes the cross-reference to chapter 572 in this section and clarifies that the refusal-to-solemnize provision added by the bill for chapter 572 (new section 572-E, above) governs for marriages.

Section 8 of the bill amends section 572C-2, HRS. This section reflects the findings made when the reciprocal beneficiary law, Act 383, Session Laws of Hawaii 1997, was enacted, which provided that the 1997 Legislature's decision at that time was to limit marriage to between one man and one woman. In 1998, the people of Hawaii chose to amend the Hawaii Constitution to add section 23 to article I. This constitutional amendment expressly vested the authority to

legislate matters related to marriage in the Legislature. Therefore, the amendment to section 572C-2 removes statements that would be inconsistent with the intent and purpose of the bill.

Section 9 amends section 580-1, HRS. This provision governs the jurisdiction of the family courts over actions for annulment, divorce, and separation. The addition of subsection (b) provides that the Hawaii family courts will exercise jurisdiction over an action for annulment, divorce, or separation if neither party to the marriage resides in a jurisdiction that recognizes the marriage. This applies only to couples who were married under chapter 572 in this State. This situation may arise when same-sex couples travel to Hawaii to be married, but reside in a State that does not recognize their marriage.

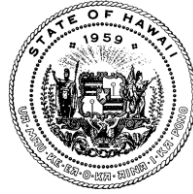
***Uncodified Session Law Added by the Bill.*** The bill would enact uncodified sections of session law to aid in the bill's implementation. By bill section number, these sections are as follows:

Section 10 enacts an uncodified session law. This provision states that any existing reciprocal beneficiary relationship or civil union entered into before the Act's effective date remains valid until terminated in accordance with applicable law. Under section 572C-4, HRS, only those couples who are prohibited from marrying can enter a reciprocal beneficiary relationship. If this bill becomes law, same-sex couples who are otherwise not prohibited from marrying (for example, due to family relationship) would not be allowed to enter reciprocal beneficiary relationships. This provision clarifies that existing reciprocal beneficiary relationships would be unaffected. For purposes of clarity and consistency, the same explicit protection is stated for existing civil unions.

Sections 11 enacts uncodified session law. This provision allows the Department of Health to make changes to internal procedures and forms to aid in the implementation of this Act.

Section 15. Under section 15, the bill, if enacted, would take effect on November 18, 2013.

We respectfully ask the Committee to pass this bill.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**Committee on Judiciary and Labor**

**October 28, 2013**

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health**

**RELATING TO EQUAL RIGHTS.**

1 **Department's Position:** COMMENTS.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:**

4 The purpose of Senate Bill 1 is to recognize marriages between individuals of the same sex, and extend  
5 to same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-  
6 sex couples receive.

7

8 The Department of Health is responsible for the administration and record keeping of Hawaii's public  
9 health statistics, which includes the licensing and certification of marriages and civil unions officiated in  
10 the State.

11

12 Enacted as currently drafted, DOH's in-person and online systems are prepared to accept applications  
13 within a minimum of two weeks from the date of enactment, provided that the Effective Date falls on a  
14 working Monday. However, any substantive amendments to this bill regarding licensure and

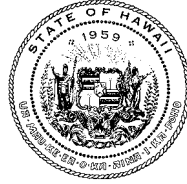
1 certification are likely to negatively impact system configuration, as well as quality assurance and end-  
2 user testing which may diminish DOH's confidence in a smooth transition.

3

4 Thank you for the opportunity to testify.

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1530  
FAX NO: (808) 587-1584

FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

To: The Honorable Clayton Hee, Chair  
and Members of the Senate Committee on Judiciary and Labor

Date: Monday, October 28, 2013

Time: 10:30 a.m.

Place: Auditorium, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. No. 1 Relating to Equal Rights

This measure adds new sections to Chapter 572 of the Hawaii Revised Statutes (HRS) to recognize marriages between individuals of the same sex and to extend to same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-sex couples receive. The measure is effective on November 18, 2013.

The Department of Taxation (Department) supports this measure. Taxpayers must be legally married in order to obtain federal tax benefits such as the ability to file a joint income tax return. All couples, including same-sex couples, must be legally married to obtain other federal benefits such as health care, housing, family separation allowance, and veteran's benefits.

Prior to the United States Supreme Court decision in United States v. Windsor, 133 S. Ct. 2675 (2013), the Internal Revenue Service (IRS) was prohibited from recognizing as valid, same sex marriages for tax purposes under the Defense of Marriage Act (DOMA), (Pub.L. 104-199, 110 Stat. 2419 enacted September 21, 1996). In Windsor, the United States Supreme Court ruled Section 3 of DOMA to be unconstitutional, declaring it "a deprivation of the liberty of the person protected by the Fifth Amendment."

Consequently, the IRS announced that same sex couples that were married in a jurisdiction where such marriage is legal would be afforded the same rights and duties for federal tax purposes as any other married couple. This, however, does not apply to civil unions or domestic partnerships, as they are not marriages under applicable law.

Thank you for the opportunity to provide comments.

COMMITTEE ON JUDICIARY AND LABOR

S. B. 1, Relating to Equal Rights

October 28, 2013, 10:30 a.m.

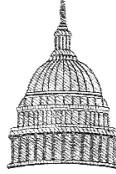
Chairman Hee and members of the Senate Committee on Judiciary and Labor, aloha.

My name is Linda Schatz and I am here today to represent the Schatz family -- Brian and I -- in support of the S. B. 1, recognizing marriage for same sex couples.

Although Brian, as a United States Senator, respects the jurisdiction of the State Legislature, we decided as a family that we should be here today speaking on behalf of this measure. We support legislation that recognizes marriage for same-sex couples and applies provisions of law equally to all couples committing to a life partnership through marriage.

I am honored to be the family spokesperson today because the action you are considering is a bright moment for our State and an affirmative unfolding of history. We must remove long-standing barriers and as we offer the same rights and responsibilities to all couples wishing to make a full and complete life together.

Thank you for the opportunity to appear before you today and I humbly ask for your support of this measure.



CONGRESSWOMAN COLLEEN HANABUSA  
FIRST DISTRICT  
HAWAII

Chair Hee, Vice Chair Shimabukuro, and members of the Committee:

Thank you for this opportunity to present testimony in support of SB1, Hawaii's same-sex marriage law.

When the U.S. Supreme Court ruled in *United States v. Windsor* last summer, it changed our nation's conversation about marriage equality in very profound ways. In granting federal benefits to same sex couples who were legally married in states that allowed for those unions, the Court's decision was a great victory for many couples, but not all.

Today, same-sex couples in Hawaii do not have access to those federal rights afforded other couples across the country because our state does not recognize same-sex marriage. It is simply untenable that any Hawaii resident would be treated as a second-class citizen as a result of our state's refusal to acknowledge the legitimacy of their union. Now, the remedy for that is in your hands.

I would like to add, however, that I come to you today as more than an attorney and a legislator. I am also a proud part of the Hawaii community, and I count myself fortunate for having enjoyed the privileges of its openness and diversity. We as a state and a community can no longer call ourselves a place of Aloha if we continue to tell these committed, loving couples that they do not deserve the right to celebrate their unions. Marriage equality is about more than rights. It is about respect and acceptance.

Our state's history on the question of marriage equality has not been perfect, but we have the capacity to learn from our past. Like many Americans, including President Obama, my own views have evolved. I have always believed in equal rights for our LGBT brothers and sisters and pushed for civil unions while serving as President of the Hawaii State Senate, but I now appreciate that *nothing less than full marriage equality is enough*.

Progress grows from those who are willing to stand up and speak for themselves and others. Beginning today, the Hawaii State Legislature has an opportunity to rise to the situation, demonstrate your respect for the rights of *all* of our citizens, acknowledge the power of diversity in our community, and offer full marriage equality in Hawaii. I encourage you to vote in support of SB1. All citizens of Hawaii deserve the freedom to marry the ones they love.

Mahalo.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a vertical line intersecting it.

Colleen Hanabusa

**From:** [Steven Levinson](#)  
**To:** [JDLTestimony-InPerson](#)  
**Subject:** Strong support for SB1  
**Date:** Thursday, October 24, 2013 10:23:06 AM

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To: Senate Committee on Judiciary and Labor  
Hearing Date/Time: Monday, October 28, 2013, 10:30 a.m.  
Place:Capitol Auditorium  
Re:Strong Support of SB1, Relating to Equal Rights

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

I am writing in strong support of SB 1.

In its 1993 decision in *Baehr v. Lewin*, the Hawaii Supreme Court held that the state's marriage law presumptively denied otherwise eligible same-sex couples the equal protection of the laws under the state constitution by withholding access on the part of such couples to the legal status of marriage. I authored the lead opinion. The *Baehr* appeal convinced me that what is now called Marriage Equality was not only compelled by the Hawaii Constitution, but was also the only fair course to pursue. I saw no rational basis for blackballing otherwise eligible loving and committed couples, simply on the basis of their sexual orientation, from following their hearts and receiving the legal and social recognition, approval, and respect that only the institution of marriage can confer.

In 1998, the Hawaii electorate ratified an amendment to the state constitution, proposed by this legislature, reserving to the legislature the power to determine marriage eligibility. It was the legislature's prerogative to do so.

SB1, if approved, would exercise the legislature's constitutional authority and prerogative to extend marriage eligibility to couples who could marry right now were it not for the fortuity of their gender. The time has come for the legislature to take that important step.

Marriage Equality is no longer a new idea. The list of Marriage Equality jurisdictions is growing inexorably and with accelerating speed. Marriage Equality is now recognized in California (2008,2013), Connecticut (2008), Delaware (2013), the District of Columbia (2010), Iowa (2009), Maine (2012), Maryland (2013), Massachusetts (2004), Minnesota (2013), New Hampshire (2010), New Jersey (2013), New Mexico (six counties, 2013), New York (2011), Rhode island (2013), Vermont (2009), and Washington (2012).

The Marriage Equality wave is washing onto shores on four continents and Oceania all around the world, having been formally adopted in the Netherlands (2001), Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010), Denmark (2012), Brazil (2013), France (2013), Uruguay (2013), New Zealand (2013), and England and Wales (effective 2014).

I respectfully urge the legislature to adopt SB1. As presently drafted, SB1 would allow Hawaii to join the growing list of jurisdictions that have discharged a long-overdue debt to the LGBT community, while at the same time honoring and protecting First Amendment freedom of religious expression and belief.

Thank you for this opportunity to testify.

Steven H, Levinson  
Associate Justice (Retired)  
Hawaii Supreme Court

Steven Levinson  
3430-F Keahi Place  
Honolulu, HI 96822



**From:** [Paul Groesbeck](#)  
**To:** [JDLTestimony-InPerson](#)  
**Subject:** SB ! Testimony  
**Date:** Wednesday, October 23, 2013 12:26:36 PM  
**Attachments:** [image001.png](#)

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**WRITTEN TESTIMONY**

-  
Presented by: Paul Groesbeck, Executive Director  
(808) 853-3234 [pgroesbeck@lifefoundation.org](mailto:pgroesbeck@lifefoundation.org)

SB 1 RELATING TO EQUAL RIGHTS  
Senate Committee on Judiciary and Labor  
Hearing: Monday, October 28, 2013, 10:30 a.m.  
State Capitol Auditorium

To Committee Chair Clayton Hee, Vice-Chair Maile Shimabukuro and Members of the Committee: Aloha. I am writing as executive director of Life Foundation, Hawaii's oldest and largest HIV/AIDS organization, to express our **STRONG SUPPORT** of this bill, which will give same-sex couples in Hawaii the same right to marry that has been enjoyed for years by couples of opposite genders.

As someone who has been in the health field for many years, I know that, when people are singled out as "different" and treated as inferior, they begin to question their own self-worth, which can result in poor health and safety related decision making and, in too many cases, suicide.

As recently as 1967, it was a crime in more than one-third of the states for a white person to marry a person of another race. Thankfully, Hawaii was not one of those states. Vociferous moral arguments were made in favor of those anti-miscegenation laws by religious groups that felt they had the right to dictate their own prejudices to society in general. The Supreme Court finally sorted that out 46 years ago.

As a lawyer, I have read the proposed bill and, in my opinion, find that it adequately addresses the concerns of religious groups. They will be given the right to legally discriminate against anyone they want in the context of marriages performed within their traditional ministry. They will not be able to discriminate against anyone who seeks to be married in a church's for-profit marriage business. A simple distinction.

As someone who has been happily married for more than thirty years, I have never harbored any fears that legalizing same-sex marriages would negatively impact my marriage, my family, my community or the rotation of the planet.

Let's face it. This issue is being considered by the legislative body of the State of Hawaii. It is no longer a moral issue. It is not a religious issue. It is solely a legal issue that can be put right for

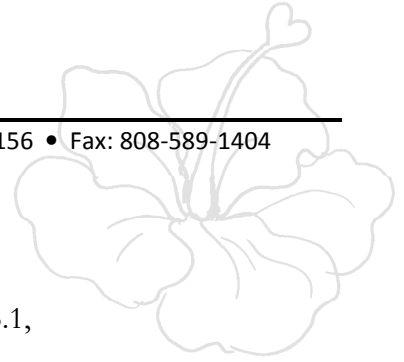
thousands of our fellow citizens within the next few days. When Supreme Court Justice Antonin Scalia recently so clumsily said that the 14<sup>th</sup> Amendment of the U. S. Constitution, “is not just for the blacks,” he was right. The Constitution also protects the rest of us including, in this particular case – gay men and women.

Everyone should just take a deep breath and move on.

# Planned Parenthood<sup>®</sup> of Hawaii

1350 S. King Street • Suite 309 • Honolulu, Hawaii 96814 • [www.pphi.org](http://www.pphi.org) • Phone: 808-589-1156 • Fax: 808-589-1404

To: Hawaii State Senate Committee on Judiciary and Labor  
Hearing Date/Time: Monday, October 28, 2013, 10:30 a.m.  
Place: Auditorium, Hawaii State Capitol  
Re: Testimony of Planned Parenthood of Hawaii in support of S.B.1,  
Relating to Equal Rights



Dear Chair Hee and Members of the Committee on Judiciary and Labor,

Planned Parenthood of Hawaii writes in support of S.B.1, which seeks to recognize marriages between individuals of the same sex and extend to same-sex couples the same rights, benefits, protections and responsibilities of marriage that opposite-sex couples receive.

Planned Parenthood of Hawaii is dedicated to providing Hawaii's people with high quality, affordable and non-judgmental sexual and reproductive health care, education, and advocacy. We are proud to be a provider of health care, education and information for many in Hawaii's LGBT community.

We care deeply about the health of individuals, families and communities and we know that when people are truly cared for, their lives, their families, and their communities are better and healthier. Marriage equality *is* care and it will strengthen and enrich the lives of committed same-sex couples in Hawaii and provide stability for their families – to everyone's benefit.

Planned Parenthood of Hawaii was founded on principles of social justice. We support and respect the decisions of all people and families, regardless of their sexual orientation. We believe that individuals should be able to make their own choices about their health, their futures, their partners and who they marry. Until our LGBT patients and supporters enjoy the same rights as everyone else, we will continue to advocate for equal protection under the law.

Providing Hawaii with marriage equality is the right, just, and compassionate thing to do. It is time to join the 13 states and the District of Columbia that allow same-sex couples the freedom to marry the person they love. We respectfully call on you to pass S.B.1 and ensure marriage equality in Hawaii.

Thank you for this opportunity to testify.

Sincerely,  
Andrea Anderson  
CEO, Planned Parenthood of Hawaii

**HONOLULU CLINIC**  
1350 S. King Street, Suite 310  
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**KONA CLINIC**  
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**MAUI CLINIC**  
Kahului Office Center  
140 Ho'ohana Street, Suite 303  
Kahului, HI 96732  
808-871-1176



**HAWAII CATHOLIC CONFERENCE**

6301 Pali Highway  
Kaneohe, HI 96744-5224

**Online Submittal**

**Hearing on:** Monday, October 28, 2013  
Capitol Auditorium

**DATE:** October 25, 2013  
**TO:** Senate Committee on Judiciary  
Sen. Clayton Hee, Chair  
**From:** Fr. Gary Secor, Vicar General, Diocese of Honolulu  
**Re:** Strong Opposition SB 1 Relating to Equality (Redefining Marriage)

Mahalo for the opportunity to testify. I am Fr. Gary Secor, **representing the Hawaii Catholic Conference**. The Hawaii Catholic Conference, the public policy office of the Roman Catholic Church in the State of Hawaii under the current leadership of Bishop Larry Silva, has for many years come before this legislature to express its profound opposition to the legal recognition of same-sex civil unions and marriages within our state. The Conference's opposition to legal recognition of these forms of relationship is based not only on the religious teachings of the Catholic Church, but also out of the church's concern for the potentially negative sociological impact such relationships may eventually have on society.

The Catholic Church opposes the redefinition of marriage based on the clear understanding that the complementarity of man and woman is intrinsic to the meaning of marriage. The word marriage describes the exclusive and lifelong union of one man and one woman with the possibility, in many cases, of generating and nurturing children. Other unions exist, but they are not marriage.

In marriage, a husband and a wife make a public and reciprocal commitment, assuming duties to society, to themselves, and to their children. Society and the law reciprocate by bestowing on traditional marriage a privileged status that recognizes the essential role that families play in society. The family, based on marriage, is a natural institution that is prior to the state. As such, the reservation of marriage to the union of one man and one woman is a fact of nature, not a social prejudice.

The Church is also concerned that its religious freedom and conscience rights, both individually and collectively, continue to be protected. We fail to see how this bill takes these concerns adequately into account.

In recognition of the critical role marriage plays in the well-being of future generations and a stable society, the Church advocates for public policies that protect traditional marriage and promote the security of the family. Because of this, our diocese will continue to strongly advocate for the definition of marriage as the union of one man and one woman.

**From:** [Jackie Young](#)  
**To:** [JDLTestimony-InPerson](#)  
**Subject:** Strong support for SB1  
**Date:** Saturday, October 26, 2013 11:47:13 AM

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Dear Chair Hee and members of the committee:

Some of you may know me as a former representative and vice-speaker of the House from 1990-94. One of the reasons I left was because of the issue of same-sex marriage. In 1993 and 1994 there were fierce debates and public meetings on this issue.

A friend, Alison Adams, was dying of breast cancer at Queen's Hospital. Alison was a psychology professor at UH who was in her second year of law school. Her partner Beth Byerly would walk back and forth from the Capitol to Alison's hospital room so Alison could look over the latest draft of legislation we were crafting. Her consistent answer: "It's not fair." During a hearing at Mabel Symth Auditorium Alison sent someone to read her testimony. She died a few months later.

When the time came to vote for the legislation I couldn't be "loyal" to the leadership team and instead, voted my "conscience"—I voted for fairness and equality.

In 1998, I led the Protect Our Constitution Campaign arguing against a constitutional amendment that would violate our equal protection laws. We lost. We didn't realize at the time that it would be the beginning of a national movement to right a wrong.

A little of my history: I am of the generation that witnessed Pearl Harbor being attacked. I am of the generation that saw Japanese-Americans sent away to be interned during WW II. I am of the generation that lived in Wahiawa and saw Italian prisoners of war on farms outside of Wahiawa that are now Leilehua Golf Course. I attended Punahou School, which, until the 1960s had a 10% acceptance quota on Asians. This was a time when the Outrigger Club and the Pacific Club were off limits to Asians as was purchasing homes in affluent neighborhoods.

In 1954 I told my parents I wanted to marry Harry, my University of Hawaii College classmate. My parents cried, my grandparents cried, my aunts cried. Harry was not Korean (I'm "pure Korean"). In fact, he was not even Asian. Worse yet, he was "mixed" being of Hawaiian, Chinese, Portuguese, German and English background. On top of that he was from Maui.

We have four beautiful children. Two of them attended Kamehameha Schools, which was founded by a couple in a mixed marriage: Bernice Pauahi and Charles Reed Bishop.

In 1961 lived in Berlin, Germany with my husband who was the military police officer in charge of Checkpoint Charlie when the Berlin Wall went UP.

In 1962 we moved to Augusta, Georgia. We were checked out at the Georgia state line but because we had Hawaii state IDs my husband and I were called "Hawaiians" and were considered ok. Our Japanese American colleague—a captain—was taken to the police station with his blond wife. Their commander had to vouch for them. He later became a general.

In 1964, while still living in Georgia, we heard about a case that would change history. A mixed race couple, Mildred and Richard Loving, asked ACLU to help them because they wanted the freedom to visit their friends and family in Virginia without being arrested. In 1959, the Lovings had police burst into their bedroom in the middle of the night, intent on catching them having sex—which was illegal in Virginia between mixed couples. Instead the police found them sleeping. Nevertheless, they were sentenced to a year in prison if they remained in Virginia. They moved away.

The result was the Loving v. Virginia case which in 1967 struck down the miscegenation law.

As Ted Olson wrote: “Marriage is one of the building blocks of our neighborhoods and our nation. At its best, it is a stable bond between two individuals who work to create a loving household and a social and economic partnership...It transforms two individuals into a union based on shared aspirations, and in doing so establishes a formal investment in the well-being of society.”

In 2007, Mildred Jeter Loving, a woman of African-American and Native American Descent spoke out on the 40th Anniversary of Loving v. Virginia about marriage equality.

Mildred said, “I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry... I am still not a political person, but I am proud that Richard’s and my name is on a court case that can help reinforce the love, the commitment, the fairness and the family that so many people, black or white, young or old, gay or straight, seek in life. I support the freedom to marry for all. That’s what Loving, and loving, are all about. ”

Jackie Young  
930 Kaheka Street, PHB5  
Honolulu, HI 96814



***League of Women Voters of Hawaii***

49 South Hotel Street, Room 314 | Honolulu, HI 96813

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SENATE COMMITTEE ON JUDICIARY AND LABOR  
Sen. Clayton Hee, Chair and Sen. Maile Shimabukuro, Vice-Chair

Monday, October 28, 2013, 10:30 A.M. State Capitol Auditorium

S.B. 1 Relating to Equal Rights

TESTIMONY

Beppie Shapiro, Legislative Committee member, League of Women Voters of Hawaii

Chair Hee, Vice-Chair Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii strongly supports SB1** which recognizes marriage between two persons of the same sex in the State of Hawaii.

**LEGAL RATIONALE FOR MARRIAGE EQUALITY**

The US Constitution's Fourteenth Amendment, (Section 1) guarantees equal protection under the law stating "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In most instances, the Supreme Court permits laws that do not treat people equally if the laws have a "rational basis" and a "legitimate purpose." The League speaks later in this testimony to "rational" arguments advanced in favor of restricting marriage to a man and a woman. As to 'legitimate purpose', in *Romer v. Evans* (1995) Justice Kennedy wrote for the majority "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."<sup>1</sup> The group in question was homosexuals

While Hawai'i's Civil Unions law provides state benefits for same-sex couples, this is not the case for Federal benefits, such as income tax deductions; the ability to file joint

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<sup>1</sup> [http://www2.law.columbia.edu/faculty\\_franke/Gay\\_Marriage/Romer%20edited.pdf](http://www2.law.columbia.edu/faculty_franke/Gay_Marriage/Romer%20edited.pdf), accessed 9/22/13.

taxes; the ability to receive a spouse's inheritance; preferential treatment under immigration laws; benefits such as health care to spouses of federal employees or veterans, and continuation of some benefits after death or divorce. How can Hawaii prohibit same sex marriage after this summer's U.S. Supreme Court ruling that invalidated DOMA restrictions on Federal benefits to same-sex couples?

Arguments based on religious principles or authority confuse civil marriage (which is licensed and regulated by the State), and religious marriage ceremonies conducted under the auspices of an organized religion. Same-sex couples may choose a civil marriage officiated by a judge, but if they seek religious ceremonies, the bill allows clergy/churches to choose whether or not to provide these ceremonies; many churches which support the proposed bill will presumably do so.

Since the proposed bill states that clergy will not be **required** to perform same-sex marriages, we think the first amendment rights of religious clergy to express disapproval by not sanctioning these marriages is upheld.

However, with regard to religious facilities, it is entirely appropriate that Hawaii's public accommodations law be applied if a religious organization operates its facility as a for-profit business, and/or allows non-members to use its facilities for weddings. This law protects our citizens from prejudicial exclusions.

We now call on the legislature to support and defend the U.S. Constitution, which by Supreme Court interpretation of the First Amendment Establishment clause includes the separation of church and state. We hope you will be able to separate religious belief and individual civil rights in this important situation.

### **“RATIONAL” ARGUMENTS AGAINST MARRIAGE EQUALITY**

The 2010 U.S. Census reported that 27% of Hawaii's households headed by same-sex couples include children. Some opponents of marriage equality argue that children of same-sex parents experience a lower quality of life than children living with a male and female parent. However, “scientific research that has directly compared outcomes for children with gay and lesbian parents with outcomes for children with heterosexual parents has been consistent in showing that lesbian and gay parents are as fit and capable as heterosexual parents, and their children are as psychologically healthy and well-adjusted as children reared by heterosexual parents.”<sup>2</sup> In general, children benefit from living in stable, two parent families. Having a clear legal relationship with both parents simplifies situations from school and medical emergencies to the death of a parent. Legal marriage will promote stable same-sex families both because of the recognized commitment, and the enhanced financial security and physical and mental health which characterize married versus cohabiting couples.<sup>3</sup>

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<sup>2</sup> <http://cdn.ca9.uscourts.gov/datastore/general/2010/10/27/amicus29.pdf>, accessed 9/22/13.

<sup>3</sup> <http://cdn.ca9.uscourts.gov/datastore/general/2010/10/27/amicus29.pdf>, accessed 9/22/13.



Others fear legalizing same-sex marriage encourages people who would otherwise be heterosexual to adopt a homosexual identity or “lifestyle”. Yet research documents that most gay men and many or most lesbians do not feel they had a choice in their sexual orientation. Further, sexual orientation is highly resistant to change.<sup>4</sup>

Another argument is that legalizing same-sex marriage would undermine the stability and functioning of society. The executive board of the American Anthropological Association published the following Statement in 2004: “The results of more than a century of anthropological research on households, kinship relationships, and families, across cultures and through time, provide no support whatsoever for the view that either civilization or viable social order depend upon marriage as an exclusively heterosexual institution. Rather, anthropological research supports the conclusion that a vast array of family types, including families built on same-sex partnerships, can contribute to stable and humane societies.”<sup>5</sup>

## **OUR CONCLUSION**

The League of Women Voters believes there is ample legal precedent for same-sex marriage. We strongly reject any notion that same-sex marriages place children in the family at higher risk than heterosexual marriages. We believe that economic research has documented that marriage equality will have economic benefits to Hawai‘i, with State of Hawaii and City and County of Honolulu general excise tax revenue projected to grow by \$10.2 million over the 2014-2016 period.<sup>6</sup> The number of weddings, honeymoons, and anniversary celebrations would grow, increasing employment and tax revenue. Hawaii could also avoid modifying its tax code or public infrastructure to accommodate same-sex couples who owe taxes to Hawai‘i but have already married in one of 14 other states that permit such marriage.

We hope the legislature will now have the political will to reject misplaced religious arguments in favor of protecting the civil rights of gay couples. Hawaii voters expect no less, having passed a Constitutional Amendment in the 1998 election, enabling the legislature to pass this bill: “The legislature shall have the power to reserve marriage to opposite-sex couples” HAW. CONST. ARTICLE I, SECTION 23. The League of Women Voters of Hawaii urges you to thoughtfully consider our reasoning and evidence, and to enact marriage equality.

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<sup>4</sup> <http://www.theage.com.au/victoria/tick-for-samesex-families-20130605-2npxf.html#ixzz2faBoHsrB>, 6/5/2013.

<sup>5</sup> <http://www.aaanet.org/issues/policy-advocacy/Statement-on-Marriage-and-the-family.cfm>; accessed 9/22/13).

<sup>6</sup> Sumner LaCroix and Lauren Gabriel, “The Impact of Marriage Equality on Hawaii’s Economy and Government: An Update after the U.S. Supreme Court’s Same-Sex Marriage Decisions,” Research Paper from the Economic and Research Organization at the University of Hawaii, July 25, 2013.



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

October 28, 2013  
State Capitol Auditorium  
10:30 a.m.

To: The Honorable Clayton Hee, Chair  
Members of the Senate Committee on Judiciary and Labor

From: Linda Krieger, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 1

The Hawai‘i Civil Rights Commission has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The Hawai‘i Civil Rights Commission (HCRC) strongly supports the proposed marriage equality legislation, as offered in S.B. No. 1.

We also support inclusion of a religious exemption for clergy who refuse to solemnize any marriage, as found in the proposed HRS § 572-E.

The HCRC supports inclusion of a religious exemption for religious facilities that are used for religious activities, if those facilities are not public accommodations. However, if the use of the facility is offered to the general public, HRS Chapter 489 prohibitions against discrimination in public accommodations should apply. The HCRC opposes any exemption that diminishes protections against discrimination under our public accommodations law. Enactment of marriage equality legislation should not be a vehicle or excuse to weaken or diminish existing civil rights protections.

In this regard, the HCRC has serious concern over the proposed religious exemption found in the proposed HRS § 572-F, which diminishes state law protections against discrimination in public accommodations.

### **HCRC Support for S.B. No. 1 and Marriage Equality**

To our credit, Hawai'i was the first state to seriously consider the issue of same-sex marriage, and more specifically, the denial of rights to same-sex couples that are recognized by law for married couples. In its 1993 landmark decision *Baehr v. Lewin*, the Hawai'i Supreme Court held that denial of the benefits accorded to married couples to same-sex couples, who could not obtain a license to marry, was sex-based discrimination in violation of the constitutional guarantee of equal protection, absent the showing of a compelling state interest. Now, twenty years later, the legislature is poised to make Hawai'i the 14th state, in addition to the District of Columbia, to recognize same-sex marriages. With enactment of this legislation, same-sex married couples in Hawai'i and their families will be entitled to federal rights, benefits, protections, and responsibilities that are and would be denied to them if state law continued to recognize only civil unions but not marriage for same-sex couples. With enactment of marriage equality legislation, Hawai'i lives up to its promise of equal treatment for all of its people.

### **Prohibited Discrimination in Public Accommodations and Religious Facilities**

The State has a compelling interest in the elimination of discrimination in public accommodations.

HRS § 368-1 states:

The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy.

The HCRC supports proposed religious exemptions for clergy who refuse to solemnize marriages and for religious organizations that refuse to make religious facilities available for solemnization of a marriage, if the religious facility is not a place of public accommodation.



These exemptions can be found in our civil unions law, at HRS §§ 572B-4(c) and 572B-9.5, and in the proposed marriage equality bill offered earlier by Governor Abercrombie.

The HCRC has enforcement jurisdiction over the state law prohibiting discrimination in public accommodations, HRS Chapter 489.

HRS § 489-3 prohibits discrimination in places of public accommodation based on race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability.

“Place of public accommodation” is defined in HRS § 489-2, as: “[A] business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, and accommodations are extended, offered, sold or otherwise made available to the general public as customers, clients, or visitors.”

Religious facilities are not subject to the public accommodations law unless goods, services, facilities, privileges, advantages, and accommodations are offered to the general public. Churches are free to discriminate as long as they do not operate a place of public accommodation. If offered for public use, the public accommodations law applies and unlawful discrimination is prohibited.

The public accommodations law is clear. It is a law of general applicability that serves a compelling state interest and does not target religion. Opening the door to broad or numerous exemptions to our state civil rights laws undermines the compelling state interest and invites constitutional challenges. It is not necessary to create exemptions to our civil rights laws to enact marriage equality legislation, and to do so will weaken existing civil rights protections, creating a slippery slope that leads to demands for additional exemptions.

The HCRC opposes proposals to create exemptions that weaken protections against discrimination under our public accommodations law. For this reason, the HCRC does not support the proposed HRS § 572-F exemption for religious facilities, which will allow discrimination on the basis of sexual orientation (and all other protected bases) in places of public accommodations for solemnizations of marriage.

## **HCRC Concerns Regarding the Proposed HRS § 572-F**

If the legislature chooses keep the exemption for religious organizations and facilities along the lines provided in the proposed HRS § 572-F, the HCRC strongly urges clarification of the scope of the exemption, to narrow its focus and avoid claims of broad applicability that will erode the strong protections against discrimination in public accommodations effected by HRS Chapter 489.

The proposed HRS § 572-F reads:

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

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

*(emphasis added).*

### **HCRC concerns:**

**There is no definition of "religious organization".** The statutory language could be interpreted to include what might be considered "churches" in a generic sense – places of worship including, for example, mosques, synagogues, and temples – as well as "religious organizations" generically, which could include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principle purpose is the study or advancement of religion. Such interpretation would be consistent with a known standard, as developed in interpretation of the Internal Revenue Code. In S.B. No. 1, the



exemption is narrowly drawn, because it only applies to refusal to solemnize any marriage, but the lack of a definition of “religious organization” leaves it unclear whether the exemption extends to facilities that are owned, controlled, or operated by a religious organization (e.g., the YMCA, YWCA, Salvation Army, Catholic Diocese, etc.), and confusion could open the door to other entities asserting claims to the exemption. If the scope of the exemption is meant only to cover “churches”, as in places of worship, that should be clarified.

**There is no definition of “for a profit”.** “For a profit” is not defined, except in the negative, as the last sentence of HRS § 572-F explains what does not constitute “for a profit”. We understand that the intent of the statutory language is to capture those religious organizations that make substantial amounts of money in return for the use of their religious facilities – entering the stream of commerce by offering the use of the facilities for money.

With the “[n]otwithstanding any other law” language, the religious facilities exemption creates an exemption from our state law prohibiting discrimination in public accommodations, HRS Chapter 489, allowing discrimination in the use of religious facilities for solemnization of weddings, even if open to the public for that use, if not “for a profit”. The use of “for a profit” as a qualifying criteria for the exemption injects the concept of “for a profit” into the HCRC’s public accommodations statutory scheme.

The HRS § 489-2 definition of “place of public accommodation” is a “... business, accommodation, refreshment, entertainment, recreation or transportation facility of any kind, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors.” Whether a facility is operated for a profit or whether the public is charged a fee is not relevant to coverage and jurisdiction.

The lack of a definition begs the question of whether “[not] for a profit” means “nonprofit”, and whether all churches and religious organizations are by definition, operation, and character not “for a profit”. If it is not the intent of the Senate to create such a broad exemption for all nonprofit churches and religious organizations, that should be clarified.

In addition, the last sentence of HRS § 572-F states: “For the purposes of this section, a religious organization accepting donations from the public ... shall not constitute “for a profit”. This could arguably be read to allow an exemption for religious organizations that allow the use

of their facilities for a substantial “suggested donation”.

Clarification is needed to avoid vagueness, ambiguity, and confusion. The HCRC suggests that the legislature might look to the State Department of Taxation (DoTax) interpretation of what church activities are exempt from excise taxes. DoTax focuses on whether the activity is religious or income-producing. “Fundraising activities” that generate income and are outside of the exempt purpose are taxable; the activity does not have to be profitable. *See*, Tax Facts 98-3, “Tax Issues for Hawaii Nonprofit Organizations”, November 1998. (Attachment A).

A 1997 DoTax Tax Advisory, “Tax Advisory on the Application of the General Excise Tax to Tourist Wedding Activities of Churches”, April 27, 1997, is instructive and useful. (Attachment B).

In that advisory, DoTax advises:

In performing traditional wedding ceremonies, a church is conducting an activity that is religious in nature. Accordingly, income received from the conduct of these ceremonies are generally considered exempt from the general excise tax. With the recent introduction of tourist “wedding” activities on church premises on a wholesale basis, questions have arisen as to whether the income derived from this activity qualifies for exemption from the general excise tax.

The test is whether the primary purpose of the tourist “wedding” activity is religious or fundraising in nature. If fundraising, the income derived from the activity will be subject to the 4 percent general excise tax. This determination is made on a case-by-case basis taking into account all of the facts involved.

For example, if the ceremony performed is in fact a wedding (as opposed to, say, a reenactment of one) conducted on church premises by the church minister, priest, or other officiator, then the activity will be considered religious and not income-producing. On the other hand, if the weddings are arranged, packaged and conducted through a commercial entity without church involvement other than making available the use of church premises, the “wedding” activity will be considered fundraising in nature. Even though the wedding activity may



be conducted by the church minister, priest, or other officiator, the activity can take on a commercial hue that is so predominant as to render it fundraising in nature (considering the size and frequency of the activity, how the activity is marketed, the amount of time and resources expended, and the amount of revenues derived from the activity).

\* \* \* \* \*

Aside from tourist wedding activities, many church facilities are made available for use by other organizations, individuals, or community groups. Amounts charged for this use will be considered rental income subject to the 4 percent general excise tax. Whether it is called “rental,” “user donation,” “donation,” or by some other designation, the charge for the use of church facilities will as a general rule be considered fundraising in nature.

The DoTax approach is instructive in several ways:

In interpreting the General Excise Tax law, DoTax is considering what kind of exemption is required for religious activities, while enforcing its law of general applicability. They focus the inquiry on the nature of the activity.

DoTax narrowly focuses the scope of the exemption on the use of church premises. They articulate a standard and lay out a simple test.

And, DoTax makes it clear that all fundraising, regardless of whether for a profit or not, is not exempt, and disregards the designation of amounts charged or income as a “donation” in their analysis.

## **CONCLUSION**

The HCRC supports marriage equality and urges your favorable consideration of S.B. No. 1 to recognize same-sex marriages.

The HCRC also supports express religious exemptions for clergy and religious facilities that are used for religious activities and do not offer goods, services, or facilities to the general public, but opposes proposals to create exemptions that diminish protections against discrimination under our state public accommodations law. In that regard, the HCRC urges the legislature to amend S.B. No. 1 to eliminate the proposed HRS 572-F exemption.



**Hawai'i Civil Rights Commission**

**Testimony RE: S.B. No. 1**

**Attachment A**

**Tax Facts 98-3, "Tax Issues for Hawaii Nonprofit Organizations", November 1998.**



# TAX FACTS

From the  
State of Hawaii, Department of Taxation

November, 1998

## TAX ISSUES FOR HAWAII NONPROFIT ORGANIZATIONS

98-3

Due to the generous nature of the people of Hawaii, we have a multitude of groups that are organized as "not-for-profit" in nature. Tax Facts No. 95-1, "All About the Hawaii Use Tax" and Tax Facts No. 96-1, "General Excise vs. Sales Tax" also may be helpful when reading this issue of Tax Facts. The Department has also issued a Tax Advisory on the application of the general excise tax (GET) to tourist wedding activities of churches dated April 21, 1997, that contains specific information about the GET exemption for churches and, in particular, their tourist wedding activities. The following are some of the commonly asked questions regarding the taxation of tax-exempt organizations.

### **1. What is the difference between "nonprofit" and "tax-exempt" organizations?**

For federal income tax purposes (federal Internal Revenue Code of 1986 — the "IRC"), tax-exempt status is accorded to certain kinds of organizations whether they be corporations, associations, trusts, or other entities. To achieve tax-exempt status, the organization must be organized and operated in a manner that conforms to the requirements set out in the IRC in addition to those prescribed under state law. Some organizations must also apply for determination of their exempt status with the Internal Revenue Service ("IRS"). The federal rules are complex and explained in IRS Publication 557, "Tax-Exempt Status for your Organization."

These "tax-exempt" organizations include those that are organized as not-for-profit, such as corporations organized under Hawaii nonprofit corporation laws. However, merely organizing as a nonprofit entity does not necessarily mean that the IRS will recognize it as tax-exempt. Again, the IRC imposes additional requirements to achieve tax-exempt status.

### **2. How do we qualify for tax-exempt treatment under Hawaii tax laws?**

Hawaii imposes two taxes that are potentially applicable to organizations seeking tax-exempt status—the income tax and the GET.

The organization will be exempt from Hawaii *income* tax if the organization qualifies for exemption for federal income tax purposes under the IRC. If the organization is the type that must obtain a determination of exempt status from the IRS, then Hawaii will follow the determination of the IRS in this regard. No separate determination is required for Hawaii income tax purposes from the Hawaii Department of Taxation. Organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes as described in IRC section 501(c)(3) are generally required to submit an application to the IRS to request recognition of exemption from federal income taxes. Certain organizations

are not required to obtain from the IRS a determination of their exempt status. These organizations are exempt from Hawaii income tax if they meet the requirements of the IRC section under which they claim to be exempt provided that Hawaii has adopted those IRC provisions. Hawaii has adopted the federal provisions of IRC section 501, except for IRC sections 501(c)(12), (15), and (16). IRC section 501(a) provides an exemption from federal income taxes to organizations described in IRC sections 501(c), 501(d), and 401(a). See IRS Publication 557 for procedures on how to apply for recognition of exempt status with the IRS.

### **3. We have been recognized as a tax-exempt organization by the IRS. When is our State income tax exemption effective?**

The effective date for the exemption from Hawaii income taxes is the same as the effective date for federal purposes. You are not required to separately register or otherwise apply for recognition of exemption from the Hawaii Department of Taxation for *income* tax exemption purposes; however, as you will see in Question #6, you will need to do this for GET exemption purposes. As with the IRS, you must substantiate your organization's status as tax-exempt in the event that you are audited by the Hawaii Department of Taxation. If the organization is not required to file an application with the IRS, the effective date for Hawaii income tax will be the same date that the organization meets the requirements of the IRC section under which it is claiming to be exempt. In the event that the IRS revokes your exemption, Hawaii will treat the organization as taxable upon the effective date of that revocation.

### **4. We have been recognized as a tax-exempt organization by the IRS, what are my reporting requirements for Hawaii Income Tax purposes?**

IRS publication 557 discusses the filing requirements and required disclosures of tax-exempt organizations for federal income tax purposes. If you are required to file Form 990-T with the IRS, you are required to file the corresponding Form



N-70NP and pay any tax due for Hawaii income tax purposes on this unrelated business income. Although you may be required to file a Form 990 or Form 990-EZ with the IRS, you are not required to file any corresponding information return for Hawaii income tax purposes. Private foundations, however, are required to file a copy of their federal filings with the Attorney General.

**5. *The IRS has stated that we must file Form 990-T for "unrelated business income". What type of income is this and do we have to file a return with Hawaii?***

The IRS has issued guidelines regarding unrelated business income in IRS Publication 598, "Tax on Unrelated Business Income of Exempt Organizations". Hawaii follows the federal determination of unrelated business income for Hawaii *income* tax purposes. This refers to income from sales activity regularly carried on that is not in furtherance of an exempt purpose.

**6. *If we are treated as tax-exempt for income tax purposes, does this mean we also are exempt from paying the GET?***

Not necessarily. The GET law provides that certain organizations created for purposes enumerated in sections 237-23(a)(3) through (6), of the Hawaii Revised Statutes (HRS), must apply for exemption from the payment of GET by filing Form G-6, Application for Exemption from the Payment of General Excise Taxes, with the Hawaii Department of Taxation. A one-time \$20 registration fee must be paid with Form G-6. If your organization already has paid the \$20 fee to obtain a general excise license number, you do not need to submit the \$20 registration fee — just fill in your GET license number on the Form G-6 in the box provided. See the Instructions for Form G-6 for a more detailed discussion of organizations which qualify to apply for a GET exemption.

**7. *We filed Form G-6 and received a letter approving the GET exemption for our organization. If approved, when is the exemption effective?***

The law requires that the Form G-6 be filed within three (3) months of the commencement of business (with extensions of up to two (2) months for good cause). If the Form G-6 is filed within the required or extended period, the exemption shall apply to income earned from the date of commencement of business. If filed after this period, the exemption applies only to income received on or after the date the Form G-6 was filed. Once the exemption is allowed, no further application is necessary unless there is a material change in your objectives or operations.

**8. *If granted the exemption, is all of the income we now receive exempt from the GET?***

It depends. Amounts received as dues, donations, or gifts are not included in gross income subject to the GET.

However, gross receipts derived from any activity the primary purpose of which is to produce income are subject to the GET even though used to fund the exempt purposes or activities of the organization. Consequently, gross income received from the conduct of any fundraising activity is subject to the GET. Other income may be exempt from the GET depending on the nature of the activity giving rise to the income in relation to the organization's stated exempt purpose (see Question #9).

**9. *What types of activities are considered "fundraising activities"?***

In general, "fundraising activities" are activities conducted with the intention of generating income, and are outside of the organization's stated exempt purpose. The activity does not have to be profitable in order to be taxable, and can include gross receipts from a single event. (Do not confuse this with "unrelated business income" as defined for *income* tax purposes.)

Although casual sales are exempt from the GET, this exemption is not applicable to fundraisers. A fundraising activity would not be considered a "casual sale" since the activity is not a single occasional sale nor an incidental sale. It is an infrequent activity comprised of numerous sales or transactions, e.g., white elephant sales, fairs, bazaars, and the like. Furthermore, it does not matter that the items being sold were donated to the organization.

**Example:** An educational institution's stated purpose is "to educate students in an environment conducive to learning". The institution charges tuition to attend the institution and also sells learning materials. Occasionally, the institution has a fair or sells baked goods or other merchandise to raise funds for the institution to operate.

The gross income from the tuition and sale of learning materials is exempt from the GET since it is generated in the performance of the organization's stated exempt purpose. The gross income from the fair and other fundraising activities, although the income received from the activities is to be used in the fulfillment of the organization's stated purpose, is generated from activities outside the scope of the organization's stated purpose with the object of gain or economic benefit and is taxable for GET purposes.

**10. *If we are registered with the State as tax-exempt under the GET law, does this mean we also are exempt from paying the GET visibly passed on by a vendor when we purchase items from the vendor?***

No. Because the GET is levied on the business receiving the income rather than on the customer, businesses still are subject to the GET on their sales to tax-exempt organizations. The business is not tax-exempt, even if the customer is. Therefore, tax-exempt organizations may have the GET visibly passed on to them when they buy goods and services. The