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Same Sex Marriage: Report of the Commission on Sexual Orientation and the Law [Folder 1] [2]

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Appendix D-1

B. UNIVERSAL COMPREHENSIVE
DOMESTIC PARTNERSHIP

H.B. NO.

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1996
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO DOMESTIC PARTNERSHIPS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

DOMESTIC PARTNERSHIPS

§ -1 Purpose. The purpose of this chapter is to create a way to recognize committed relationships of people and the right to identify the partners with whom they share their lives as members of each other's immediate family.

§ -2 Findings. Domestic partners live together in the context of a committed family relationship. However, they are often denied public and private-sector benefits, because they cannot provide state certified proof of their relationship.

The State of Hawaii finds that domestic partners comprise a percentage of households within this jurisdiction that is not insignificant. Domestic partners are often subject to marital

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1 status discrimination in employment, housing, and public
2 accommodations. The enactment of this registration section is a
3 means of attempting to eliminate this discrimination.

4 § -3 Definitions. For the purposes of this chapter:

5 "Basic living expenses" means basic food and shelter. It
6 includes any other cost, such as medical care, if some or all of
7 the cost is paid as a benefit to one or both partners because
8 they have registered as domestic partners under this section.

9 "Declaration of domestic partnership" means a statement in a
10 form issued by the director that declares the intent of two
11 people to enter into a valid domestic partnership contract. By
12 signing it, two people swear under penalty of perjury that they
13 meet the requirements for a valid domestic partnership contract.

14 "Director" means the director of health.

15 "Domestic partners" means two adults who are parties to a
16 valid domestic partnership contract and meet the requisites for a
17 valid domestic partnership contract as defined in section -4.

18 "Joint responsibility" means that each partner agrees to
19 provide for the other's basic living expenses while the domestic
20 partnership is in effect if the partner is unable to provide for
21 himself or herself. It does not mean that the partners need
22 contribute equally or jointly to basic living expenses. Anyone
23 to whom these expenses are owed can enforce the responsibility
24 established by this chapter.

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"Live together" means that two people share the same place to live. It is not necessary that the legal right to possess the place be in both of their names. Two people may live together even if one or both have additional places to live. Domestic partners do not cease to live together if one leaves the shared place but intends to return.

§ -4 Requisites of a valid domestic partnership contract.

In order to make a valid domestic partnership contract it shall be necessary that the parties shall:

- (1) Live together;
- (2) Consider themselves to be members of each other's immediate family;
- (3) Agree to be jointly responsible for each other's basic living expenses;
- (4) Neither be married nor a member of another domestic partnership;
- (5) Not be related by blood in a way that would prevent them from being married to each other under chapter 572;
- (6) Each be at least eighteen years old;
- (7) Each shall be competent to enter into a contract; and
- (8) Each sign a declaration of domestic partnership as provided for in section -5.

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1 § -5 Establishing a domestic partnership. Two persons,
2 who meet the criteria set out in section -4, may establish a
3 domestic partnership by presenting a signed notarized declaration
4 of domestic partnership to the director, who shall file it and
5 give the partners a certificate of domestic partnership showing
6 that the declaration was filed in the names of the parties who
7 shall be known as "domestic partners".

8 § -6 Rights and obligations. Upon the issuance of a
9 certificate of domestic partnership by the director, the parties
10 named in the certificate shall have the same rights and
11 obligations under the law that are conferred on spouses in a
12 marriage relationship under Chapter 572. A "domestic partner"
13 shall be included in any definition or use of the terms "spouse",
14 "family", "immediate family", or "dependent" as those terms are
15 used throughout the law.

16 § -7 Dissolution of domestic partnerships. The family
17 court shall have jurisdiction over the dissolution of domestic
18 partnerships. The dissolution of domestic partnerships shall
19 follow the same procedures and be subject to the same substantive
20 rights and obligations that are involved in the dissolution of
21 marriage under chapter 572.

22 § -8 Records and Fees. The director shall keep a record
23 of all declarations. The director shall set the amount of the
24 filing fee for declarations, but in no case shall the fee be

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higher than the fee for a marriage license. The fees charged shall cover the State's costs of administering this section.

§ -9 Preemption. This chapter shall supersede any state law, or political subdivision ordinance to the contrary.

§ -10 Private solemnization not required. Nothing in this chapter shall be construed to require any religious organization to solemnize a domestic partnership that does not recognize a domestic partner relationship within their ideology; provided that any rights and obligations of domestic partners are not obstructed or violated."

SECTION 2. Section 368-1, Hawaii Revised Statutes, is amended to read as follows:

"§368-1 Purpose and intent. The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, sexual orientation, marital status, including domestic partnership, national origin, ancestry, or disability in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy. It is the purpose of this chapter to provide a mechanism which provides for a uniform procedure for the enforcement of the State's discrimination laws. It is the legislature's intent to preserve all existing rights and remedies under such laws."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the

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1 invalidity does not affect other provisions or applications of
2 the Act which can be given effect without the invalid provision
3 or application, and to this end the provisions of this Act are
4 severable.

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun, before its effective date.

8 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

Appendix D-2

A. CONSTITUTIONAL AMENDMENT TO PROHIBIT MARRIAGE

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1996
STATE OF HAWAII

H.B. NO.

A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I, SECTION 5, OF THE
CONSTITUTION OF THE STATE OF HAWAII, TO AMEND THE DUE
PROCESS AND EQUAL PROTECTION CLAUSE RELATING TO SAME SEX
MARRIAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to propose an amendment to Article I, section 5, of the Constitution of the State of Hawaii to clarify that same sex marriages are not constitutionally protected and to define marriage as a legal relationship between a male and a female.

SECTION 2. Article I, section 5, of the Constitution of the State of Hawaii is amended to read as follows:

"DUE PROCESS AND EQUAL PROTECTION

Section 5. No person shall be deprived of life, liberty or property without due process of law, nor be denied 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.

Nothing in this section or any other section of this Constitution shall be interpreted to create a constitutional

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1 right to same-sex marriages in order to reserve marriage as a
2 legal relationship between a man and a woman as husband and wife
3 which has been sanctioned by the State. Marriage and its
4 requisites may be subject to reasonable regulation by the State."

5 SECTION 3. The question to be printed on the ballot shall
6 be as follows:

7 "Shall the Due Process And Equal Protection Clause be
8 amended to clarify that same sex marriages are not
9 constitutionally protected in order to define marriage as a
10 legal relationship between a man and a woman as husband and
11 wife which has been sanctioned by the State and which may be
12 reasonably regulated by the State."

13 SECTION 4. New constitutional material is underscored.

14 SECTION 5. This amendment shall take effect upon compliance
15 with Article XVII, section 3, of the Constitution of the State of
16 Hawaii.

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INTRODUCED BY: _____

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B. EXPANSION OF DEFINITION OF FAMILY

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1996
STATE OF HAWAII

H.B. NO.

A BILL FOR AN ACT

RELATING TO FAMILY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 11-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If a life threatening circumstance exists to a law enforcement person or to the law enforcement person's family, that law enforcement person may apply to the county clerk to keep confidential the information relating to residence address and telephone number contained in the affidavit of registration of that law enforcement person, or any list or register prepared therefrom.

For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together; and"

"Family" shall include those people who share a house or apartment and the economic expenses of life."

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1 SECTION 2. Section 46-15.3, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) For the purpose of this section:

4 "Building code" means an ordinance the purpose of which is
5 to provide minimum standards to safeguard life or limb, health,
6 property, and public welfare by regulating and controlling the
7 design, construction, quality of materials, use and occupancy,
8 location, and maintenance of all buildings and structures within
9 the county's jurisdiction and certain equipment specifically
10 regulated by the ordinance.

11 "Economic expenses of life" means the cost of the daily
12 necessities of life including the cost food, housing and
13 clothing. It shall be considered sharing the expenses of life if
14 only one person pays the entire costs of the economic expenses of
15 life for two or more people living together."

16 "Family" shall include those people who share a house or
17 apartment and the economic expenses of life.

18 "Fire code" means an ordinance adopted under section 132-3
19 or an ordinance intended to prescribe regulations consistent with
20 recognized good practice for the safeguarding to a reasonable
21 degree of life and property from the hazards of fire and
22 explosion arising from the storage, handling, and use of
23 hazardous substances, materials, and devices and from conditions
24 hazardous to life or property in the use or occupancy of
25 buildings or premises.

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"Licensed adult family boarding home" means an adult family boarding home licensed under chapter 346, part IV.

"Licensed care home" means a care home licensed under section 321-15.6.

"Life safety code" means an ordinance the purpose of which is to establish minimum requirements that will provide a reasonable degree of safety from fire in buildings and structures."

SECTION 3. Section 150A-5, Hawaii Revised Statutes, is amended to read as follows:

"§150A-5 Conditions of importation. (a) The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil; bacteria, fungus, or virus; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in chapter 142); box, vehicle, baggage, or any other container in which such articles have been transported or any packing material used in connection therewith shall be made in the manner hereinafter set forth:

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1 (1) Notification of arrival. Any person who receives for
2 transport or brings or causes to be brought to the
3 State as freight, air freight, baggage, or otherwise,
4 for the purpose of debarkation or entry therein, or as
5 ship's stores, any of the foregoing articles, shall,
6 immediately upon the arrival thereof, notify the
7 department, in writing, of the arrival, giving the
8 waybill number, container number, name and address of
9 the consignor, name and address of the consignee or the
10 consignee's agent in the State, marks, number of
11 packages, description of contents of each package, port
12 at which laden, and any other information that may be
13 necessary to locate or identify the same, and shall
14 hold such articles at the pier, airport, or any other
15 place where they are first received or discharged, in
16 such a manner that they will not spread or be likely to
17 spread any infestation or infection of insects or
18 diseases that may be present until inspection and
19 examination can be made by the inspector to determine
20 whether or not any article, or any portion thereof, is
21 infested or infected with or contains any pest. In
22 addition, the department by rules shall designate
23 restricted articles that shall require a permit from
24 the department in advance of importation. The
25 restricted articles shall include, but not be limited

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to, fungi, bacteria, virus, or living insects. Failure to obtain the permit in advance is a violation of this section.

(2) Individual passengers, officers, and crew.

(A) It shall be the responsibility of the transportation company to distribute, prior to the debarkation of passengers and baggage, the State of Hawaii plant and animal declaration form to each passenger, officer, and crew member of any aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency in order that the passenger, officer, or crew member can comply with the directions and requirements appearing thereon. All passengers, officers, and crew members, whether or not they are bringing or causing to be brought for entry into the State the articles listed on the form, shall complete the declaration, except that one adult member of a family may complete the declaration for other family members. Any person who defaces the declaration form required under this section, gives false information, fails to declare restricted articles in the person's possession or

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1 baggage, or fails to declare in cargo manifests is
2 in violation of this section.

3 (B) Completed forms shall be collected by the
4 transportation company and be delivered,
5 immediately upon arrival, to the inspector at the
6 first airport or seaport of arrival. Failure to
7 distribute or collect declaration forms or to
8 immediately deliver completed forms is a violation
9 of this section.

10 (C) It shall be the responsibility of the officers and
11 crew of an aircraft or vessel originating in the
12 continental United States or its possessions or
13 from any other area not under the jurisdiction of
14 the appropriate federal agency to immediately
15 report all sightings of any plants and animals to
16 the plant quarantine branch. Failure to comply
17 with this requirement is a violation of this
18 section.

19 (3) Plant and animal declaration form. The form shall
20 include directions for declaring domestic and other
21 animals cited in chapter 142, in addition to the
22 articles enumerated in this chapter.

23 (4) Labels. Each container in which any of the above-
24 mentioned articles are imported into the State shall be
25 plainly and legibly marked, in a conspicuous manner and

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place, with the name and address of the shipper or owner forwarding or shipping the same, the name or mark of the person to whom the same is forwarded or shipped or the person's agent, the name of the country, state, or territory and locality therein where the product was grown or produced, and a statement of the contents of the container. Upon failure to comply with this paragraph, the importer or carrier is in violation of this section.

(5) Authority to inspect. Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:

(A) Enter and inspect any aircraft, vessel, or other carrier at any time after its arrival within the boundaries of the State, whether offshore, at the pier, or at the airport, for the purpose of determining whether any of the articles or pests enumerated in this chapter or rules adopted thereto, is present.

(B) Enter into or upon any pier, warehouse, airport, or any other place in the State where any of the above-mentioned articles are moved or stored, for the purpose of ascertaining, by inspection and examination, whether or not any of the articles is infested or infected with any pest or disease or

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1 contaminated with soil or contains prohibited
2 plants or animals.

3 (C) Inspect any baggage or personal effects of
4 disembarking passengers, officers, and crew
5 members on aircraft or vessels arriving in the
6 State to ascertain if they contain any of the
7 articles or pests enumerated in this chapter. No
8 baggage or other personal effects of the
9 passengers or crew members shall be released until
10 the baggage or effects have been passed.

11 Baggage or cargo inspection shall be made at the
12 discretion of the inspector, on the pier, vessel, or
13 aircraft or in any quarantine or inspection area.

14 Whenever the inspector has good cause to believe
15 that the provisions of this chapter are being violated,
16 the inspector may require that any box, package,
17 suitcase, or any other container carried as ship's
18 stores, cargo, or otherwise by any vessel or aircraft
19 moving between the continental United States and Hawaii
20 or between the Hawaiian Islands, be opened for
21 inspection to determine whether any article or pest
22 prohibited by this chapter or by rules adopted pursuant
23 thereto is present. It is a violation of this section
24 if any prohibited article or any pest or any plant,
25 fruit, or vegetable infested with plant pests is found.

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(6) Request for importation and inspection. In addition to requirements of the United States customs authorities concerning invoices or other formalities incident to importations into the State, the importer shall be required to file a written statement with the department, signed by the importer or the importer's agent, setting forth the importer's desire to import certain of the above-mentioned articles into the State and giving the following additional information: the kind (scientific name), quantity, and description; the locality where same were grown or produced; the certification that all animals to be imported are the progeny of captive populations or have been held in captivity for a period of one year immediately prior to importation or have been specifically approved for importation by the board; the port from which the same were last shipped; the name of the shipper; and the name of the consignee. The statement shall also contain:

- (A) A request that the department, by its duly authorized agent, examine the articles described;
- (B) An agreement by the importer to be responsible for all costs, charges, or expenses; and
- (C) A waiver of all claims for damages incident to the inspection or the fumigation, disinfection,

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1 quarantine, or destruction of the articles, or any
2 of them, as hereinafter provided, if any treatment
3 is deemed necessary.

4 Failure or refusal to file a statement, including
5 the agreement and waiver, is a violation of this
6 section and may, in the discretion of the department,
7 be sufficient cause for refusing to permit the entry of
8 the articles into the State.

9 (7) Place of inspection. If, in the judgment of the
10 inspector, it is deemed necessary or advisable to move
11 any of the above-mentioned articles, or any portion
12 thereof, to a place more suitable for inspection than
13 the pier, airport, or any other place where they are
14 first received or discharged, the inspector is
15 authorized to do so. All costs and expenses incident
16 to the movement and transportation of the articles to
17 such place shall be borne by the importer or the
18 importer's agent.

19 (8) Disinfection or quarantine. If, upon inspection, any
20 article so received or brought into the State for the
21 purpose of debarkation or entry therein is found to be
22 infested or infected or there is reasonable cause to
23 presume that it is infested or infected and the
24 infestation or infection can, in the judgment of the
25 inspector, be eradicated, a treatment shall be given

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such article. The treatment shall be at the expense of the owner or the owner's agent, and the treatment shall be as prescribed by the department. The article shall be held in quarantine at the expense of the owner or the owner's agent at a satisfactory place approved by the department for a sufficient length of time to determine that eradication has been accomplished. If the infestation or infection is of such nature or extent that it cannot be effectively and completely eradicated, or if it is a potentially destructive pest or it is not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, or if the owner or the owner's agent refuses to allow the article to be treated or to be responsible for the cost of treatment and quarantine, the article, or any portion thereof, together with all packing and containers, may, at the discretion of the inspector, be destroyed or sent out of the State at the expense of the owner or the owner's agent. Such destruction or exclusion shall not be made the basis of a claim against the department or the inspector for damage or loss incurred.

- (9) Disposition. Upon completion of inspection, either at the time of arrival or at any time thereafter should any article be held for inspection, treatment, or

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1 quarantine, the inspector shall affix to the article or
2 the container or to the delivery order in a conspicuous
3 place thereon, a tag, label, or stamp to indicate that
4 the article has been inspected and passed. This action
5 shall constitute a permit to bring the article into the
6 State.

7 (10) Ports of entry. None of the articles mentioned in this
8 section shall be allowed entry into the State except
9 through the airports and seaports in the State
10 designated and approved by the board.

11 (b) For the purposes of this section:

12 "Economic expenses of life" means the cost of the daily
13 necessities of life including the cost food, housing and
14 clothing. It shall be considered sharing the expenses of life if
15 only one person pays the entire costs of the economic expenses of
16 life for two or more people living together; and

17 "Family" shall include those people who share a house or
18 apartment and the economic expenses of life."

19 SECTION 4. Section 184-34, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§188-34 Fishing in Honolulu harbor, Hilo harbor,
22 restricted. It is unlawful to take or kill fish by means of any
23 draw, drag, or seine net in the waters of the harbor of Honolulu;
24 provided that commercial marine licensees as defined in chapter
25 187A may take bait fish by means of any draw, drag, or seine net

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during periods scheduled by the harbor master.

It is unlawful to take or kill fish by means of any net in the waters of that portion of the bay of Hilo bounded by the breakwater, a line from the outer end of the breakwater to Alealea Point, and the shoreline from Alealea Point to the inshore end of the breakwater, provided that commercial marine and pond operators with appropriate licenses issued by the department of land and natural resources may take bait fish or pua, or persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.

For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together; and

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 5. Section 188-45, Hawaii Revised Statutes, is amended to read as follows:

"§188-45 Nehu and iao, taking prohibited; exceptions. It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any nehu or iao; provided that any person may lawfully catch nehu for the

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1 person's family consumption or bait purposes with a net not
2 longer than fifty feet; and provided further that the department
3 of land and natural resources may issue to commercial marine
4 licensees, as defined in chapter 187A, licenses to take nehu,
5 iao, or any other species for which an open season may be
6 declared by the department for use as bait only; provided that
7 nehu may be taken by any licensed commercial marine licensee only
8 if employed on a live-bait tuna boat and only if the licensee's
9 principal means of livelihood is derived from tuna fishing and
10 the sale of tuna, and the nehu is not sold to others. The
11 licenses may be issued by the department upon terms and
12 conditions the department may deem necessary to conserve the
13 supply of the fish within state waters. The license may be
14 summarily revoked for a violation of any term or condition
15 thereof, and any or all licenses may be revoked summarily
16 whenever, in the judgment of the department, the action is
17 necessary for the conservation of the fish.

18 Any person whose license has been revoked for violation of
19 the terms and conditions of the person's license shall not be
20 eligible for another license until the expiration of one year
21 from the date of revocation.

22 For the purposes of this section:

23 "Economic expenses of life" means the cost of the daily
24 necessities of life including the cost food, housing and
25 clothing. It shall be considered sharing the expenses of life if

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only one person pays the entire costs of the economic expenses of life for two or more people living together; and

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 6. Section 201F-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For the purposes of this chapter[, the applicable]:

"Applicable median family income" shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time[.];

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together; and

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 7. Section 209-29, Hawaii Revised Statutes, is amended to read as follows:

"§209-29 Eligibility for loans. (a) Loans may be made to individuals, partnerships, corporations, cooperatives, or other business associations, but only if the applicant:

(1) Suffered loss of or damage to property in a

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rehabilitation area as a result of a state disaster;

- 2 (2) For a commercial loan, had operated an industrial,
3 manufacturing, processing, wholesaling, or retailing
4 business, or professional or service business, or
5 building rental business, immediately before the
6 disaster;
- 7 (3) Presents a suitable program for:
 - 8 (A) Rehabilitation or re-establishment of the
9 applicant's business to its predisaster level when
10 applying for a commercial loan; or
 - 11 (B) Meeting necessary expenses and satisfying the
12 serious needs of the applicant and the applicant's
13 family when applying for a personal loan;
- 14 (4) Has reasonable ability to repay the loan; and
- 15 (5) For a commercial loan, presents written evidence that
16 the Small Business Administration had declined an
17 application for financial assistance under the Small
18 Business Administration Disaster Loan Program or has
19 reduced the amount of the loan request; provided that
20 the declination was not due to the applicant's having
21 sufficient financial resources to rehabilitate the
22 applicant; or
- 23 (6) For a commercial loan, cannot secure any loans from the
24 Small Business Administration Disaster Loan Program
25 because the making of the loans is not covered by the

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program, and the director of business, economic development, and tourism is reasonably satisfied that the applicant is not able to secure loans from private lending institutions and does not have sufficient financial resources to rehabilitate the applicant.

Paragraph (6) shall be applied in the alternative with respect to paragraph (5) of this section.

(b) For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together; and

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 8. Section 231-25, Hawaii Revised Statutes, is amended to read as follows:

"§231-25 Payment, enforcement of by assumpsit action or by levy and distraint upon all property and rights to property. (a) If any tax be unpaid when due, the director of taxation may proceed to enforce the payment of the same, with all penalties, as follows:

(1) By action in assumpsit, in the director's own name, on behalf of the State, for the amount of taxes and costs, or, if the tax is delinquent, for the amount of taxes,

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1 costs, penalties, and interest, in any district court,
2 irrespective of the amount claimed. Execution may
3 issue upon any judgment rendered in any such action
4 which may be satisfied out of any real or personal
5 property of the defendant.

6 (2) By levy upon all property and rights to property
7 (except such property as is exempt under paragraph
8 (b)(5) of this section) belonging to such taxpayer or
9 on which there is a lien, as the director may deem
10 sufficient to satisfy the payment of taxes due,
11 penalties and interest if any, and the costs and
12 expenses of the levy.

13 (b) The following rules are applicable to the levy as
14 provided for in paragraph (a)(2) of this section:

15 (1) Seizure and sale of property. The term "levy" as used
16 in this section includes the power of distraint and
17 seizure by any means. A levy shall extend only to
18 property possessed and obligations existing at the time
19 thereof. In any case in which the director or the
20 director's representative may levy upon property or
21 rights to property, the director may seize and sell
22 such property or rights to property (whether real or
23 personal, tangible or intangible).

24 (2) Successive seizures. Whenever any property or right to
25 property upon which levy has been made is not

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sufficient to satisfy the claim of the State for which levy is made, the director or the director's representative may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from the person, together with all expenses, is fully paid.

(3) Surrender of property subject to levy.

(A) Requirement. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the director or the director's representative, surrender such property or rights (or discharge such obligation) to the director or the director's representative, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(B) Extent of personal liability. Any person who fails or refuses to surrender property or rights to property, subject to levy, upon demand by the director or the director's representative, shall be liable in the person's own person and estate to the State in a sum equal to the value of the

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1 property or rights not so surrendered, but not
2 exceeding the amount of taxes for the collection
3 of which such levy has been made, together with
4 costs and interest on such sum at the rate of
5 eight per cent a year from the date of such levy.
6 Any amount (other than costs) recovered under this
7 subparagraph shall be credited against the tax
8 liability for the collection of which such levy
9 was made.

10 (C) Penalty for violation. In addition to the
11 personal liability imposed by subparagraph (B), if
12 any person required to surrender property or
13 rights to property fails or refuses to surrender
14 such property or rights to property without
15 reasonable cause, such person shall be liable for
16 a penalty equal to fifty per cent of the amount
17 recoverable under subparagraph (B). No part of
18 such penalty shall be credited against the tax
19 liability for the collection of which such levy
20 was made.

21 (D) Effect of honoring levy. Any person in possession
22 of (or obligated with respect to) property or
23 rights to property subject to levy upon which a
24 levy has been made who, upon demand by the
25 director or the director's representative,

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surrenders such property or rights to property (or discharges such obligation) to the director or the director's representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.

- (E) Person defined. The term "person," as used in subparagraph (A), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.
- (4) Production of books. If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the director or the director's representative, exhibit such books or records to the director or the director's representative.
- (5) Property exempt from levy. Notwithstanding any other law of the State, no property or rights to property shall be exempt from levy other than the following:

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1 (A) Wearing apparel and school books. Such items of
2 wearing apparel and such school books as are
3 necessary for the taxpayer or for members of the
4 taxpayer's family.

5 (B) Fuel, provisions, furniture, and personal effects.
6 If the taxpayer is the head of a family, so much
7 of the fuel, provisions, furniture, and personal
8 effects in the taxpayer's household, and of the
9 arms for personal use, livestock, and poultry of
10 the taxpayer, as does not exceed \$500 in value.

11 (C) Books and tools of a trade, business or
12 profession. So many of the books and tools
13 necessary for the trade, business, or profession
14 of the taxpayer as do not exceed in the aggregate
15 \$250 in value.

16 (D) Unemployment benefits. Any amount payable to an
17 individual with respect to the individual's
18 unemployment (including any portion thereof
19 payable with respect to dependents) under an
20 unemployment compensation law of the United States
21 or the State.

22 (E) Undelivered mail. Mail, addressed to any person,
23 which has not been delivered to the addressee.

24 (6) Sale of the seized property.

25 (A) Notice of sale. The director shall take

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possession and keep the levied property until the sale. After taking possession, the director shall sell the taxpayer's interest in the property at public auction after first giving fifteen days' public notice of the time and place of the sale by publication at least once in a newspaper, published in the district, or by posting the notice in at least three public places in the district where the sale is to be held.

- (B) Assistance in seizure and sale. The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property, provided that the consent of the delinquent taxpayer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other than a sheriff so retained by the director to assist the director may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part

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1 of the costs and expenses of the levy.

2 (C) Time and place of sale. The sale shall take place
3 within thirty days after seizure; provided that by
4 public announcement at the sale, or at the time
5 and place previously set for the sale, it may be
6 extended for one week. Any further extension of
7 the sale shall be with the consent of the
8 delinquent taxpayer. The sale shall, in any
9 event, be completed within forty-five days after
10 seizure of the property.

11 (D) Manner and conditions of sale. Sufficient
12 property shall be sold to pay all taxes,
13 penalties, interest, costs, and expenses. On
14 payment of the price bid for any property sold,
15 the delivery thereof with a bill of sale from the
16 director shall vest the title of the property in
17 the purchaser. No charge shall be made for the
18 bill of sale. All surplus received upon any sale
19 after the payment of the taxes, penalties,
20 interest, costs, and expenses, shall be returned
21 to the owner of the property sold, and until
22 claimed shall be deposited with the department
23 subject to the order of the owner. Any unsold
24 portion of the property seized may be left at the
25 place of sale at the risk of the owner.

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(E) Redemption of property. If the owner of the property seized desires to retain or regain possession thereof, the owner may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs and expenses.

(c) For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together; and

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 9. Section 321-123, Hawaii Revised Statutes, is amended to read as follows:

"§321-123 Financial assistance; eligibility standards. (a)

The department of health shall extend financial assistance under this part to aid in offsetting:

- (1) Expenses directly incurred in dialysis or any other medical or surgical procedures necessary for the care and treatment of chronic renal disease; and
 - (2) The cost of purchasing and installing home dialysis equipment and the supplies therefor.
- (b) The department shall establish standards of eligibility

1 for financial assistance under this part which, taking into
2 consideration the total funds available under this part and the
3 number of sufferers needing financial assistance, seek to
4 minimize, to the greatest extent possible, the effect of chronic
5 renal disease on the economic well-being of the sufferer and the
6 sufferer's family. In determining eligibility for financial
7 assistance under this part, the department shall consider the
8 financial resources of the patient, the availability of third
9 party reimbursement for all or part of the expense of the care
10 and treatment of the sufferer, and the extent to which the
11 failure to extend financial assistance under this part would
12 affect the sufferer and the sufferer's family; provided that the
13 financial assistance extended under this part shall not be used
14 to reduce assistance payments from the department of human
15 services to which the sufferer or the sufferer's family is
16 otherwise entitled.

17 (c) For the purposes of this section:

18 "Economic expenses of life" means the cost of the daily
19 necessities of life including the cost food, housing and
20 clothing. It shall be considered sharing the expenses of life if
21 only one person pays the entire costs of the economic expenses of
22 life for two or more people living together; and

23 "Family" shall include those people who share a house or
24 apartment and the economic expenses of life."

25 SECTION 10. Section 321-351, Hawaii Revised Statutes, is

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amended by adding two new definitions to be appropriately inserted and to read as follows:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together.

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 11. Section 323-51, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~§323-51~~]]~~ **Animal therapy.** Animals of the kind commonly kept as household or family pets may be brought into long term health care facilities for the purpose of visiting patients therein. The institution shall determine whether an animal is suitable for visitation, the location where the visit may take place, and the policies governing the visit. At the discretion of the institution, the animal owner may be required to produce written documentation from a veterinarian attesting to the animal's good health, before visitation is permitted.

For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of

1 life for two or more people living together; and

2 "Family" shall include those people who share a house or
3 apartment and the economic expenses of life."

4 SECTION 12. Section 327-3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§327-3 Making, revoking, and objecting to anatomical
7 gifts, by others. (a) Any member of the following classes of
8 persons, in the order of priority listed, may make an anatomical
9 gift of all or a part of the decedent's body for an authorized
0 purpose, unless the decedent, at the time of death, has made an
11 unrevoked refusal to make that anatomical gift:

12 (1) The spouse of the decedent or[;] adult family member
13 who lived with the decedent just prior to death as
14 defined in subsection (f);

15 (2) An adult son or daughter of the decedent;

16 (3) Either parent of the decedent;

17 (4) An adult brother or sister of the decedent;

18 (5) A grandparent of the decedent; and

19 (6) A guardian of the person of the decedent at the time of
20 death.

21 (b) An anatomical gift may not be made by a person listed
22 in subsection (a) if:

23 (1) A person in a prior class is available at the time of
24 death to make an anatomical gift;

25 (2) The person proposing to make an anatomical gift knows

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of a refusal or contrary indications by the decedent;
or

(3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under subsection (a) shall be made by:

(1) A document of gift signed by the person; or

(2) The person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under subsection (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make an anatomical gift under subsection (a) is not an objection to the making of an anatomical gift.

(f) For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of

1 life for two or more people living together; and

2 "Family" shall include those people who share a house or

3 apartment and the economic expenses of life."

4 SECTION 13. Section 334-59, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) Emergency hospitalization. If the physician or the
7 psychologist who performs the emergency examination has reason to
8 believe that the patient is:

9 (1) Mentally ill or suffering from substance abuse;

10 (2) Imminently dangerous to self or others, or is gravely
11 disabled, or is obviously ill; and

12 (3) In need of care or treatment, or both;

13 the physician or the psychologist may direct that the patient be
14 hospitalized on an emergency basis or cause the patient to be
15 transferred to another psychiatric facility for emergency
16 hospitalization, or both. The patient shall have the right
17 immediately upon admission to telephone the patient's guardian or
18 a family member or an adult friend and an attorney. If the
19 patient declines to exercise that right, the staff of the
20 facility shall inform the adult patient of the right to waive
21 notification to the family and shall make reasonable efforts to
22 ensure that the patient's guardian or family is notified of the
23 emergency admission but the patient's family need not be notified
24 if the patient is an adult and requests that there be no
25 notification. The patient shall be allowed to confer with an

attorney in private.

For the purposes of this section:

"Economic expenses of life" means the cost of the daily necessities of life including the cost food, housing and clothing. It shall be considered sharing the expenses of life if only one person pays the entire costs of the economic expenses of life for two or more people living together; and

"Family" shall include those people who share a house or apartment and the economic expenses of life."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Appendix E

HISTORICAL LESSONS¹

It is said that we as a society are doomed to repeat the mistakes of the past unless we study and learn the lessons of history. For the purposes of this report, the Commission finds the most compelling similarity of facts, and hence the existence of relevant lessons from history, in the treatment of "marriage" during the religious wars of 17th century England.²

Two other historical periods are less clear as relevant examples for the Commission's work. Most African-Americans prior to 1865 could get married using their own clergy or, at times, a state-licensed member of the clergy, but they would not be issued government certificates because they were slaves. Such couples were married but lacked certificates.

Jewish-Germans under the Nazi government were likewise capable of getting married but not being certified by the government.

In both these latter examples, however, the people being discriminated against were also denied many other basic human rights and were not considered full citizens. The married couples, or potentially marriable couples, in modern Hawaii who are being denied certificates are, however, accorded many more basic human rights than the slaves or Jews in these two examples.

Also, the slaves and Jews were generally in immutable situations -- they could not themselves change their race, slave-status, or ethnicity. The religious minorities of 17th century England were instead persecuted for their choice of religious belief -- they could themselves change their status by converting to the state church. For the same-gender couples in modern Hawaii who are discriminated against, many may have immutable sexual orientations, but at least some may have chosen their partner as a matter of choice.³

1. This appendix was contributed by Dr. Stauffer and approved and endorsed by the Commission.

2. One text, which includes key portions of the transcript from the historic Bushell's Case described later in the text, is Braithwaite, William C. *The Second Period of Quakerism*. York, England: William Sessions Limited, 1979 edition of the 1919 original volume.

See also the two general histories by Hill, Christopher: *Puritanism and Revolution*. New York: Schocken, 1958, and *The World Turned Upside Down*. New York: Viking, 1972.

3. The Hon. James Burns, acting associate justice of the Hawaii Supreme Court for the Baehr case, based his partial dissent on this point. I.e., that if sexual orientation is an immutable status, then discrimination exists; if it is not immutable, then perhaps it does not. *Baehr v. Lewin*, 74 Haw. 530, 585.

The court's majority ruled that the issue was not relevant as the discrimination was not on the basis of sexual orientation but purely on gender.

The historical example of the English persecutions would support this: whether a discriminated class is based on immutable grounds such as race or ethnicity, or whether it is based on mutable grounds such as religious belief, is irrelevant. As long as it is a protected class (such as religion, national origin, or gender), it should be accorded the proper level of protection.

Many other similarities exist between the English example and the modern Hawaii situation. The laws against the non-believers and wrong-believers in England were based on their "immorality" of religious belief and their "pernicious" conduct. The discrimination was based on the further belief that society-wide disaster would await England due to Divine retribution for allowing the wrong-believers and non-believers to legally exist.

The discrimination was also based on strongly-held majoritarian religious beliefs. And it was based on strongly-held majoritarian social beliefs, as and enacted into law by the people's representatives. The discrimination was also based on not wanting to extend "special rights" to the non-believers and wrong-believers. That is to say, the persecutory laws were equal in their application: all non-believers and wrong-believers were treated equally. It could be said that it would be granting a "special right" to allow any of them to worship in a manner anathema to the True Church and against the laws of the land.

This then is the historical case: for a decade in the 1650s the English throne was overturned and a non-monarchy republic established. The official Church of England, allied to the throne, also lost favor, while the "Nonconformist" churches held much power, particularly the Puritans (today's United Church of Christ).

With the restoration of the monarchy and re-establishment of the Kingdom in 1660, the state church also regained power. Laws were soon passed outlawing all Nonconformist faiths, particularly the newly founded Quakers (the Religious Society of Friends) and the Baptists.

Many Nonconformists saw their church buildings seized or shut-down, their clergy threatened with arrest or forced underground. With their worship officially outlawed, many would gather at dining tables in private homes with food set out before them, and hold their services. If the authorities burst in -- as they often did -- the worshipers could claim that they were simply gathered for a meal.

The Quakers went a step further, gathering outside their seized or government-destroyed meeting houses and holding their services in the open, daring the authorities to act. The government met the challenge, beating many worshippers and arresting thousands, with large numbers dying in the filthy prisons of the era. At the height of the "Intolerance" era, throughout large areas of England not a single adult male Quaker remained outside of jail.

The laws weighed heavily within the arena of marriage. Couples who married at a Nonconformist church were denied government marriage certificates. These marriages were not "legal marriages," and the spouses were not "legal spouses." Put another way, the couples were married, but lacked a government certificate because of religious discrimination on the part of the government.

These couples could be prosecuted under criminal statutes for "living in sin," their children could be harassed or sometimes taken away as being "illegitimate," and greedy relatives often could claim the family's assets at the time of death of one or both parents, thus dispossessing the children and at times the second spouse.

That is to say, the "major legal and economic marriage benefits" of the day guaranteed the right to legally cohabit, to have legal children, and to provide for an orderly probate process at the time of death, in favor of the surviving spouse and children. These benefits were denied to those married couples that did not have government certificates.

The persecution of the day created tremendous pressure on married couples seeking to provide benefits for their children. Several married Quaker couples, for instance, would

seek out a government-sanctioned priest to certify their relationships. But this meant breaking the doctrine of their own religion, which regarded the Church of England priests as agents of evil. Quaker congregations met often during this period to counsel and at times discipline couples who had sinned by consenting to "marriage by the priest."⁴

The government's witch hunt meanwhile reached its climax when the Quaker minister William Penn, later the founder of Pennsylvania, went to his seized and shuttered meeting house in London in 1670 and began services on the sidewalk outside. William Meade was in the congregation with other Friends, when the constables attacked.

The religious persecution laws permitted trials without jury, but the authorities unwittingly charged Penn and Meade with rioting, a charge accorded the right of jury. The trial was however short-lived, Penn appealing to the "fundamental rights" of all English citizens, and the judge ordering he and Meade hauled away.

The jury returned a decision of "not guilty" for Meade, and found Penn "guilty of speaking in Gracious Street," noting that street talk was no crime. The judge refused the verdict, whereupon it was repeated in writing by the jury and again refused, the jury then being sent off without "meat, drink, fire, and tobacco" until the next morning.

The next day found the jury unrepentant, with the judge threatening to cut off the jury foreman's nose, Penn claiming that menacing a jury violated the Magna Charta, and the court's recorder -- in words reminiscent of testimony received by the Commission -- calling for the (Quaker) perversion to be removed from the land through introducing the techniques of the Spanish Inquisition. The following day, with the jury still on their enforced fast, they again stood by their verdict, and when this was refused once more, they issued a new written verdict of "not guilty" for both Penn and Meade.

The judge then fined and jailed the jury and kept the now not-guilty Penn and Meade in jail as well. Word of the scandal, and the heroism of the non-Quaker jury, spread through the Kingdom. Months later the jury was released after an Habeas Corpus appeal. About a year later a higher court, led by a judge who evidently loved the Church of England but loved liberty more, issued the landmark Bushell's Case decision, named for Edward Bushell, an outspoken member of the jury.

Wrote the latter court, "what either necessary or convenient use can be fancied of [i.e., found for] juries, or [even] to continue trials by them at all" if their presiding judges do not give them the right to decide decisions?⁵ British and American principles of civil rights, including the right by a jury free to issue its own decision, have abided by the Bushell's Case's principles ever since.

Still, the religious wars continued, the level of persecution first ebbing and then flowing once again. Nearly twenty years later (1689) there was a Toleration Act that eased the oppression religious rules somewhat, but it was 1753 before Quaker marriages (for different-gendered couples) were universally certified by the government.

It was the fearful memories of the abuse of "fundamental rights" perpetrated by government-supported churches and religiously-influenced governmental laws that led

4. Braithwaite, p. 253.

5. Braithwaite, p. 73.

ultimately within the U.S. to adoption of the First Amendment's rules, (a) against the Federal government showing favoritism towards any particular religion, and, (b) against improper influence of religion in government. These two rules were then extended to the States after passage of the Fourteenth Amendment in 1868.

The Commission finds clear and convincing parallels between the events outlined above and the current marriage situation in Hawaii. Some of the Nonconformist churches of that earlier day, in their modern incarnations,⁶ and other churches,⁷ are today marrying together spouses, only to find that these couples cannot receive government certificates.

The Commission also finds that these many churches are legally protected in their right to marry same-gender couples,⁸ more than can be said for the lack of liberty given their counterparts in England three centuries ago. But these modern Hawaii churches and their members still cannot obtain certification for these marriages. Further, while history has judged the English authorities to have discriminated on the basis of religion, the Hawaii Supreme Court has judged the Hawaii State authorities to be showing discrimination today on the basis of gender. The Commission finds further that the broader question of whether something should be recommended to be done about this is addressed in the body of this report.

The lessons from the above historical parallels, however, reinforce the Commission's finding that it is necessary in this report to differentiate between "marriage" and being "legally married;" between being a spouse and being a "legal spouse;" and between being "married" and "having a government certificate." There are same-gender spouses in Hawaii today who are married and have formally celebrated their religious marriage ceremonies in their churches, presided over by government-licensed clergy.⁹ What does not exist today in Hawaii, however, are such couples that possess government certificates, just as there were so many married couples three centuries ago that were denied such certificates.

6. I.e., in Hawaii, congregations of the United Church of Christ and of the Religious Society of Friends have both either married same-gender couples or announced their willingness to do so.

7. E.g., the Unitarian-Universalists, some Lutherans, the Metropolitan churches, many Buddhist denominations, etc.

8. Section 572-1.6, *Hawaii Revised Statutes* (1993 and Supp 1994).

9. This also applies to couples ready, willing, and able to get married, who would be denied certificates if they got married and then applied for governmental certification. It also applies to couples who, like their different-gender counterparts, would desire to get certified by a judge.

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Appendix F-1

A. FULL FAITH AND CREDIT LAW OVERVIEW

ERA (+)	Gay Rights Law (+)	Marriage Validation Law	Sodomy Law (-)	ANTI-GAY Marriage Law (+)	Marriage Evasion Law (-)
Alaska	California	Arizona	Alabama	Florida	Arizona
Colorado	Connecticut	Arkansas	Arizona	Illinois	Dist. of Columbia
Connecticut	Dist. of Columbia	California	Arkansas*	Indiana****	Georgia
Hawaii	Hawaii	Colorado	Florida	Kansas	Illinois
Illinois	Massachusetts	Georgia	Georgia	Louisiana	Indiana
Maryland	Minnesota	Idaho	Idaho	Maryland****	Maine
Massachusetts	New Jersey	Illinois	Kansas*	Minnesota	Massachusetts
Montana	Rhode Island	Kansas	Louisiana	Nevada	Michigan
New Hampshire	Vermont	Kentucky	Maryland	North Carolina	North Dakota
New Mexico	Wisconsin	Michigan	Massachusetts	North Dakota	Vermont
Pennsylvania		Minnesota	Michigan	Oregon	Wisconsin
Texas		Nebraska	Minnesota	Texas****	
Utah		New Mexico	Mississippi	Utah****	
Virginia		North Dakota	Missouri*	Virginia****	
Washington		South Dakota	Montana*	Wyoming	
Wyoming		Utah	North Carolina		
		Wyoming	Oklahoma*		
			Rhode Island		
			South Carolina		
			Tennessee*		
			Texas***		
			Utah		
			Virginia		

The first three columns are characteristics considered positive for gay marriage. A (+) indicates their presence. The last three columns are characteristics considered negative for gay marriage. A (-) indicates their presence as well.

ERA signifies an equal rights amendment regarding gender is part of the state's constitution.

A marriage validation statute is a state law indicating that marriages legally constituted in another state, but not conforming to the laws of the state in question, are nonetheless considered valid. This law is not absolute. If such a validation would, in the court's (or first, in the state's) view contravene a "basic public policy," such marriages can under common law still be held invalid. (See also marriage evasion statute—below.)

In the sodomy law column, (-) indicates that the law applies only to gay sex. (***) indicates that a sodomy law is still technically on the books, but has been effectively rendered unenforceable, at least as private sex is concerned. Consult statutes and case histories for these states.

An anti-gay marriage law is a law, often part of a marriage statute itself, which explicitly states that marriage can be entered into only by one man and one woman and/or specifically forbids same-sex marriage (these are marked ****).

A marriage evasion statute is a law which says a couple has gone to another state in order to elude marriage, because that marriage would have been invalid in their home state (the state in question), that marriage is (still) invalid in their home state. This law trumps validation statutes in the states which have both.

Source: Forum on the Right to Marriage
227 Chelsea Street
East Boston, MA 02128

Appendix F-1

B. APA POLICY STATEMENTS ON LESBIAN AND GAY ISSUES

APA Policy Statements on Lesbian

Discrimination Against Homosexuals

At its January 1975 meeting, Council [Ed. note: The Council of Representatives, governing body of the American Psychological Association] adopted a statement policy regarding homosexuals, recommended by BSERP [Ed. note: The Board of Social and Ethical Responsibility for Psychology, a Standing Board provided by the American Psychological Association's Bylaws] and amended by the Board of Directors and Council, and adapted from a statement adopted by the Association of Gay Psychologists Caucus Meeting in New Orleans in September 1974. Further, Council voted that the Association's Statement of Policy regarding Equal Employment Opportunity be amended to include sexual orientation among the prohibited discriminations listed in the statement. Following is the Policy Statement regarding Discrimination against Homosexuals:

1. The American Psychological Association supports the action taken on December 15, 1973, by the American Psychiatric Association, removing homosexuality from that Association's official list of mental disorders. The American Psychological Association therefore adopts the following resolution:

Homosexuality per se implies no impairment in judgement, stability, reliability, or general social and vocational capabilities:

Further, the American Psychological Association urges all mental health professionals to take the lead in removing the stigma of mental illness that has long been associated with homosexual orientations.

2. Regarding discrimination against homosexuals, the American Psychological Association adopts the following resolution concerning their civil and legal rights:

The American Psychological Association deplores all public and private discrimination in such areas as employment, housing, public accommodation, and licensing against those who engage in or have engaged in homosexual activities and declares that no burden of proof of such judgement, capacity, or reliability shall be placed upon these individuals greater than that imposed or any other persons. Further, the American Psychological Association support and urges the enactment of civil rights legislation at the local, and state and federal level that would offer citizens who engage in acts of homosexuality same protections now guaranteed to others on the basis of race, creed, color. Further, the American Psychological Association supports and urges the repeal of all discriminatory legislation singling out homosexual acts by consenting adults in private. (Conger, 1975, p. 633)

Appendix F-1

C. SELECTED QUOTATIONS

"The deletion of homosexuality from the *Diagnostic and Statistical Manual* of the American Psychiatric Association in 1980 marked a dramatic reversal of the judgment that homosexuality is a behavioral disorder. In the practice of medicine, especially psychiatry, it is important to distinguish between that which is abnormal and that which is not."

--Richard C. Friedman, M.D. and Jennifer I. Downey, M.D., "Homosexuality," *New England Journal of Medicine*, October 6, 1994, Volume 331, No. 14, pg. 923.

"The literature on children of lesbian mothers indicates no adverse effects of a homosexual orientation, as evidenced by psychiatric symptoms, peer relationships, and overall functioning of the offspring. The frequency of a homosexual orientation has not been greater in such children than in children of heterosexual mothers. The data on children of gay fathers is more scant. No evidence has emerged, however, to indicate an adverse effect of sexual orientation on the quality of fathering. Enough information has accumulated to warrant the recommendation that sexual orientation should not in itself be the basis for psychiatric and legal decisions about parenting or planned parenting."

--Richard C. Friedman, M.D. and Jennifer I. Downey, M.D., "Homosexuality," *New England Journal of Medicine*, October 6, 1994, Volume 331, No. 14, pg. 927.

"Patients who seek a change in their sexual orientation are diverse with respect to sexual attitudes, values, and psychopathological features. Some are motivated by homophobia, and the wish to change subsides as this is addressed. Others reject their homosexual orientation for other reasons, often religious. Sometimes the incompatibility between sexual desires and personal values cannot be resolved by therapeutic interventions."

--Richard C. Friedman, M.D. and Jennifer I. Downey, M.D., "Homosexuality," *New England Journal of Medicine*, October 6, 1994, Volume 331, No. 14, pg. 927.

"There are no data from scientific studies to justify the unequal treatment of homosexual people or their exclusion from any group."

--Richard C. Friedman, M.D. and Jennifer I. Downey, M.D., "Homosexuality," *New England Journal of Medicine*, October 6, 1994, Volume 331, No. 14, pg. 928.

"One of the justifications presented for strong anti-gay legislation in these states was the assertion that gays and lesbians are at particularly greater risk to sexually molest children. "Colorado for Family Values," a group lobbying to limit gay rights, asserted that people living a homosexual lifestyle were responsible for 50% of all child molestations..."

--"Atler disputes group's assertions about gays." *Denver Post*, Sept. 3, 1992, B5.

...In addition to noting the relationship to the child, we evaluated the information provided about the alleged perpetrators to determine if they were involved or had been involved in heterosexual relationships. Heterosexual relationships were documented for 237 (88%) of the alleged adult offenders. In 32 cases no "sexual identity" could be inferred from the pattern of relationships documented in the chart. In most of these cases, the person who

brought the child to the clinic was not personally acquainted with the alleged offender and had no knowledge of his or her habits or lifestyle.

--Jenny, MD, MBA, Carole; Thomas A. Roesler, MD; and Kimberly L. Poyer, MSW, "Are Children at Risk for Sexual Abuse by Homosexuals?" *Pediatrics*, Vol. 94, No. 1, July 1994.

"Community-based studies of adults indicate the typical perpetrator is likely to be a trusted person in the child's immediate network of family or friends, and rarely is childhood sexual abuse committed by strangers"

--Jenny, MD, MBA, Carole; Thomas A. Roesler, MD; and Kimberly L. Poyer, MSW, "Are Children at Risk for Sexual Abuse by Homosexuals?" *Pediatrics*, Vol. 94, No. 1, July 1994, citing Russel, D.E.H., "The incidence and prevalence of intrafamilial and extrafamilial sexual abuse of female children," *Child Abuse & Neglect*, 1983, 7:133-146.

"...a child's risk of being molested by his or her relative's heterosexual partner is over 100 times greater than by someone who might be identifiable as being homosexual, lesbian or bisexual."

--Jenny, MD, MBA, Carole; Thomas A. Roesler, MD; and Kimberly L. Poyer, MSW, "Are Children at Risk for Sexual Abuse by Homosexuals?" *Pediatrics*, Vol. 94, No. 1, July 1994.

"...no evidence is available from this data that children are at greater risk to be molested by identifiable homosexuals than by other adults. There is no support for the claim to the effect by groups advocating legislation limiting rights of homosexuals.

--Jenny, MD, MBA, Carole; Thomas A. Roesler, MD; and Kimberly L. Poyer, MSW, "Are Children at Risk for Sexual Abuse by Homosexuals?" *Pediatrics*, Vol. 94, No. 1, July 1994.

"If religious strictures are used to justify oppression by people who regularly disregard precepts of equal gravity from the same moral code, or if prohibitions which restrain a disliked minority are upheld in their most literal sense as absolutely inviolable while comparable precepts affecting the majority are relaxed or reinterpreted, one must suspect something other than religious belief as the motivating cause of the oppression."

--John Boswell, *Christianity, Social Tolerance, and Homosexuality*, Yale, 1980, pg. 7.

"There is a sense in which gay people were the first to introduce romantic love into the Christian system of thought, and following this, marriage as a result of romantic love rather than biological necessity. There is a great irony in the fact that in the 20th century gay people should therefore be made to feel that there is no place for them in that tradition..."

--The Fifth Annual Michael Harding Memorial Address: Rediscovering Gay History, by John Boswell, transcript by Gay Christian Movement, 1982, pg. 21.

"One might view these unions as 'imitative of' heterosexual marriage, but it would be more cautious to see them as modes of 'participating in' the majority culture."

--John Boswell, *Same-Sex Unions in Pre-Modern Europe*, Villard, 1994, pg. 82.

Karl Ulrichs, a German and probably the first gay political activist to ever live wrote in 1869 of the church's refusal to sanction gay marriage:

"That they have omitted doing this...is a sin of hitherto unsuspected significance for the Church, a sin whose burden falls upon the Church itself. It criticizes the [gay person] with: 'You fulfill your...Sexual orientation sinfully.' However, based upon that omission, he parries the entire criticism with: 'You, however, carry the guilt of not making it possible for me to do so without sin'."

--Karl Heinrich Ulrichs, trans. by Michael Lombardi-Nash, *The Riddle of "Man-Manly" Love*, 1994, pg. 563. (Originally published 1864-1879.)

Ulrichs again:

"But to call the blind cry of the masses: 'Punish the [homosexual's] 'awareness of the law' is nothing but a euphemism. Two hundred forty years ago they called out: 'Burn the sorcerer!' and at one time in Rome: 'Christians to the lions!' Would you call those the 'awareness of the law'? In London they once established a committee for the delivery of wood to the funeral piles 'to burn heretic'... Legislators should not subordinate themselves to such an awareness of the law... We have ministers of justice, not ministers of people's passions."

--Karl Heinrich Ulrichs, trans. by Michael Lombardi-Nash, *The Riddle of "Man-Manly" Love*, 1994, pg. 540. (Originally published 1864-1879.)

In his book, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights*, Richard Mohr recounts the following true, not atypical story:

"On their walk back from their neighborhood bar to the Victorian [house] which, over the years, they have lovingly restored, Warren and Mark stop along San Francisco's Polk Street to pick up milk for breakfast...Just for kicks, some wealthy teens from the valley drive into town to 'bust some fags.' Warren dips into a convenience store, while Mark has a smoke outside. As Mark turns to acknowledge Warren's return, he is hit across the back of the head with a baseball bat. Mark's blood and vomit splash across Warren's face. At San Francisco General, Mark is dead on arrival. Subsequently in 1987, a California appellate court holds that under no circumstance can a relationship between two homosexuals--however emotionally significant, stable, and exclusive--be legally considered a 'close relationship,' and so Warren is barred from bringing any suit against the bashers for negligently causing emotional distress, let alone for wrongful death."

--Richard Mohr, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights*, Beacon, 1994, pp. 33-34.

"They are married to each other in their own eyes, in God's eyes, in the eyes of their church and community--in every eye but the law's."

--Richard Mohr, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights*, Beacon, 1994, pp. 52-53.

"...in approaching the courts, gays need to acknowledge that there are some cases and moral causes that are advanced for the sake of such important values that they are causes and cases worth losing."

--Richard Mohr, *Gay Ideas: Outing and Other Controversies*, Beacon, 1992, pg. 86.

"I suggest that, for the foreseeable future, dignity rather than happiness or practicality ought to be the ideal and polestar of gay politics."

--Richard Mohr, *Gay Ideas: Outing and Other Controversies*, Beacon, 1992, pg. 94.

The legal philosopher **Ronald Dworkin** explained how ideas that many ideas once seen as radical will come to be seen as obviously true:

"They appeared in law school classrooms and law review articles, then as lawyers' arguments in particular cases at law, then as judicial arguments in dissenting opinions explaining why the majority opinion, reflecting the orthodoxy of the time, was unsatisfactory, then as the opinions of the majority in a growing number of cases, and then as propositions no longer mentioned because they went without saying."

--Ronald Dworkin, *Law's Empire*, Harvard University, 1986, pg. 137.

Legal philosopher **H.L.A. Hart**:

"No doubt it is true that if deviations from conventional sexual morality are tolerated by the law and come to be known, the conventional sexual morality might change in a permissive direction. But even if the conventional morality did so change, the society in question would not have been destroyed or 'subverted.' We should compare such a development not to the violent overthrow of government but to a peaceful Constitutional change in its form, consistent not only with the preservation of a society but with its advance."

--H.L.A. Har, *Law, Liberty, and Morality*, Stanford University, 1963, pg. 52.

Gay legal theorist **William Eskridge**:

"We are gender rebels because that role has been thrust upon us by oppressive dividing practices, including legal discriminations like the exclusion from marriage. If those dividing practices were to collapse, we might tend to meld back into society's mainstream, which does not inevitably strike me as baleful."

--William Eskridge, "A History of Same-Sex Marriage," *Virginia Law Review*, Vol. 79 (1993), pg. 1490.

In response to some gay activists who worry that marriage will somehow create a classes of "good" vs. "bad" gay men and lesbians:

"I am underwhelmed by this argument."

--William Eskridge, "A History of Same-Sex Marriage," *Virginia Law Review*, Vol. 79 (1993), pg. 1492.

In response to the charge that gay men have much more to gain from marriage than do lesbians, the gay legal philosopher William Eskridge responds: "Lesbians are often the plaintiffs in same-sex marriage lawsuits, and the overwhelming majority of same-sex couples who have actually obtained marriage licenses in the United States have been women, including women passing as men and lesbians of color."

--William Eskridge, "A History of Same-Sex Marriage," *Virginia Law Review*, Vol. 79 (1993), pg. 1492.

And finally:

"Once those repressed by dividing practices such as this one recognize that their isolation is unnecessary as well as hurtful, they resist it. And once they resist, there is hell to pay until the system relents, which it ought to do promptly."

--William Eskridge, "A History of Same-Sex Marriage," *Virginia Law Review*, Vol. 79 (1993), pg. 1507.

"THE "GAY ELITE" is a myth. A new University of Maryland study to be released today, found gay workers earn less than others in the same jobs. Gay men earn 11% to 27% less than heterosexual men of similar age, occupation, marital status and residence. Lesbians earn 5% to 14% less.

--Labor Letter, A Special News Report on People and Their Jobs in Offices, Fields and Factories, *The Wall Street Journal*, Aug. 16, 1994.

Appendix F-2

A. "NOT-SO-STRAIGHT NEWS"

THE GAY GENE

Not-so-straight news

"Reporting" on genetic research tells only half the story

BY CAL THOMAS

The "discovery" of "new evidence" of a "gay gene" was trumpeted on the front page of *The Washington Post* as a scientific breakthrough equivalent to a cure for cancer. But the story is another exercise in the uncritical "reporting" by most of the major media when it comes to homosexuality and an example of the loss of credibility the press suffers when it climbs into bed with an advocacy group.

The story quotes another "study" by Dean Hamer, a molecular biologist at the National Cancer Institute. One might ask

Press stories don't mention that Mr. Hamer was reassigned to other areas of research, such as smoking and cancer, after ethical questions arose. Or that co-researcher David Fulker told the *Chicago Tribune* on June 25, "If the second study were the first study, it wouldn't have been published. The second study is not strong enough [statistically] to stand on its own."

The *Post* story tells of researchers "confirming and [extending] ... the discovery that hereditary factors apparently predispose some men to homosexuality." But is it good science for scientists to confirm and extend their own original findings? Such findings must be confirmed by other scien-



At the gay journalists' meeting: Clinton advisor George Stephanopoulos, left, and Rep. Barney Frank.

why federal funds targeted for cancer research are being diverted for another purpose, but the *Post* doesn't.

The *Post* fails to mention that Mr. Hamer's widely trumpeted 1993 "gay gene" study is under investigation for alleged fraud by the federal Office of Research Integrity and that a colleague of Mr. Hamer has charged that Mr. Hamer selectively reported data in ways that enhanced the study's thesis. Nor does the press report on Mr. Hamer's own homosexuality, which might indicate to some readers that he has a bias in favor of discovering a biological cause for homosexual behavior.

tists. Mr. Hamer, who published his original conclusions in *Science* magazine, chose another publication, *Nature Genetics*, for his latest conclusions.

The *Post* notes that the second study, unlike the first, reports on a control group of heterosexual brothers, but downplays the fact that 22 percent of the non-gay brothers had the same genetic markers. If Mr. Hamer's conclusion is that genetic makeup determines homosexuality, why isn't this fifth of the sample of non-gay subjects gay? Mr. Hamer also has never explained why he did not include a heterosexual control group in his first study.

Not only is scientific integrity compromised in such studies, journalistic credibility is, too. Mr. Hamer once told a meeting of Parents and Friends of Lesbians and Gays, "If you tell the press what to write about a scientific study, they'll write it." He added that when he told the press that homosexuality is like being left-handed, it dutifully reported his analogy.

Why has most of the press become a shell for the gay rights movement? Fear is one answer. Most liberals don't want to be labeled "intolerant" and shy away from any moral code that doesn't support their political comfort level. But perhaps the main reason is that the establishment media have developed a relationship with the political objectives of gay-rights activism that has shamefully compromised their ability to report objectively and fairly on the issue.

Evidence of this compromise is everywhere, from the open recruitment of "gay journalists" to a convention of the National Lesbian and Gay Journalists Association meeting in Washington last month. A copy of the program shows that not only were representatives of major press organizations in attendance as participants, they also contributed substantially to the cost of the event. Their names were listed in the program.

The Washington Post contributed \$2,500 to the convention and underwrote a National Press Club awards reception. *The New York Times* kicked in \$5,000 and cosponsored (along with NBC News, an \$8,000 contributor) a luncheon with the Minority Journalism Association presidents.

Other mainstream media underwriters included Knight-Ridder (\$15,000), The Gannett Foundation (\$10,000), CBS News (\$7,500), the *Los Angeles Times* (\$5,000), ABC News Washington Bureau (\$3,000), Hearst Newspapers, and *The Miami Herald* (\$2,500 each).

Would anyone imagine such press giants making contributions to, or cavorting with, the Christian Coalition? Whatever happened to press ethics? Whatever happened to the arm's-length separation journalists were supposed to observe between themselves and the subjects they cover?

Never has it been more necessary for the public to analyze the information it receives from the media in order to determine whether it is truth or propaganda. Increasingly, when it comes to homosexuality, the press cannot be trusted. ■

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Appendix F-2

B. ACLU PRESS RELEASE



P R E S S R E L E A S E

AMERICAN CIVIL
LIBERTIES UNION
OF HAWAII

FOR IMMEDIATE RELEASE
October 27, 1993

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Vanessa Y. Chong
Executive Director
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COALITION FORMS TO SUPPORT SAME-SEX MARRIAGE
AND
OPPOSE STATE CONSTITUTIONAL AMENDMENT

A coalition of community organizations went public today to announce their support of the same-sex marriage case and to oppose a movement for a state constitutional amendment.

President:
Celia M. Fritz
Vice President:
Patricia Q. Lichty
Secretary:
Patricia Thomas
President:
Pat M. Hammers
National Representative:
Roger W. Fonseca
Executive Committee Member:
A. Joris Wallace

The ACLU of Hawaii is coordinating the work of the Coalition. Executive Director Vanessa Chong said, "The Coalition formed to defend Hawai'i's unique and fundamental traditions of diversity, tolerance, acceptance of different cultures and lifestyle, and a commitment to equality."

Members of the Board:
Bernice E. Coleman
Mark S. Davis
Thomas P. Gill
Nancy N. Grekin
Julie Hugg
Tom Humphreys
Andy M. Ichik
Miles M. Jackson
Elizabeth Kent
Lumford Dale Phillips
Marlene Sepple
Rick Schneider
William G. Siggel
Judy M. Weightman

The groups issued a joint statement (attached) and will be testifying at a hearing in Honolulu this Friday, October 29th, on same-sex marriage.

The House Judiciary Committee has been holding informational hearings state-wide since September. The turn out has been large. No legislation is being proposed, but some are calling for a state constitutional amendment.

Executive Director:
Vanessa Y. Chong
Legal Director:
Carl M. Varady
Program Director:
Brid Wilson

The Coalition is especially urging all citizens to contact the House Judiciary Chair, Representative Terrance Tom.

"Every voice of reason counts. The case should get its full day in court. We're going to fight any attempt to subvert the judicial process", said Chong.

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Attachments: - Joint Statement
- List of Organizations

Contributions to the ACLU
of Hawaii Foundation are
tax deductible to the extent

Appendix F-2

C. SELECTED QUOTATIONS

"Approximately thirty per cent of male homosexuals who come to psychotherapy for any reason (not just for help with their sexual preference) can be converted to the heterosexual adaptation.

--Ruth Tiffany Barnhouse, *Homosexuality: A Symbolic Confusion* (New York: The Seabury Press), 1977, pg. 97.

In 1952, Dr. Irving Bieber supervised a nine-year project studying male homosexuality. There were 77 members of the Society of Medical Psychoanalysts who supplied information on two patient samples--106 homosexual males and 100 heterosexual males. The outcome? "Of 106 homosexuals who undertook psychoanalysis... 29 (27 percent) became exclusively heterosexual..."

--Dr. Irving Bieber, *Homosexuality: A Psychoanalytic Study* (New York: Basic Books), 1962, pg. 301.

"During a ten-year period, from 1967 to 1977, I have treated psychoanalytically 55 overt homosexuals.... One can report... that the forty-four overt homosexuals who have undergone psychoanalytic therapy, twenty patients, nearly 50 percent, developed full heterosexual functioning and were able to develop love feelings for their heterosexual partners."

--Charles W. Socarides, M.D., *Homosexuality* (New York: Jason Aronson), 1978, pp. 405-406.

"Five years after publishing our study, a follow-up of patients showed that the one-third whose adaptation had shifted to heterosexuality remained so. And we have personally followed some patients for as long as 20 years who remained exclusively heterosexual."

--Morey, Tom, Committee to Study Homosexuality of the United Methodist Church, General Conference of Ministries, Chicago Meeting on the Sciences, August 1990, pg. 19.

"About eighty percent of homosexual men and women in Syntonic Therapy have been able to free themselves and achieve a healthy and satisfying heterosexual adjustment... These individuals were selected as follows: (1) They were not psychotic and they had the ability to work and function as self-supporting people. (2) They were not psychopathic and they had the ability to experience the emotions of fear and guilt and to be aware that they were not fulfilling their human potential. (3) They came to therapy for themselves, and not to please someone else. (4) They were able to direct their aggression therapeutically and were able to learn to work with themselves, between sessions, when in anxiety or panic states, rather than act out their problem homosexually. (5) They were strongly enough motivated to go through the inevitable rough spots of change without quitting, staying till they had resolved their problems."

--Robert Kronmeyer, *Overcoming Homosexuality* (New York: Macmillan Publishing Company, Inc.), 1968, pg. 135.

"Recently I have worked with seven male homosexuals and three lesbians. The outcome of the therapy of these ten patients has been a successful reorientation in their sexual practices to heterosexuality in seven cases... In evaluating these patients, I found that the classification or the degree of homosexuality was not a factor in the effectiveness of the therapy."

--Dr. William pg. Wilson, *What You Should Know About Homosexuality*, edited by Charles W. Keyser (Grand Rapids: Zondervan Publishing House), 1979, pg. 164.

Masters and Johnson worked with sixty-seven male homosexuals and fourteen lesbians who asked for conversion or reversion therapy to heterosexuality and said their failure rate was 28.4% after a follow-up of six years (pg. 402)... In treating sexual dysfunction in heterosexuals their failure rate was 20%. (pg. 408)

--William H. Masters and Virginia E. Johnson, *Homosexuality in Perspective* (Boston: Little, Brown and Company), 1979, pgs. 402 and 408.

"...Homosexuality has a 30 to 50 per cent chance of reversing with psychiatric treatment." (pg. 519)

"...Combined therapy with homogeneous groups has been... the treatment of choice.... The rate of recovery among the homosexuals treated in these groups is 49 per cent." (pg. 532)

--Dr. Toby Bieber, "Group Therapy with Homosexuals," *Comprehensive Group Psychotherapy*, edited by Harold I. Kaplan and Benjamin J. Saddock (Baltimore: The Williams and Wilkins Company), 1971.

Eleven men, ages 21 through 35, claimed they changed their sexual orientation "from exclusive and active homosexuality to exclusive heterosexuality through participation in a Pentecostal church fellowship. None of these men had ever sought professional treatment for their psychiatric reasons or for their homosexuality. The church had a crisis service for homosexuals which gave these men 'a welcome reception as homosexuals. No attempt was made to make them change their homosexuality. Rather, they were presented with the invitation to commit their life to Christ and the church. All subjects had an explicit Christian conversion or rededication. They were then invited into small church groups where they studied the Bible and learned expected Biblical patterns of mature lifestyle. This included an expectation to engage in loving, nonerotic relationships with both men and women in the fellowship groups.'" (pg. 1558)

"None of the subjects claimed a miraculous deliverance but rather 'the gradual diminution of their homosexual drives...'" (pg. 1555) Supervisor of the study, Dr. E. Mansell Pattison stated "that 8 of our 11 subjects amply demonstrated a 'cure.' The remaining 3 subjects had a major behavioral and intrapsychic shift to heterosexual behavior, but the persistence of homosexual impulses was still significant." (pg. 1560)

"Thus, all subjects in our sample demonstrated a strikingly profound shift in sexual orientation." (pg. 1555)

"The evidence suggest that cognitive change occurs first, followed by behavioral change, and finally intrapsychic resolution." (pg. 1562)

--E. Mansel Pattison and Myrna Loy Pattison, "Ex-Gays': Religiously Mediated Change in Homosexuals," *American Journal of Psychiatry*, December 1980.

Psychologist Dr. Gerald van den Aardweg has counselled homosexuals for more than 20 years. In an extensive analysis of the 101 homosexual men he's worked with, he said, "Of those who continued treatment--60 percent of the total group--about two-thirds reached at least a satisfactory state of affairs for a long period of time. By this is meant that the homosexual feelings had been reduced to occasional impulses at most while the sexual orientation had turned predominantly heterosexual, or that the homosexual feelings were completely absent, with or without predominance of heterosexual interests. Of this group, however, about one-third could be regarded as having been changed 'radically.' By interests this is meant that they did not have any more homosexual interests but had normal heterosexual feelings..." (pgs. 105-106)

"These results are still far from perfect, but... the radically changed cases--from complete homosexuality to normal heterosexuality--refute the theory that therapy of homosexuality is pointless...." (pg. 107)

--Gerald van den Aardweg, *Homosexuality and Hope: A Psychologist Talks About Treatment and Change* (Ann Arbor: Servant Books), 1986.

Dr. Edmund Bergler (graduated from Vienna's Medical School; served on staff at Freud Clinic from 1927-1937).

"In nearly thirty years, I have successfully concluded analyses of one hundred homosexuals... and have seen nearly five hundred cases in consultation... On the basis of the experience thus gathered, I make the positive statement that homosexuality has an excellent prognosis in psychiatric-psychoanalytic treatment of one to two years' duration, with a minimum of three appointments each week--provided the patient really wishes to change." (pg. 176)

"...And cure denotes not bisexuality, but real and unfaked heterosexuality." (pg. 279)
...The color of a person's eyes cannot be changed therapeutically, but homosexuality can be changed by psychotherapy." (pg. 166).

--*Homosexuality: Disease or Way of Life* (New York: Collier Books), 1962.

Dr. Bernard Berkowitz, Mildred Newman and Jean Owen (Berkowitz got his Ph.D. from New York University. Newman graduated from Hunter College; she trained with Theodore Reik; she completed analytic training at the National Psychological Association for Psychoanalysis.)

"Analysts once thought they had little chance of changing homosexuals' preferences and had little success in that direction. But some refused to accept that and kept working with them, and we've found that a homosexual who really wants to change has a very good chance of doing so. Now we're hearing all kinds of success stories."

--*How to be Your Own Best Friend* (New York: Lark Publishing Company), 1971, pp. 22-23.

Dr. Toby B. Bieber (Ph.D. from Columbia University; lecturer in psychology at New York University; clinical instructor in psychiatry at New York Medical College).

"Few, if any, homosexuals are satisfied with their condition, whether or not this is consciously admitted. Those who cling to their homosexual orientation and avoid contemplating possibilities for change are, by and large, chronically depressed, although

episodes of gloom and despair may be rationalized to other situations. Strident public declarations about happy homosexuality are evidence of denial mechanisms...."

--*Comprehensive Group Psychotherapy*, edited by Harold I. Kaplan and Benjamin J. Saddock (Baltimore: the Williams and Wilkins Company), 1971, pg. 521.

Dr. Anna Freud (studied with her father Sigmund Freud)

In 1950, Dr. Anna Freud, "lectured in New York on the recent advances in treatment of homosexuals, stating that many of her patients lost their inversion as a result of analysis. This occurred even in those who had proclaimed their wish to remain homosexual when entering treatment, having started only to obtain relief from their homosexual symptoms."

--Dr. Charles Socarides, "Homosexuality," *American Handbook of Psychiatry*, 2nd edition, Vol. 3 (New York: Basic Books, Inc.), 1974, pg. 308.

Dr. Samuel Hadden (was associate professor of Psychiatry at University of Pennsylvania Medical School; pioneered use of group therapy in helping homosexuals).

"While there is little doubt that the homosexual is difficult to treat and is prone to break off treatment...if psychotherapists themselves come to adopt a less pessimistic attitude and view homosexuality simply as a pattern of maladaptation, greater numbers of such patients will be significantly helped."

--Samuel B. Hadden, "Treatment of Male Homosexuals in Groups," *The International Journal of Group Psychotherapy*, XVI, No. 1, Jan. 1966, pg. 14.

In another article, Dr. Hadden states that not all mental health professionals are actually qualified to help the homosexual. For treatment to be successful, "a vital factor... is the therapist's attitude toward a particular disorder and those afflicted by it. If, for example, he feels that some aberrations cannot be successfully treated or feels any distaste for treating the condition, he will communicate his pessimism and dislike to the patient and failure is almost inevitable."

--"A Way Out for Homosexuals," *Harper's Magazine*, March 1967, pg. 107.

Dr. Lawrence J. Hatterer (M.D. from Columbia Medical School; basic psychiatric training at New York Medical College; served as Associate Clinical Professor of Psychiatry at Cornell Medical School).

"Over the past seventeen years I have evaluated 710 males troubled and untroubled by a vast spectrum of homosexually fantasy, impulse, act, and milieu. Since 1953 I have successfully and unsuccessfully treated well over 200 of them.... I have also collected two to fifteen year follow-ups on some patients. Of this group, forty-nine patients recovered, nineteen partially recovered, seventy-six remained homosexual." (pgs. vii, viii)

"...Other therapists who have specialized in research and treatment of men troubled by homosexuality reported 23 per cent to 28 per cent of the motivated patients totally capable of a heterosexual readaptation. (pg. 94)

"...I've heard of hundreds of other men who went from a homosexual to a heterosexual adjustment on their own. (pg. 138)

"...A large undisclosed population has melted into heterosexual society, persons who behaved homosexuality in late adolescence and early adulthood, and who, on their own, resolved their conflicts and abandoned such behavior to go on to successful marriages or to bisexual patterns of adaptation. (pg. 14)

--*Changing Homosexuality in the Male* (New York: McGraw-Hill Book Company), 1970.

Dr. Arthur Janov (psychologist and psychiatric social worker at Los Angeles Children's Hospital; consultant to California Narcotic Outpatient Program; developed Primal Scream program.)

"I do not believe that there is a basic genetic homosexual tendency in man. If this were true, the cured patient would still have his homosexual needs, which he does not. (pg. 328)

"The homosexual act is not a sexual one. It is based on the denial of real sexuality and the acting out symbolically through sex of a need for love.... The homosexual has usually eroticized his need so that he appears to be highly sexed. Bereft of his sexual fix, his lover, he is like an addict without his connection; without his lover, he is in the pain that is always there but which is drained off sexually. But sex is not his goal--love is. (pg. 322)

"I have found that homosexual habits that have persisted for years have faded away in the face of reality." (pg. 322)

--*The Primal Scream* (New York: Dell Publishing Company), 1970.

Dr. Jeffrey Keefe (Ph.D. in psychology from Fordham University; interned at Bellevue Psychiatric Hospital; worked at Staten Island Mental Health, St. Vincent Medical Center; taught at Notre Dame).

"Can homosexuals change their orientation? The fact, reported in the literature, proves the possibility. I have seen some homosexuals in treatment--and have met more former homosexuals (including those who were exclusively so)--who now respond physically and emotionally as heterosexuals in successful marriages. Movement toward the heterosexual end of the Kinsey scale ordinarily requires strong motivation on the client's part, a skilled therapist, and unfortunately more often than not, financial resources...."

--Father John F. Harvey, *The Homosexual Person: New Thinking in Pastoral Care* (San Francisco: Ignatius Press), 1987, pg. 76.

Dr. Judd Marmor (M.D. from Columbia University; served as resident neurologist at Montefiore Hospital; president of the American Psychiatric Association; president of American Academy of Psychoanalysis).

"The myth that homosexuality is untreatable still has wide currency among the public at large and among homosexuals themselves...."

"There is little doubt that a genuine shift in preferential sex object choice can and does take place in somewhere between 20 and 50 per cent of patients with homosexual behavior who seek psychotherapy with this end in mind. The single most important prerequisite to reversibility is a powerful motivation to achieve such a change."

"Although some gay liberationists argue that it would be preferable to help these persons accept their homosexuality, this writer is of the opinion that, if they wish to change, they deserve the opportunity to try, with all the help that psychiatry can give them...."

--"Homosexuality and Sexual Orientation Disturbances," *Comprehensive Textbook of Psychiatry II*, second edition, edited by Alfred M. Freedman, Harold I Kaplan, and Benjamin J. Saddock (Baltimore: The Williams & Wilkins Company), 1975, pg. 1519.

Masters and Johnson (Dr. William H. Masters--M.D. from University of Rochester; served as Professor of Clinical Obstetrics and Gynecology for the School of Medicine of Washington University, Director of the Reproductive Biological Research Foundation and Co-director and Chairman of the Board of the Masters and Johnson Institute. Virginia E. Johnson studied at University of Missouri; Research Director of the Reproductive Biological Research Foundation; Co-director of the Masters and Johnson Institute).

"No longer should the qualified psychotherapist avoid the responsibility of either accepting the homosexual client in treatment...or referring him or her to an acceptable treatment source."

Dr. E. Mansell Pattison (studied at University of Oregon and University of Cincinnati; worked for the National Institutes of Mental Health; taught at Georgetown University, University of Washington, The University of California at Irvine and the Department of Psychiatry and Human Behavior of the Medical College of Georgia in Augusta).

Dr. Charles W. Socarides, M.D. (Clinical Professor of Psychiatry at Albert Einstein College of Medicine; in 1995 received Distinguished Professor award from the Association of Psychoanalytic Psychologists, British Health Service; current President of National Association of Research and Therapy of Homosexuality [N.A.R.T.H.]

"Even the most serious cases of homosexuality will yield to therapy if the patient seeks therapy when he feels severely distressed about being homosexual, not only because of guilt or shame but because he finds his homosexual life meaningless... (pg. 418)

"There is at present sufficient evidence that in a majority of cases homosexuality can be successfully treated by psychoanalysis... (pg. 3)

"While I can minimize neither the hard work and resoluteness required of the psychoanalyst in treating this serious disorder, nor the courage and endurance required of the patient, a successful resolution brings reward fully commensurate with their labors." (pg. 6)

--*Homosexuality* (New York: Jason Aronson), 1978.

Dr. William pg. Wilson (M.D. from Duke University; served as president of the Southern Psychiatric Association; chairman of the nuerology/psychiatry section of the American Medical Association).

"Treatment using dynamic individual psychotherapy, group therapy, aversion therapy, or psychotherapy with an integration of Christian principles will produce object-choice reorientation and successful heterosexual relationships in a high percentage of persons.... Homosexuals can change their orientation."

--*What You Should Know About Homosexuality*, edited by Charles W. Keysor (Grand Rapids: Zondervan Publishing House), 1979, pg. 167.

Appendix G

SURVEY OF PUBLIC OPINION POLLS

Polls show Americans often initially resent equal rights being extended to people, but that this opposition recedes in time. Also, in some cases of equal rights, many Americans may report private opposition towards some group of people, but Americans will also often stand up for making sure the government treats everyone equally.

For example, in 1954 the States of Georgia, Louisiana, Mississippi, and South Carolina voted, sometimes by more than two-to-one margins of the voters, to amend their constitutions to allow for selling off all of the public schools so that the schools could be privatized, or other schemes, to permit school desegregation to continue after the Federal *Brown v. Board of Education* case (see the *New York Times*, December 22, 1954, page 1). Even in the northern state of Delaware, a poll indicated over 98% opposed school integration (*New York Times*, November 23, 1954, page 49). Yet, over time, these numbers and hard feelings have declined.

A high level of national disapproval exists in polling data against gays and lesbians, with polls showing a disapproval rate of 50% to 77%, depending on how the poll was phrased (see Susan Hibbard's 1994 survey of polls, page 2); see also the Commission minority's selective poll results included later in this appendix. At the same time, approximately three-quarters of Americans feel that gays and lesbians should have equal employment rights, and a typical response is that "homosexuality is wrong, but it should be legal" (Hibbard, page 2).

For example, in a February 3, 1994, Hawaii poll, the Honolulu *Star-Bulletin* reported that "52 percent said allowing gays and lesbians to legally wed would make no difference in Hawaii's image" (page A-1). In a national poll released by People for the American Way, 62 percent said intolerance and discrimination against lesbian and gay people is a serious problem, and 65 percent said "the government should not concern itself with the morality of private activity, such as sexual orientation." Likewise, a poll conducted for the U.S. News and World Report found that two-thirds of voters favor ensuring equal rights for gay people and preventing discrimination against gays, with a majority of every demographic subgroup supporting the idea -- including those who voted for Clinton, Bush and Perot (from Humans Rights Campaign Fund report of national polls).

Likewise, a 1994 poll by the Public Agenda Foundation found that 61 percent of Americans believe it is appropriate for public schools to teach "respect for people who are homosexual" (as reported in the *Washington Blade*, October 21, 1994).

People are concerned about discrimination because they believe that gays and lesbians are being discriminated against. A 1992 national poll found that 93% said that homosexuals face discrimination and prejudice, with only 4% saying they experienced no discrimination. In a 1993 New York state survey of eight Republican state senate districts found that a minimum of two-thirds of voters, of every age group, political party, ideology and gender, answered yes when asked if gays and lesbians face discrimination (Hibbard, page 5).

Americans respect civil rights. From the days of opposition to African-Americans in the 1950s, Americans today have moved to a general approval of basic human rights for all citizens. For example, while polls show a majority personally opposed to homosexuality in 1993, 42%-53% of various polls agreed that the laws which protect the human and civil rights for other minorities (e.g., racial and religious minorities, some polls included women) should

be extended to include gay men and lesbians. A 1993 poll for the Times Mirror publishing company found that 83% felt that "protecting the rights of gays and lesbians" was either somewhat, very, or critically important (Hibbard, page 8).

Whether someone wanted the government to discriminate against gays and lesbians had a lot to do with the person's gender, age, education level, and acquaintance with lesbians and gays. Women, younger adults, people with higher educations, and those who know gay friends or family members all tend to oppose discrimination more strongly and are more likely to support legislation assisting gays and lesbians (Hibbard, page 1).

A 1993 New York Times/CBS poll asked if homosexuality was "an acceptable alternative lifestyle or not?" Those that found it a more acceptable lifestyle included those 18-44 years old, women, and those with some college (or college graduates). Those over 44 years old, men, and those with high school (or less) education found homosexuality more of an unacceptable lifestyle (Hibbard, page 17).

A 1992 poll of Colorado, which was then considering an anti-gay initiative on its ballot, also found that the strongest support for the anti-gay effort came from persons over 44 years old, men, and those with high school (or less) education. Support for gay rights came particularly from those 35-44 years old, women, and those with a college degree (Hibbard, page 17). A follow-up Colorado poll in 1993 had similar results. Those in favor of governmental discrimination against gays and lesbians were primarily those over 65 years old, men, those with high school or less education. The poll also found that Republicans and Whites tended to be against gay rights. On the other hand, those against the discrimination were primarily those 25-44 years old, women, college-graduates, Democrats, and non-whites (Hibbard, page 17).

In 1992 Oregon also considered an initiative that would discriminate against gays and lesbians. Those more in favor again tended to be older folks, men, and Republicans. Those most strongly against the discrimination were those 18-44 years old, women, Democrats and Independents (Hibbard, page 17).

FIVE HAWAII POLLS ON LEGALIZING SAME-SEX "MARRIAGE"

QUESTION	RESULTS	MARGIN OF ERROR	WHO	POLL		DATE / SOURCE
Should gay couples be allowed to marry?	YES-34% NO-49% NOT SURE 17%	4.9%	425 registered voters	Political Media Research	Star-Bulletin KGMB-Ch.9	April 3-7, 1991 Star-Bulletin 4/24/91
Do you favor or oppose gay marriages in Hawaii?	FAVOR— 30% OPPOSE— 61% UNSURE— 9%	5%	419 registered voters	Political Media Research	Star-Bulletin	June 4-7, 1993 Star-Bulletin 6/19/93
Do you approve or disapprove of a proposed legislative bill legalizing same-sex marriages?	APPROVE-31% DISAPPROVE- 58% UNSURE-11%	5%	423 registered voters	Political Media Research	Star-Bulletin	Oct. 21-23, 1993 Star-Bulletin 11/6/93
Should same-sex couples be allowed to marry in Hawaii?	YES-25% NO-67% DONT KNOW 8%	4%	605 Hawaii residents	SMS Research/ Marketing Services Inc.	Honolulu Advertiser/ KHON-Ch.2	Feb. 12-17, 1994 Advertiser 2/28/94
Should Hawaii allow two people of the same sex to get married?	YES-24% NO-68% DONT KNOW OR REFUSED 8%	3.5%	800 Hawaii residents	SMS Research/ Marketing Services Inc.	Honolulu Advertiser/ KHON-Ch.2	July 19-29, 1994 Advertiser 8/4/94

Appendix H
WRITTEN COMMUNICATIONS
BETWEEN COMMISSIONERS

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Commission on Sexual Orientation and the Law
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Phone: (808) 587-0666; Facsimile: (808) 587-0681

Thomas P. Gill, Chairperson
Lloyd James Hochberg, Jr.
Robert H. Stauffer

Morgan Britt
Nanci Kreidman

L. Ku'umeaaloha Gomes
Marie A. "Toni" Sheldon

August 31, 1995

MEMORANDUM

TO: Members, Commission on Sexual Orientation and the Law

FROM: Thomas P. Gill
Chairman

SUBJECT: Introductory Material for Distribution

Enclosed is a list of items being distributed to members of the Commission so that we can familiarize ourselves with some of the issues and points of view we will need to consider. The items include:

1. The *Baehr v. Lewin* decision. 74 Haw. 530 (1993). Note highlighted portions on pages 560 and 561 regarding rights and benefits effected.
2. The Attorney General's letter dated May 15, 1995 regarding Chapter 92 (Sunshine Law) as it relates to casual meetings of members of the Commission.
3. The Interim Report of the prior Commission. (A more complete version of Appendix B should be available by the first meeting.)
4. The enabling act of the Commission, Act 5, Session Laws of Hawaii 1995, and related committee reports.
5. The enabling act of the prior commission, Act 217, Session Laws of Hawaii 1994.
6. August 1995 Special Report of the Spectrum Institute "Legalization of Same-Sex Marriage is Sure Bet in Hawaii—Or is it?"
7. *McGivern v. Waihee*, January 13, 1995, court order invalidating participation of four members of the prior commission.
8. The New Mexico "gender neutral" marriage law (N.M. Stat. Ann. Sec. 40.1.1) along with some subsequent sections and annotations.
9. An article from the *Hawaii Bar Journal* (February 1995) discussing some of the issues in opposition to same-sex marriage.

August 31, 1995

10. "God's Way", an unsolicited statement received from Evangelist C.F. Woodard.
11. An analysis of Domestic Partnership ordinances in existence (Special Report, Spectrum Institute).
12. Possible draft legislation for a Domestic Partnership law in Hawaii.
13. Official notice and agenda for September 13, 1995 meeting.

A proposed meeting schedule of once every two weeks will be discussed at the first meeting. Meeting days and times will be arranged to accommodate each commission member's schedule. Schedules may be modified in the future as needed.

If you have any material that you would like to distribute to the Commission at its first meeting, please contact Pamela Martin at 587-0666.

Thank you for responding to our letter of August 21st. It appears that the meeting date and place was agreeable to all members. The meeting will be held at 10:00 a.m., Wednesday, September 13, 1995, in the State Office Tower, Senate Caucus Room, 6th Floor. A parking permit for the meters at Iolani Palace on the Capitol side is enclosed. Be sure to display the permit on your dashboard.

TPG:mm
Enclosures



Commission on Sexual Orientation and the Law
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Thomas P. Gill, Chairperson *Morgan Britt* *L. Ku'umeaaloha Gomes*
Lloyd James Hochberg, Jr. *Nanci Kreidman* *Marie A. "Toni" Sheldon*
Robert H. Stauffer

October 2, 1995

MEMORANDUM

TO: Commission Members

FROM: Thomas P. Gill *Tom Gill*
Chairperson

SUBJECT: Procedure for Inviting Witnesses to Testify

It would seem, based on our meeting of September 27, that it would be helpful to all of us to have a more orderly procedure for inviting witnesses to testify. I have these suggestions:

The next meeting on October 11 will, after voting on the matters considered at the last meeting, hear testimony on the second item in Section 3 of Act 5: "Examine the substantial public policy reasons to extend or not to extend such benefits in part or in total to same-sex couples;". We need as wide a range of testimony as we can get, particularly from local organizations, churches or religious groups which could be affected by or have positions on the extension of such benefits. Since, at this point, public participation in the hearings has been quite limited I hope each member will help to expand our list of "invited guests". As indicated in our last agenda we have made some contacts and others are being pursued. We would appreciate having the names and affiliations of persons who are willing to appear submitted to the LRB by Friday, the 6th, so they can be circulated to the commission members before the 11th. If a person cannot appear on the 11th, we can hold time at the following meeting on October 25.

There are two categories where we need assistance: (1) trust officers or others in the private sector who administer health, retirement, or other funds which might be affected by the extension of such benefits; and (2) churches or religious groups which oppose, or are likely to oppose such extension of benefits. Since Commissioner Hochberg has expressed an interest in item (1) and through his connection with the Rutherford Institute and the Episcopal Church could have access to organizations covered in item (2), I would strongly suggest that he help us with names of witnesses who are willing to testify. We will also reserve a space for Mr. Makuakane who did not appear at the last meeting. We will also continue our efforts to find such witnesses. Please call Ms. Martin if you need information.

The suggestion was made that we find witnesses from, or hold hearings on the neighbor islands. Our time and funding limitations do not permit hearings off island, but if any of you have witnesses from other islands who are willing to appear at our meetings, please let Ms. Martin know at once.

Also, we expect to submit to you, before the next meeting, a draft of proposed findings based on the research and the testimony submitted regarding the "major legal and economic benefits" considered to date. It would be helpful if proposed amendments or alternate findings were reduced to writing for consideration by commission members on October 11. Thank you for your assistance.



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Morgan Britt
Nanci Kreidman

L. Ku'umeaaloha Gomes
Marie A. "Toni" Sheldon

October 9, 1995

MEMORANDUM

TO: Commission Members
FROM: Thomas P. Gill
Chairperson *TMS*
SUBJECT: Decision Making, October 11 Meeting

Our Agenda for the third meeting to be held this coming Wednesday, October 11, states, as to the first part of the meeting, that we will "...vote on the 'major legal and economic benefits extended to married opposite-sex couples, but not to same-sex couples.'"

I am suggesting that this vote be limited to the general concepts covered so far, including acceptance of the LRB list of such benefits prepared under instructions from the last commission. A resolution to this end is included for your consideration.

The LRB, and the members of the Commission, have also received a number of draft motions prepared by Dr. Stauffer relating to specific benefits being identified. The motions are lengthy and quite detailed and will no doubt be of assistance in the drafting of the Commission's report. However, our current schedule provides that our fifth meeting on November 8 will include discussion of the contents of the draft report, and receiving public testimony on it. I suggest it would be appropriate to include these current motions, and any other suggestions by Commission members, in that November 8 discussion.

Also please note that at the coming meeting on October 11, one of our members, Ms. Kreidman, will not be able to be present, and under current rules will not be able to vote by proxy. It will be more productive, as well as fair to allow her to review the various suggestions and vote when the time comes.

Any of you who have language or items you would like to see included in the Commission's report, whether it will be a majority or minority position, should draft and circulate this material as soon as possible so it can be fully considered at the November 8th and subsequent meetings.

Thank you for your assistance.

JAMES HOCHBERG
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Honolulu, Hawaii 96813
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October 10, 1995

Thomas P. Gill, Esq.
Chairman, Commission on Sexual
Orientation and the Law
Legislative Reference Bureau
1177 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

Re: Objections to proposed procedure for October 11,
1995 Commission meeting

Dear Mr. Gill:

As a member of the Commission on Sexual Orientation and the Law, I am concerned about your proposed procedure for the October 11, 1995 meeting. It is important to me that the Commission conduct its work with the openness required of our commission by law, with intellectual honesty in performing our function, and with unbiased inquiry into the issues we have been charged with examining. For the reasons stated in this letter, I suggest that rather than rush to a vote on the "major legal and economic benefits", that the Commission take the time to evaluate the items on the list provided by the Legislative Reference Bureau and vote after we discuss the various items. Otherwise, our motives appear suspect. The Commission clearly is staffed with a majority of Commissioners who favor extending marriage rights to homosexuals, although the balance of interests on the Commission do not correlate to the balance of interests on these issues in the community. As Commissioners, we are charged with performing this function on behalf of the entire community and not solely the homosexual activists.

Specifically, my objections are based on the following:

1. The Commission has not discussed nor analyzed the 15 page listing of statute sections which the Legislative Reference Bureau attorney collected.
2. We have not considered or determined whether there are any errors in the list due to the author's interpretation, which may differ from ours.
3. The author's work was based upon the 1994 Commission's instructions from the legislature to examine the "precise"

legal and economic benefits which accrue to married couples. However, our Commission has been instructed to examine only the "major" legal and economic benefits accruing to married couples. The difference is important as is evidenced by the definition utilized by the first Commission, namely: to find every statute that contains "anything contributing to an improvement in condition or an advantage that a married couple would have as a result of holding the status 'spouse', 'family' that would not be offered to a same-gendered couple even though they had the same commitments to each other as a married couple." That broad definition does not address the call to examine the "major" legal and economic benefits. Consequently, the 15 page list of statutes must be rejected since it is based on the prior Commission's definition. The Commission should evaluate the statutes to determine which create "major" legal and economic benefits.

4. At every meeting, I have asked the Commission to define "major" legal and economic benefits to enable us to properly evaluate that list of statutes. First you, then the majority of the Commission refused to do so. It is a travesty for this Commission to adopt the 15 page list of statutes under these circumstances while creating the appearance of conducting ourselves as a bona fide Commission under state law. It does not necessarily follow from the absence of directions from the legislature concerning the change in the legislative instructions that the change "indicates no specific difference in the duties assigned to the present Commission." This thinking ignores the simple change in meaning which occurs along with the change in wording. I suggest that the Commission adopt the following definition of "major legal and economic benefits":

A resultant significant improvement in condition or resultant significant advantage, after consideration of concomitant burdens, which a married couple enjoys as a result of holding the status "spouse" or "family" that would not be either offered to a same-sex couple nor available to a same-sex couple by another avenue or means.

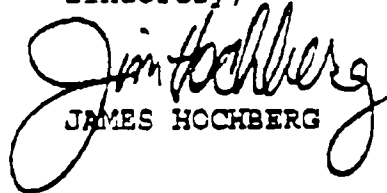
5. The pro-homosexuality majority of the Commission has voted to prohibit expert testimony via telephone, when those identified experts were traditionalists who would opine against extending marriage benefits to homosexuals.

Thomas P. Gill, Esq.
October 10, 1995
Page 2

6. The majority of the Commission is relying on the economic analysis of Dr. LaCroix who has failed to provide the assumptions and methodology he used, and who when asked for that information was unable to provide it although it should have been the basis for his conclusions.

In summary, there is simply insufficient information upon which this Commission can fairly adopt your proposed resolution in an unbiased, intellectually honest manner. I make this objection in the hope that it will encourage openness, intellectual honesty, and unbiased inquiry into the issues we have been charged with examining. This is a very serious matter for the State of Hawaii.

Sincerely,



JAMES HOCHBERG

:JH

cc: Governor Benjamin Cayetano
Senate President Norman Mizuguchi
House Speaker Joseph Souki
Commissioners:
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Nanci Kriedman 531-7228
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October 11, 1995

Thomas P. Gill, Esq.
Chairman, Commission on Sexual
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Legislative Reference Bureau
1177 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

**Re: Objections to Proposed Procedure for
October 11, 1995 Commission Meeting**

Dear Mr. Gill:

I received a copy of Mr. Hochberg's letter October 10, 1995 letter to you concerning his objections to your proposed procedure for our October 11, 1995 meeting late in the afternoon of October 10th.

As a member of the Commission, I share the concerns Mr. Hochberg expressed in his letter, and believe the bases for his objections to your proposed procedure are meritorious.

I believe that as Commissioners we are charged with the responsibility of thoroughly investigating the matters before us from all aspects, and carefully considering the interests of the entire community in making our ultimate recommendations to the Legislature.

In order to properly perform our tasks, it is imperative that we agree upon a clear definition of "major" legal and economic benefits, and conduct our investigation of applicable statutes on that basis. The effects of the Commission's failure to properly define the parameters of our investigation may be devastating to the social and economic future of our State. There may be serious implications that will not be considered if we simply adopt the 15-page list of statute sections collected by the Legislative Reference Bureau attorney without further inquiry.

Specific but not exhaustive examples of the effect of our failure to properly define the parameters of our statute search and discussion are the following:

1. The responsibilities to itinerant conferred will not be discussed as the 15-page list does not address them.
2. It appears that no consideration will be given to the impact that domestic partnerships and/or same sex marriage will have on the ability of law enforcement and the family court to

Thomas P. Gill, Esq.
October 11, 1995
Page 2

comply with the requirements of the penal code, such as H.R.S. §709-906, which sets forth the penalty for abuse of family and household members as this statute is not included on the 15-page list.

3. It appears that no consideration will be given to the fact that the results of our statute search and evaluation will greatly impact our public policy considerations.

In addition to the above, reliance on the results of an economic analysis for which the assumptions and methodology used are unknown is not good science or intellectual honesty. Such reliance places the credibility of the Commission's findings in jeopardy.

Finally, the fact that the pro-homosexual majority has voted to prohibit expert testimony via telephone, when the experts identified are traditionalists who would speak against extending marriage benefits to homosexuals also places the credibility of our recommendations in question.

The importance of this matter to the State of Hawaii cannot be overemphasized. Therefore it is imperative that this Commission conduct its business with the utmost intellectual honesty and that our work be conducted with the openness required by law.

Very truly yours,



MARIE A. "TONI" SHELDON

cc: Governor Benjamin Cayetano (via fax)
Senate President Norman Mizuguchi (via fax)
House Speaker Joseph Souki (via fax)
Commissioners (via hand delivery)
James Hochberg
Nanci Kriedman
Morgan Britt
Bob Stauffer
Ku'umeaaloha Gomes
The importance of



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Marie A. "Toni" Sheldon

October 18, 1995

MEMORANDUM

TO: Commission Members

FROM: Thomas P. Gill
Chairperson

SUBJECT: October 25 Meeting

As indicated in the Agenda for the coming meeting our major task, after settling the minutes of the last meeting and listening to the invited guests on the third topic set forth in Act 5, will be to arrive at a general understanding of the Commission's position on the first two topics: (1) the major legal and economic benefits involved and (2) the policy reasons to extend or not to extend such benefits in whole or in part.

Each of you should feel free to clearly state your respective positions on each of these topics verbally and/or in writing. We should try to keep the discussion orderly and constructive. If we are successful we should identify the basic positions--majority and minority--on these topics.

Since the recurring question of the meaning of "major" benefits will probably be raised again I would like to make a suggestion to Mr. Hochberg. His definition of "major" which has been proposed and voted down at least twice, may suffer from some ambiguity. In order to allow the other members of the Commission to see how it would apply to the various benefits which have been discussed so far I would strongly suggest that he select from the various benefits mentioned by the Supreme Court, the list prepared by the Legislative Reference Bureau, and/or by various speakers including Dr. La Croix, specific examples and apply his definition of "major" to them. This could provide guidance to the Commission in sorting out this portion of the report.

As indicated at the last meeting there may still be additional speakers who have something to contribute to the first two topics considered by the Commission. We still have some invitations outstanding to which we have not received a response. However, there were two specifically mentioned by Mr. Hochberg which we ask him to pursue: (1) Mr. Makuakane, from his law firm, who is skilled in the tax implications of some of the benefits, and (2) someone from the private sector--perhaps a trust company--who is familiar with the impact the extension of certain benefits might have on private retirement, pension, medical or similar plans. Our testimony to date has dealt with public benefit plans.

Let's continue our practice of submitting suggested changes to the minutes or other items before the meeting so that we can all consider them before it is time to vote. Thanks for your help.

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October 25, 1995

Tom Gill, Chairman
Commissioners
Commission on Sexual Orientation
And the Law

Re: Mr. Gill's October 18, 1995 letter

Dear Commissioners:

In response to Mr. Gill's October 18, 1995 letter, this explores how I would interpret the definition of "major legal and economic benefit" as proposed by me. Each commissioner's interpretation might be little different, but at least we would all be using the same definition. Clearly, interpretation of the statutes using different definition is chaos.

"major legal and economic benefit" shall mean:

"a resultant significant improvement in condition or resultant significant advantage, after consideration of concomitant burdens, which a married couple enjoys as a result of holding the status "spouse" or "family" that would not be either offered to a same-sex couple nor available to a same-sex couple by another avenue or means."

Contains the following four questions in analyzing a given statute:

1. does the statute in question create a significant improvement in condition or advantage for a married couple as a result of holding the status "spouse" or "family"?
2. is there any burden associated with that significant improvement in condition or advantage?

3. after considering the burden associated with the improvement in condition or advantage, is the remaining improvement in condition or advantage still significant?
4. is that remaining significant improvement in condition or advantage not offered to a same-sex couple nor available to a same-sex couple by another avenue or means?

EXAMPLES:

- A. HRS 183D-22: Resident license fee applies to spouse of active duty Military stationed in Hawaii.
1. does the statute in question create a significant improvement in condition or advantage for a married couple as a result of holding the status "spouse" or "family"?
- Perhaps but not likely.
2. is there any burden associated with that significant improvement in condition or advantage?
- Yes, must be spouse of a military person. Quite burdensome if homosexual.
3. after considering the burden associated with the improvement in condition or advantage, is the remaining improvement in condition or advantage still significant?
- NO. Stop analysis. Go to next statute.
- B. HRS 201E-62: Requires the HFDC to consider the size of the family and the family income in determining the qualifications of an "eligible borrower". The family income cannot exceed the requirements of Section 143(f) of the Internal Revenue Code.
1. does the statute in question create a significant improvement in condition or advantage for a married couple as a result of holding the status "spouse" or "family"?
- Maybe, if the family qualifies for the special loans.

Commission on Sexual Orientation
and the Law
October 25, 1995
page 3

2. is there any burden associated with that significant improvement in condition or advantage?

Yes. If both spouses work it is likely that their combined income will disqualify them for the benefit.

3. after considering the burden associated with the improvement in condition or advantage, is the remaining improvement in condition or advantage still significant?

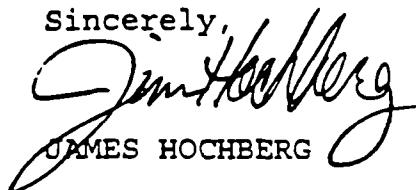
No. Especially if they no longer qualify for the benefit.

4. is that remaining significant improvement in condition or advantage not offered to a same-sex couple nor available to a same-sex couple by another avenue or means?

No. According to HFDC employees, "family" is defined to include household members. Therefore, homosexuals receive this benefit presently, and would not benefit in this statute from creation of domestic partnership to confer the benefit.

I trust that this letter will assist you all in recognizing the necessity of a single definition of "major legal and economic benefit" for our use in analyzing the 15 page list of statutes. The proposed definition, soundly based upon the charge given us by the Legislature, fairly addresses the issues in determining a major legal or economic benefit. As the above examples show, this definition is not biased in favor of a particular political view point. I urge you to adopt this definition and use it in addressing the very serious matters with which we have been charged. If you have any questions, please feel free to address them to me. I remain,

Sincerely,



JAMES HOCHBERG

:JH

MARIE A. SHELDON
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1001 Bishop Street
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Telephone: (808) 524-2466
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October 27, 1995

Thomas P. Gill, Esq.
Chairman, Commission on Sexual
Orientation and the Law
Legislative Reference Bureau
State Capitol, Room 446
Honolulu, Hawaii 96813

Via Fax

**Re: Governor's Commission on Sexual Orientation
and the Law**

Dear Mr. Gill:

Our Thursday, October 26, 1995 meeting left me with several grave concerns. This letter is an attempt to resolve some of those concerns.

Specifically, I have the following questions and comments:

1. Why have you refused to permit the Commission to discuss and arrive at a specific working definition of "major legal and economic benefit"?

I am concerned that Commissioner Robert Stauffer's terminology which purports to replace the Legislature's statutory language of "major" legal and economic benefits with the Hawaii Supreme Court's operative term "salient" has been adopted, ostensibly for definition purposes. See, Commissioner Stauffer's October 6, 1995 First Memo at 4. This is questionable because this Commission is not empowered with the authority to change the language adopted by the Legislature. Further, it is unheard of to divine legislative intent in the change from "precise" to "major" based upon an appellate decision written two years before the legislation. Indeed, even though it had immediate access to the Hawaii Supreme Court's opinion, the Legislature expressly did not use the Court's language.

2. Why did you insist that we forge ahead without completing our review and approval of the Minutes of the Meeting Held Wednesday, October 11, 1995 (hereafter "the October 11 Meeting")?

I am concerned about this because, as you will no doubt recall, you insisted on a vote approving the written proposed amendments to the minutes submitted by Commissioner Stauffer even though we only received those proposed amendments upon arrival at the October 25, 1995 meeting, and did not have an opportunity to review or discuss them at

Thomas P. Gill, Esq.

Re: Governor's Commission on Sexual Orientation and the Law

October 27, 1995

Page 2

all. You stated that Commissioner James Hochberg's proposed amendments which were not submitted in writing at that time would be discussed later. Pursuant to your request, Commissioner Hochberg committed some of his proposed amendments to writing and submitted them when we reconvened on Thursday, October 26, 1995. At that time you refused to consider any of his written or oral proposed amendments to the October 11 Minutes. Instead, you insisted that we forge ahead without approving the outstanding minutes.

I believe this is particularly disconcerting given that Commissioner Hochberg's amendments concerned the testimony of expert economists that is crucial to our accomplishing the statutorily-dictated goals of this Commission, including matters you insisted come to a vote in the course of our October 26 session. If the minutes were drafted in a more balanced fashion (if witnesses opposed to homosexual marriage could be properly identified and their testimony represented in a manner equal to that of witnesses who support homosexual marriage), the discussion wouldn't be necessary. In addition to the obvious equitable reasons, it is extremely important that the minutes be presented in a balanced form because they constitute the official records of this Commission's business.

3. Why did you insist that we consider and vote on Commissioner Stauffer's proposed drafts of sections of the Commission's report which deal with the very matters contained in the unapproved October 11 Minutes?

This matter is of particular concern because you insisted that we forge ahead despite the Commission's unanimous approval of Commissioner Hochberg's motion to postpone voting on what major legal and economic benefits are granted in Hawaii as a result of marriage until the Commissioners had the opportunity, consistent with HRS Chapter 92, to publicly discuss each legal and economic benefit including statutes contained in the fifteen-page list submitted by the Legislative Reference Bureau attorney, Pamela Martin. See proposed and still unapproved Minutes of the October 11, 1995 Meeting.

4. Why did you refuse to permit any substantive discussion and/or amendment of the draft report sections submitted by Commissioner Stauffer which you insisted come to a vote at the October 26, 1995 session?

I am really concerned about this since the drafts we purportedly voted on contain specific findings on matters we have never even touched upon let alone discussed.

5. Why do you constantly and continually demean and ridicule Commissioner Hochberg's efforts to make viable contributions to the work of this Commission?

Thomas P. Gill, Esq.

Re: Governor's Commission on Sexual Orientation and the Law

October 27, 1995

Page 3

I am concerned, completely surprised, and frankly, offended by what I perceive to be outrageous conduct on your part toward Commissioner Hochberg. Specifically, every time Commissioner Hochberg asks a question, makes a motion, or attempts to engage in substantive discussion, you chastise him and accuse him of purposeful delay or frivolity. Moreover, at the October 26 session, you vehemently tried to insist that Commissioner Hochberg recite a lengthy statement by Commissioner Kriedman which he was trying to incorporate into a motion or forego bringing the motion. This seems particularly strange to me because you permitted other Commissioners to incorporate lengthy statements by reference to the audio tape. Yet, you chastised and demeaned Commissioner Hochberg when he tried to avail himself of the same courtesy. Even more perplexing was your comment at the close of the session inquiring as to whether Commissioner Hochberg would "gas everybody next week to stop the proceedings". What in the world did you mean by that?

6. Finally, is it your intent that this Commission timely draft and submit a report and recommendation to the Hawaii State Legislature based on a somewhat revised form of the drafts submitted by Commissioner Stauffer and the soon to be voted upon draft submitted by Commissioner Britt even if it means doing so without benefit of any substantive investigation and discussion?

I am extremely concerned about this because it appears that the Commission's majority has already determined the tenor of this Commission's recommendations to our Legislature, and it intends to proceed in that tenor without any substantive discussion of the issues before it. Such a report would mislead the Legislature.

Frankly, I take my appointment to this Commission very seriously, and I have looked forward to making a viable contribution to an intellectually honest and unbiased effort to consider the interests of the entire Hawaii community in performing my tasks as a Commissioner. Unfortunately, I find that the Commission is staffed with a clear five to two majority of individuals who favor extending marriage rights to homosexuals. This imbalance is not consistent with the often adamantly voiced interests of a clear majority of Hawaii's citizens. Thus, I fear that the public interest is being sacrificed in order to satisfy a personal agenda predicated on the behavioral desires of what amounts to a "tiny fraction" of the population. One cannot help but notice that the "tiny fraction" happens to be represented by a majority of this Commission's membership.

Thomas P. Gill, Esq.

Re: Governor's Commission on Sexual Orientation and the Law

October 27, 1995

Page 4

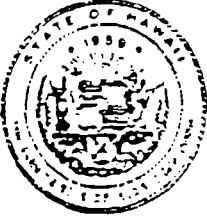
I look forward to receiving your response to my inquiries.

Very truly yours,



MARIE A. "TONI" SHELDON
Commissioner

cc: Governor Benjamin Cayetano
Senate President Norman Mizuguchi
House Speaker Joseph Souki
Commissioners:
Jim Hochberg 528-3631
Nanci Kriedman 531-7228
Morgan Britt 599-1965
Bob Stauffer 237-8042
Ku'umeaahola Gomes 956-9880



COMMISSION ON SEXUAL ORIENTATION AND THE LAW
Legislative Reference Bureau
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Thomas P. Gill, Chairperson
Lloyd James Hochberg, Jr.
Robert H. Stauffer

Morgan Britt
Nanci Kreidman

L. Ku'umeaaloha Gomes
Marie A. "Toni" Sheldon

MEMORANDUM

October 30, 1995

TO: Commission Members
FROM: Thomas P. Gill
Chairperson *T.P.G.*
RE: Setting Aside Time for Future Meetings

When we recessed last Thursday, October 26, the Commission was still attempting to finish its agenda for the October 25 meeting which involved considering motions on the first two items in Act 5--identifying benefits and policy reasons to extend or not to extend those benefits to same-sex couples.

*m 1008
Office Tower!*
We had considered Dr. Stauffer's list of benefits and agreed to adopt substantial benefits Nos. 1 through 4. We then recessed until 10:00 a.m., Wednesday, November 1, ~~Room 323, State Capitol Building~~. Our agenda for the meeting on the 1st will start where we left off on the preceding Thursday. We will first consider the remaining suggested substantial benefits, Nos. 5 through 14, and the subsequent list of "general benefits" as listed in Memorandum No. 13. Following consideration of Dr. Stauffer's list we will move on to Mr. Britt's list of "policy reasons".

If Commission members have additional "benefit" or "policy reasons" they wish considered they should submit them in writing prior to or at the November 1 meeting.

It seems obvious from our experience at recent meetings that we will not have time to complete the agenda in the two hours allotted to the November 1 meeting. I am therefore suggesting that we set aside the morning, or perhaps all day, on Thursday, November 2, to complete this phase of our work.

You will note that the agenda for the next regular meeting on Wednesday, November 8, includes voting on item (3) of Act 5. This involves recommending appropriate action to be taken by the Legislature. At this meeting we will also be discussing the contents of the draft report.

Given this schedule and work load please examine your schedule and see if you can set aside time on Thursday, November 2 and 9. If this is not possible for some of you we can consider other days or, possibly, proceeding with less than the entire membership.

Thanks for helping. Suggestions are always welcome!



Commission on Sexual Orientation and the Law
Legislative Reference Bureau
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Thomas P. Gill, Chairperson
Lloyd James Hochberg, Jr.
Robert H. Stauffer

Morgan Britt
Nanci Kreidman

L. Ku'umeaaloha Gomes
Marie A. "Toni" Sheldon

October 31, 1995

Marie A. Sheldon, Esq.
1200 Pauahi Tower
1001 Bishop Street
Honolulu, HI 96813

Re: Your Letter of October 27, 1995

Dear Ms. Sheldon:

Let me respond very briefly to your letter. There are some inaccuracies in it which you may want to correct.

1. We have not "refused to permit" the Commission to discuss and arrive at a definition of "major" benefits. Mr. Hochberg's proposed definition was considered and voted down twice by the Commission. The legislature did not define "major". Mr. Hochberg's definition seemed to some to be a bit convoluted and would impose on the Commission the duty of not only identifying such benefits, but then proving that they met Mr. Hochberg's definition. You might remember I suggested to Mr. Hochberg that he take some of the benefits suggested by the Supreme Court and others and apply his definition to them. He did so and the examples he used turned out to not be "benefits" under his definition. If the purpose of the Commission was to determine that there would be no "benefits" conferred by marital status or its equivalents on same-sex couples, and therefore the Legislature should do nothing, the definition would be quite helpful. However, most would agree that the Commission's function is somewhat broader than that.

2. You might recall that the October 11 minutes were considered and approved with some minor amendments by a majority of the Commission. Mr. Hochberg apparently had not had time to prepare and submit his proposed amendments. Both you and he were allowed to reserve your approval or disapproval until such amendments were submitted. With that understanding, final approval of the minutes was deferred until the rest of the agenda was completed. Do you now disagree with that action?

3. Commissioner Stauffer's list of benefits, including some noted by the Supreme Court and some included as possible benefits in the LRB report, was next on the agenda. We took each item, one at a time, and after four or five hours of rather intense argument or discussion, extending over the rest of the meeting on October 26 and the recessed meeting on the 27th, we were able to cover only about a third of them. Both you and Mr. Hochberg participated in this discussion, at considerable length. Are you now suggesting that we go back and discuss the entire listing of possibly relevant statutes mentioned in the LRB report before proceeding with specifically suggested benefits? Of course you are free to suggest your own list of benefits, if you want to do so, and the Commission can discuss them too, with the same intensity as you have discussed Dr. Stauffer's list.

October 31, 1995

4. There was no refusal to permit substantive discussion and/or amendment to Dr. Stauffer's material. It was made clear that the material was not considered to be in final form but subject to editing and modification by staff; further, when a draft report was given to the Commission, hopefully on November 8, it would be subject to further consideration and amendment. If you say there was no "substantive discussion" on the points considered, what was going on during the four to five hours we spent on these topics in the last two meetings? Perhaps you would also want to mention the numerous motions you and Mr. Hochberg presented during this discussion, and the fact that most of them were voted down four to two by the Commission. Is that your basic complaint?

5. Your reference to demeaning or ridiculing Mr. Hochberg's efforts is unfortunate. I will continue to attempt to extend to Mr. Hochberg the same level of courtesy and tolerance he extends to the Chair and to other Commission members with whom he disagrees. However, may I point out the obvious: We were given a very limited time to produce a report and little over a month remains. In the last month we have heard and/or received testimony from an extensive list of witnesses, including those suggested or produced by you and Mr. Hochberg. The time has come to move ahead with the material to be included in the report. We have little time to spend picking over footnotes and arguing at length over minute or procedural matters which would have the necessary result—even if unintended—of delaying or preventing the production of the report. Please bear that in mind.

6. It is our intention to consider the proposal made and submitted in writing to the Commission by commissioners Stauffer and Britt, along with others which may be timely submitted, and have the LRB produce a draft which can be further considered and refined by the Commission. This was made clear at the last two meetings. It was also made clear several times that you and Mr. Hochberg will have an opportunity to submit a minority report if you do not agree with the majority. Please prepare to do so.

I hope this brief response to your letter of October 27 which I received via FAX from the LRB on the 30th meets your legitimate concerns. Please note our concerns: constructive discussion is certainly in order, but not dances intended to delay. We must complete our work on time.

Sincerely yours,


Thomas P. Gill
Chairperson

cc: Commission Members

JAMES HOCHBERG
1188 Bishop Street, Suite 1610
Honolulu, Hawaii 96813
(808) 536-1777; FAX 528-3631

October 31, 1995

Thomas P. Gill, Esq.
Chairman, Commission on Sexual
Orientation and the Law
Legislative Reference Bureau
1177 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

Transmitted via fax
to: 587-0681

Re: Objections to proposed procedure for November 1,
1995 Commission meeting

Dear Mr. Gill:

You have made it abundantly clear that you will timely produce a report from the Commission to the Legislature as requested in Act 5 (1995) whether the report is valid. I agree that it is very important that our Commission complete its work, however, I disagree with putting a looming deadline ahead of taking the time to perform the work we have been given to do. In looking over your letter of October 30, 1995, you have left behind several very important items which I request that you place back on the agenda for the November 1, 1995 meeting.

Please take up these issues before moving on to force adoption of new draft language. The integrity of the work product of the commission depends on a drastic change in our work.

Sincerely,



JAMES HOCHBERG

:JH

cc: Governor Benjamin Cayetano
Senate President Norman Mizuguchi
House Speaker Joseph Souki
Commissioners:
Toni Sheldon 524-2556
Nanci Kriedman 531-7228
Morgan Britt 599-1965
Bob Stauffer 237-8042
Ku'umeaaloha Gomes 956-9880

JAMES HOCHBERG
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November 15, 1995

Thomas F. Gill, Esq.
Chairman, Commission on Sexual
Orientation and the Law
Legislative Reference Bureau
Room 413, State Capitol
Honolulu, Hawaii 96813

Transmitted via fax
to: 587-0681

Re: Commission on Sexual Orientation and the Law

Dear Mr. Gill:

In striving to complete the first draft of our minority report, several questions have arisen related to the publication schedule. As I understand the time-table, on November 17, 1995 we will receive the draft of the majority report (and they, ours). Then we will meet November 22, 1995 to vote on the drafts distributed November 17, 1995. The drafts will then be sent for public review on November 22, 1995. Then December 6, 1995, we will meet to give the public an opportunity to comment on the two drafts, and a final report will be voted on that day. I am uncertain of the schedule for making changes to the drafts. As I trust you can understand, the minority is in a difficult position writing its report without having a final version long before December 6, 1995. If the final version on December 6, 1995 is substantially different from the prior drafts that, of course would necessitate a further revision to the minority report. I understand the reason for that schedule in light of the ultimate publication deadline, however, at what time does the minority address the final version of the majority report? Do we truly receive the final when it voted on December 6, 1995?

It appears to me therefore, that the draft we are presenting November 17, 1995, will be a very rough draft, subject to substantial revision depending on what the majority report states November 17, 1995 and what it actually ends up containing November 22, 1995. In order for the minority to present a true final draft December 6, 1995, no further revisions to the majority report should occur after the November 22, 1995 meeting. All things being possible, I suppose the content of the majority report on November 22, 1995 could eliminate the need for a minority report if its content was acceptable to the current minority.

A further difficulty with the content of the final report is also complicated by the fact that the official record of the commission proceedings after September 27, 1995, upon which the report is supposed to be based, won't have been

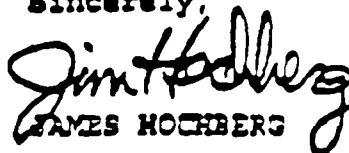
Thomas P. Gill, Esq.
November 15, 1995
Page 2

addressed until November 22, 1995. That, of course, is after the final draft of the reports are due. As you and I discussed and you agreed at the November 7, 1995 meeting, the status of the minutes from the October 11, 1995 meeting is that the only changes considered or adopted so far are those contained on the one page submitted by Mr. Stauffer, and the balance of the minutes are not yet reviewed. That includes the changes I did submit in writing and those I have not yet put down to writing. In addition, the October 25, 1995 changes made from that one page are also still subject to further change if requested by another commissioner.

The importance of this can be seen in the fact that the settlement of the record of our prior meetings at which testimony of legal and economic experts was taken has not been completed. I understand that minutes of that meeting have been made available to the public even though they have not been completely reviewed or submitted to the commission for approval. I have not received a copy of such minutes for review and or approval, and I would appreciate a copy at your earliest convenience. Remember, I have additional substantial changes to request.

On another matter, due to the issue of public access to the commission process, I believe it is appropriate that any and all input received by the commission be included as part of the majority report. This confirms that I asked Pam Martin on Tuesday, November 14, 1995, to collect all correspondence and telephone records of contact from the public (including Oahu people) and to commence keeping a log of all telephone calls to the commission. I would appreciate receiving a copy of this information at the November 22, 1995 meeting and any additional information at the December 6, 1995 meeting.

Sincerely,


JAMES HOCHBERG

JCH
cc:

Commissioners:
Toni Sheldon 524-2556
Nanci Kriedman 531-7228
Morgan Britt 599-1965
Bob Stauffer 237-8042
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November 30, 1995

Thomas P. Gill, Esq.
Chairman, Commission on Sexual
Orientation and the Law
Legislative Reference Bureau
Room 413, State Capitol
Honolulu, Hawaii 96813

Transmitted via fax
to: 567-0681

Re: Commission on Sexual Orientation and the Law

Dear Mr. Gill:

From a telephone conversation I had today with Pam Martin, Esq., I understand that the majority of the commission have decided the following:

1. They will add appendices to the report to "balance" the information appended by the minority; but
2. The minority will not be permitted to add information to the minority report between now and December 6, 1995 as previously agreed.

This is particularly troubling in light of the following:

1. From the outset of our proceedings the commission allowed for the possibility of a minority and majority report;
2. During the commission proceedings, you made it abundantly clear that the minority would not be permitted to insert information into the draft commission report (before it became a majority report) but instead instructed me to plan to present material in the minority report rather than in the commission discussions;
3. Your scheduling of meetings consumed so much time that it was very difficult to craft a minority report within the deadline you established especially since you would not permit us to take advantage of the commission meeting time to work on the issues;
4. To meet your very arbitrary deadlines, Toni Sheldon and I provided a draft minority report on time, even though it was not at the level of completion we desired on or about November 22, 1995, and consequently, as we

explained to Pam and the commission as a whole, we would be revising it;

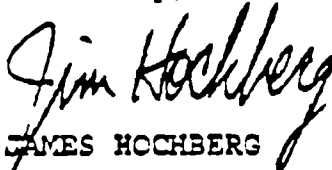
5. On November 22, 1995, the majority finally disclosed the content of the long awaited Appendix containing the list of statutes upon which the majority based its recommendations;
6. Since our minority report was also delivered the same day, we have obviously not had an opportunity to address that Appendix;
7. In addition, unlike the majority report which was furnished as if it was a final product, the minority report required significant time simply to respond to the majority report, which could not be completed before the majority report was delivered (as I am sure you understand in light of the majority response to the minority report); and
8. Finally, throughout the proceedings, you and the majority made it clear that since the minority could not address our perspectives in the meetings during which the majority draft was reviewed, the majority would not edit or in any other manner "touch" the minority report.

As you can see, things have evolved over the course of our time together. I would rather that they remained somewhat fixed in order for both the majority and minority to be able to appreciate the "rules of the road." At this point, for the record, please be advised that, like the majority, the minority is amending its report for the December 7, 1995 meeting. Even if the majority decides not to add information to its report, the minority will do so because it expects to provide the legislature and Judge Chang with a full report. We simply have not yet completed it.

Thomas P. Gill, Esq.
November 30, 1995
Page 3

Please inform me at your earliest convenience if I have
misunderstood the intentions of your majority commissioners.

Sincerely,


JAMES HOCHBERG

:JH

cc: Commissioners:
Toni Sheldon 524-2556
Nanci Kriedman 531-7228
Morgan Britt 599-1965
Bob Stauffer 237-8042
Ku'umeaaloha Gomes 956-9880
Governor Benjamin Cayetano
Senate President Norman Mizuguchi
House Speaker Joseph Souki

Chair Tom Gill and Commissioners
Commission on Sexual Orientation and the Law
c/o Legislative References Bureau
Hawaii State Capitol
Honolulu, HI 96813

December 3, 1995

Dear Chair Gill,

Without intentionally dignifying Mr. Hochberg's and Ms. Sheldon's Minority chapter in our report with a response, I feel I have a compelling personal interest in correcting their gross misrepresentation of events as they occurred at our October 25 and November 8 meetings. Their distortions of testimony and the Commission's response to those testifying are more than overblown hyperbole. It could be interpreted as slander. I am not willing to have this go into the public record unchallenged.

It is with considerable amusement that I read the Minority's account of Diane Sutton's testimony before the Commission and her recent letter to the *Star Bulletin* (11/15). I would like to point out now as I did at the time of her testimony that the Minority and Ms. Sutton are again "factually inaccurate"¹ in their allegations that I or anyone called her a "liar." Attached is a memo from Mr. Tom Aitken of Pahoa School documenting just how off-base her knowledge of Project 10 is and how she has misrepresented herself as a SCBM representative.²

I do not really have to defend myself: what was said is on audio tape, video tape and in the official minutes of the meeting for that day. Mr. Hochberg was there and witnessed her entire testimony. For him to report events other than as they occurred in the Minority chapter of the Commission's report is disingenuous of him at best. Quoting Ms. Sutton's letter in the Minority chapter as if it were true when he knows otherwise is more than disingenuous. The implications of this kind of misrepresentation of the facts exemplify the complete lack of professionalism and integrity of the Minority opinion.

In spite of the glaring inaccuracies in Ms. Sutton's testimony and the fact that her testimony had nothing to do with the issue before the Commission, Ms. Sutton was allowed to consume 15-20 minutes of the Commission's time with her histrionics. This was out of your good graces, Mr. Gill, in the interest of being "fair" to those on all sides of the issue.

The same can be said of Ms. Loree Johnson whose paranoid scatological fantasies and quantum leaps in "logic" defy the imagination. The fact that she was allowed to testify TWICE before the Commission on issues that were not on the agenda for their respective days is a testimony of how far the Commission was

¹ See Minutes of 11/8/95

² Letter amended 12/6/95 to include Mr. Aitken's memo per his request.

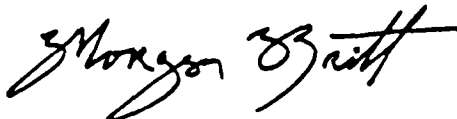
willing to go to accommodate all points of view.

If Ms. Sutton or Ms. Johnson consider themselves "harassed" when politely calling attention to known discrepancies between the content of their testimony and the facts, or being asked to get to the point after rambling at length on unrelated issues to Commission, they are stretching the definition of the word. Perhaps they would regard any public scrutiny of their testimony as "harassment." For such people as Ms. Sutton and Ms. Johnson to be allowed to continue unchallenged in their self-appointed role as spokespersons for their communities with no other credentials than their self-righteous indignation is (to use the words of Ms. Johnson) "repugnant, self-indulgent, exploitive, addictive and dangerous."³

I also take exception to Mr. Hochberg's misrepresentation of me on page 85 of the Report. There was no discussion of school policy or curriculum before the Commission. How he can presuppose my stand on this would indicate that he has greater mental powers than we know him to possess. It is safe to say that I would agree with Mr. Aitken's view that put-downs based on sexuality should not be tolerated any more than racial slurs or violence towards any group in our public schools. Children (and Ms. Sutton) should be taught this. Mr. Hochberg still seems to consider gay and lesbian youth in our schools as fair targets for abuse.

I don't have to call Ms. Sutton, Ms. Johnson or Mr. Hochberg a "liar." A liar, according to *Webster's*, is one who "makes untrue statements with the intent to deceive" or "create(s) a false or misleading impression." I'm sure they wouldn't stoop to that. However, a person who continues to assert that the sky is green, for example, does not make it so by persisting in her allegations. In fact, in the face of the patently obvious (that the sky is not green), one is led to much more basic conclusions about the person making such allegations. I don't have to state the obvious.

Sincerely,



Morgan Britt, Commissioner

cc: Governor Benjamin Cayetano
Senate President Norman
Mizuguchi
House Speaker Joseph Souki

Commissioners:
Jim Hochberg
Nanci Kreidman
Bob Stauffer
Ku'umealoha Gomes
Marie A. "Toni" Sheldon

³ See Minutes of 10/11/95 and written testimony of Loree Johnson dated 10/10/95

Appendix I
SELECTED TESTIMONIES

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**A Brief Analysis of Important Economic Benefits Accruing from Same-Sex Marriage
Revised Testimony Before Commission on Sexual Orientation and the Law, State of Hawaii**

Sumner J. La Croix, Professor of Economics, University of Hawaii
Lee Badgett, Assistant Professor of Public Affairs, University of Maryland

(As amended)

October 5, 1995

1. Intangible Economic Benefits

It is difficult to place a money value on some rights adhering to marriage, such as the right to visit a spouse in the hospital. Such rights are, however, often highly valued by each partner in the marriage. Some (but not all) intangible benefits also have the desirable feature that they do not impose costs on other people. One example is the right to obtain a spouse's vital statistics (HRS 338-18). Another is the Immigration and Naturalization Service's (INS) policy favoring the immigration of family members (including spouses) who are citizens of foreign countries.

2. Benefits from Marriage that Affect a Small Number of Couples

A relatively large class of legal benefits involves rights that are of limited economic value to the typical married couple, as the rights are used infrequently. Three examples follow. Conveyance taxes are not levied on transfers of property between a husband and wife (HRS 247-3(4) & (12)), but such conveyances are infrequent. A University of Hawaii employee's spouse is exempted from the nonresident tuition differential when the spouse is not a Hawaii resident (HRS 304-4(b)), but there are likely to be only a few such instances each year. Election law (HRS 11-204) allows an immediate family member to contribute up to \$50,000 to an immediate family member who is a candidate for public office, but relatively few same-sex couples would exercise this benefit. Of course, while the expected value of each benefit is small, the sum of numerous small benefits can be quantitatively significant.

3. Cost of Creating a Relationship (Without Access to the Institution of Marriage)

In one relatively simple and inexpensive step, marriage creates a relationship between two adults that grants several rights that can otherwise be simulated with private agreements between two unmarried partners. The laws of Hawaii include the following such benefits:

- Access to Family Court for the award of child custody and support payment proceedings.
- The right to enter in Premarital Agreements.
- The Probate code provides protection rights, notice rights, and other inheritance rights to spouse and other related parties.
- Defined principles for the control, division, acquisition, and disposition of community property in divorce.
- The right to spousal support and right to file a nonsupport action.

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

- The award of child custody and support payments in divorce proceedings.
- Post-divorce rights relating to support and property division.
- Full parenting rights to children born or adopted within the marriage.
- The right to claim a deceased spouse's body.
- The right to change name.

Same gender couples can sometimes construct private agreements that explicitly address many of the issues raised above, and legal advisors often recommend that couples write up such agreements. These documents often require the costly services of a lawyer. The documents may have to be drawn up more than once, as they will have to be changed as conditions change. In some situations, there is uncertainty about whether these contracts will be honored, particularly when they involve children. There are many cases of even wills being contested and sometimes overturned. Marriage allows a couple to save the money and time costs associated with drawing up these documents. These economic benefits can be significant, amounting to several thousand dollars.

4. Benefits from Marriage with a Significant Expected Value

A. Retirement

There are two major benefits specified in public employee retirement plans and in some private plans that are affected by a retiree's marital status: (1) health insurance and (2) pensions. Both are extended to surviving spouses in some circumstances.

1. Retirement Health Insurance Benefits

A major retirement benefit specified in the Employee Retirement System (ERS) of the State of Hawaii and in many private pension plans is full payment of health, dental, and vision insurance premiums by the employer after retirement. Coverage can be extended to a spouse. ERS offers the employee and his/her spouse the same menu of health insurance plans offered to public employees with the same schedule of copayments and coinsurance at no charge. The spouse receives this benefit if he/she is neither covered at work nor by another retirement plan. If the alternative is an individual policy with Kaiser at a monthly cost of \$122, then the benefits to the couple amount to \$1,464.00.

When a vested retiree (with at least ten years of service) becomes eligible for Medicare, the Hawaii public employees retirement plan pays the premium for Part B of the Medicare Program for both the retiree and the spouse (if they choose to enroll). This program confers benefits on spouses who do not have the same benefit coverage in their own retirement plan. The current monthly price for the Medicare Part B premium is \$46.10, amounting to \$553.20 annually.

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

2. Retirement Pension Benefits

The state retirement system (in particular, the noncontributory plan) forces an employee to choose from a menu of payment plans when the employee decides to retire. The payment plans include (1) receiving a lump-sum payment; (2) receiving monthly payment which stop at the death of the retiree; (3) receiving monthly payments which stop at the death of both the retiree and the spouse. Assuming that the last two payment plans are designed to have the same present value for a typical retiree, then the additional cost to the state of incorporating same-sex couples into its benefits plan will be relatively small. There will, however, be some additional cost, as a retiree in a same-sex marriage with a short expected lifespan and a healthy spouse will now have the option of picking the stream of payments ending with the death of the spouse. This payment package is likely to be relatively unattractive, as it is based on a relatively long survival of the retiree's spouse. However, in a same sex marriage two spouses of the same age have the same statistical life expectancy. When the retiree does choose this package, it will, on average, generate higher costs to the state system.

Of course, many retirees in a same-sex marriage will pick the payment plan which ends at the death of the retiree, as they will rationally infer, using information from life tables and their own information concerning their spouse's health, that the spouse will die first or that the spouse will not live long enough to justify the lower stream of pension benefits. Thus, in more than one-half of the plans, there will be no additional cost to the state.

In the Hawaii ERS noncontributory plan, an unmarried retiree has the right to name a second beneficiary and pick the payment package which ends at the death of the second beneficiary and the retiree. However, an unmarried partner has no rights to such a stream, while a married partner has the right to a pension payment package which does not end until he/she dies.

B. Health Insurance

The Hawaii Prepaid Health Care Act mandates that private employers provide a minimum package of health insurance benefits to employees who work more than 20 hours per week. While the Act does not require that health insurance be provided to dependents, almost all private firms as well as the State of Hawaii also cover spouses. Since most spouses in Hawaii will be working, the spouse will already have health insurance. Most insurance plans then only pay a supplemental benefit, i.e., they only cover what the spouse's plan does not cover. If the spouse is not working, then the spouse can be enrolled in, for example, the HGEA's "Kaiser Gold" package, containing health, drug, vision, and dental insurance, for an additional \$17.70 per month. If the alternative is an individual health care policy from Kaiser, then the annual benefit from including the spouse in the employee's health care plan is \$1,251.48.

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

C. The Impact of Marriage on Taxes

Federal and State Income Taxes: Marriage Taxes and Bonuses from the Tax Tables

The impact on income tax payments is complex, partly because both state and federal tax laws are involved, and because the effect of marriage depends on the number of earners in a household and the level of each spouse's earnings. This section presents two general scenarios: one in which marriage reduces a couple's income taxes and a second in which marriage increases a couple's income taxes.

The tax scenarios are based on the Arnie Aloha family described by the Tax Foundation of Hawaii (April 1994 brochure). The husband earns \$38,357 and the wife earns \$29,232, and they have two young children. After adding other sources of income, their total family gross income is \$84,760. After subtracting their itemized deductions of \$15,476, the couple's taxable income is \$59,484 and their tax bill is \$11,713. If they had no children, their taxable income would have been \$64,384, and they would have paid \$13,085 in taxes.

Suppose that the same couple is unmarried with the same individual employment earnings. Suppose also (for simplicity) that they prorate the deductions and each claim half of the other income. If the higher earner claims the two children as dependents and files as head of the household, then the total federal taxes paid the two separately are \$9,724, or \$1,989 less than if they were married. If the same couple had no children and is unmarried, then their federal income taxes would be \$12,104, or \$981 less than if they were married. The effect in this scenario is clearly to increase the couple's taxes when if they are married. This result is the well known "marriage penalty."

Consider now a second scenario with the same Arnie Aloha family. In this second scenario, the family's income is the same as in the first scenario, but all of the family's income is earned by just one of the two adults. In this scenario, if the couple is married and has two young children, then the couple's tax bill is \$12,688. If they had no children, they would have paid \$13,085 in taxes.

Suppose that the same couple is unmarried. Then when two children are claimed as dependents, the total tax bill would be \$12,688 or \$975 more than if they were married. If the same unmarried couple has no children, then the tax bill would be \$15,346 or \$2,261 more than if they were married. The effect in this scenario is clearly to decrease the couple's taxes when they are married. This result is the less well known "marriage bonus." All four results are summarized in Table 1 (attached).

These examples reproduce the familiar result that the tax schedules favor traditional married couples with one primary earner and penalize married couples with similar income levels. See Rosen, 1987 and Pechman and Engelhardt, 1990 for a more technical discussion in the economics literature. In general, marriage bonuses are created when only one partner is working or when the two partners have very unequal earnings. Same gender couples could have very unequal earnings when one partner is staying home with children, or is in school, or in a full-time training program, or is already retired.

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

Hawaii state income taxes produce similar types of marriage bonuses and penalties that are smaller in size than the federal bonuses and penalties (see attached table). The presence of tax and bonus effects in the Hawaii tax tables is because they have the same basic structure as federal income tax tables.

Additional Tax Bonuses from Marriage in the Federal Tax System

Spouses (who are not claimed as dependents on other returns) are automatically given an exemption, while unmarried partners must meet a much more rigorous test of economic dependency which many could not meet.

If an unmarried individual's employer offers domestic partner benefits, such as health care benefits, the amount paid by the employer for the partner's benefits is considered part of the employee's taxable income unless the partner can be claimed as a dependent. The amount paid by employers for a spouse's benefit is, however, not taxable income.

If a couple's relationship ends, there are tax advantages if the couple is married. Alimony payments are deductible, and divorce-related property settlements (transfers from one spouse to the other) are exempt from capital gains tax (until the spouse receiving the property sells it). When an unmarried couple's relationship ends, they cannot claim these tax benefits.

Tax Bonuses Stemming from the Marital Deduction with Federal Estate and Gift Taxes

A married person receiving an estate (or total gifts) beyond \$600,000 from his/her spouse does not owe estate or gift taxes due to the unlimited "marital deduction." Other heirs would have to pay estate or gift taxes on the value of the estate or gifts beyond the \$600,000 ceiling. The effect of the marital tax deduction is to defer payment of the transfer tax until the death of the spouse (which is usually, but not always, reduces the present value of tax savings for the spouse). Also, annual gifts beyond \$10,000 to unrelated individuals are taxed; transfers to spouses are not taxed. See.

D. Federal Social Security Benefits

Married couples receive significant advantages in the nation's social security programs, particularly in the size of monthly benefits paid under Old-Age and Survivors Insurance Program (OASI), but also in the Disability Insurance Program. All figures cited below are taken from the 1994 Green Book compiled by the Committee on Ways and Means, U.S. House of Representatives.

The benefits from marriage in the OASI Program have several sources. First, when a fully insured worker retires, his or her spouse receives a benefit equal to 50% of the retired worker's benefit (unless the spouse is entitled to a larger benefit based on his or her own work history). In 1993, the average monthly benefit for wives and husbands of retired workers was \$347, or \$4,164 more annually than a same gender couple with one fully insured worker and an uninsured partner would

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

have received. Second, when the retired worker dies, the surviving spouse (from age 60 and up) then receives the retired worker's full benefit. In 1993, the average widower in this program received \$630 per month, or \$7,560 annually, while a surviving member of a same sex couple would receive nothing. Third, when an insured spouse dies, the surviving spouse is entitled to a lump-sum death benefit of \$255. Finally, when a currently insured (non-retired) worker dies, the widow or widower is eligible for a monthly benefit if the couple had children who are under age 16 or disabled, and the legal children of the deceased also receive benefits. In 1993 the average widow or widower in this category received \$448 per month or \$5,376 annually, and children average \$173 per month or \$2,076 annually, while a surviving member of a same sex couple and the survivor's legal children would receive nothing.

The Disability Insurance system also favors married couples. If a disabled worker has a spouse who is either aged 62 or older or is caring for a young or disabled child of the worker, the spouse is eligible for a benefit that averaged \$156 per month or \$1,872 annually in 1993. In a same sex couple, the partner of a disabled person would receive nothing.

More detailed studies of the social security system show that over time, the numerous benefits awarded by the social security system to married couples generate significant benefits. Married couples—even when both spouses work—have rates of return on their social security tax payments that are two to three times higher than the rate of return earned by single individuals with the same income. See Boskin, *et al.*, 1987. Net marginal social security tax rates, which adjust the social security payroll tax rates by the amount of future benefits, are much lower for earners with dependent spouses than for single men and women. See Feldstein and Samwick, 1992. Many earners with dependent spouses have negative social security tax rates, meaning that an additional dollar of income provides more in future benefits than the worker pays in social security taxes.

In sum, the OASI tax advantages for married couples generate significant economic benefits that are worth thousands of dollars annually during retirement. In addition, the payments provided to some spouses under the Disability Insurance system provides significant added financial security when a spouse becomes disabled.

E. Tort Actions

According to Hawaii state law (HRS 663-3, 663-18), in the case of a spouse's death caused by a wrongful act by some third party, the surviving spouse may bring a civil lawsuit against the third party. The spouse may attempt to recover damages, including loss of companionship, consortium, and marital care, as well as the expenses of any illness and burial. Also, the spouse can attempt to recover the loss to the estate and the loss of support to the spouse. Loss of support can be as large as 40 percent of the decedent's lost earnings.

F. Death Benefits

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

If a Hawaii State public employee dies due to natural causes (with 10 years of credited service) or due to a job-related accident, a monthly benefit is paid to the surviving spouse until remarriage. Only a surviving spouse is eligible for the death benefit.

In some private firms, either a surviving spouse or a designated beneficiary can receive a death benefit. However, a surviving spouse can roll a death benefit into an IRA, while an unrelated person cannot. Thus, a spouse is able to defer federal taxes on the death benefit, while an unrelated person cannot.

G. Hawaiian Home Lands Lease

Upon the death of the lessee, a spouse can assume the lease on land in a Hawaiian Home Lands development, while an unrelated occupant cannot. While the expectation in a same sex marriage is that the two spouses will die at the same time, in many cases a spouse will significantly outlive the lessee spouse. By remaining in the leased dwelling, the spouse could then save the rental on housing of a similar quality. Using the 1990 rental price (\$401) for housing in the lower quartile of the rental housing distribution, the benefit would amount to \$4,812 annually.

H. Workers' Compensation

Hawaii Workers' Compensation law allows death benefits to be paid to a dependent spouse or other dependent family members (parent, son, daughter, grandchild, etc.). However, death benefits are not paid to an unrelated partner in an unmarried couple. The benefits are significant, as they are equal to 62% of a worker's weekly wage, with a minimum weekly payment of \$xx and a maximum weekly payment of \$dd. The stream of payments to the spouse does not end until the spouse's death or remarriage.

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

Table: Federal and State Income Tax Payments for Married and Unmarried Couples

	Married, Filing Jointly	Unmarried	Gain or Loss w/ Marriage
Dual Earner, w/ children			
Federal	\$11,713	9,724 ^a	1,989
Hawaii	5,230	5,006	224
Total	16,943	14,730	2,213
Dual Earner, w/o children			
Federal	13,085	12,104	981
Hawaii	5,438	5,613	-175
Total	18,523	17,717	806
Single Earner, w/ children			
Federal	11,713	12,688 ^b	-975
Hawaii	5,230	5,481	-251
Total	16,943	18,169	-1,226
Single Earner, w/o children			
Federal	13,085	15,346	-2,261
Hawaii	5,438	6,074	-636
Total	18,523	21,420	-2,897

Notes: a: Higher earner files as head of household; lower earner files as single.

b: Single earner files as head of household and claims partner as dependent.

c: Single earner files as single and claims partner as dependent.

Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

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Excerpt from the Minutes of September 27, 1995, Testimony of Sumner J. La Croix, Professor of Economics University of Hawaii and Lee Badgett, Assistant Professor of Public Affairs, University of Maryland, Pages T-10 through T-18.

Testimony Before Commission on Sexual Orientation and the Law, State of Hawaii

Public Policy Issues: How Will Same-Sex Marriage Affect Hawaii's Tourism Industry?

Sumner La Croix and James Mak, Professors of Economics, University of Hawaii

First, legalization of same-sex marriage in Hawaii is likely to induce a significant annual flow of tourists who travel to Hawaii to enter into a same-sex marriage. Following (and modifying) the analysis in Jennifer Garuda Brown's 1995 *Southern California Law Review* article, we assume that: (1) 3% of the U.S. population over the age of 16 is gay (5.76 million people); (2) 15% of gay people have a current demand for marriage; (3) marriages from this backlogged demand will take place in Hawaii over a five-year period; (4) a second state does not legalize same-sex marriage over this five-year period; (5) the couples travel alone to Hawaii; (6) the number of states declining to recognize same-sex marriages does not decrease; and (7) other tourists are not crowded out of the market during the peak tourist seasons. Using these assumptions, we calculate that 172,500 additional tourists will visit Hawaii annually to be married. We emphasize that this estimate is very rough, as the number of additional tourists visiting Hawaii could be much lower or much higher as these assumptions vary.

Second, Hawaii encourages tourists to visit and participate in the Honolulu Marathon each year. The general presumption is that the additional sports tourism generates additional income for Hawaii residents. Tourists' use of public facilities also imposes depreciation costs, operating costs, and congestion costs on Hawaii's citizens and on other tourists, thereby offsetting some of the income gains. Given the excess capacity in the state's hotel industry and various supporting industries, we conclude that as long as additional tourists visiting to run in the Marathon generate net benefits for Hawaii, it is reasonable to assume that a new flow of tourists visiting Hawaii to be married will also generate net benefits for Hawaii. In 1992 the average "Westbound" visitor (originating in North America or Europe) stayed in Hawaii for 10.47 days and spent \$117 per day. Total expenditures by the new tourists would then amount to \$211 million annually for five years. Since, on average, a dollar of visitor expenditures translates into \$0.60 of household income, the \$211 million of expenditures will yield approximately \$127 million of income annually over five years for Hawaii's households.

Third, private groups have boycotted several states and cities to protest against local laws and policies. There is, however, no evidence that cities with strong gay rights laws or strong civil rights laws, such as San Francisco, New York, and Seattle, have suffered reduced tourism flows.

Fourth, another possibility is that the higher percentage of gay tourists visiting Hawaii would lower the value of visiting Hawaii for some heterosexuals, who would then choose to visit other destinations. The extent to which this phenomenon, known as "tipping," would occur in Hawaii is difficult to gauge. However, one could argue that it is unlikely to persuade significant numbers of heterosexual tourists to choose other destinations. In 1992, there were 6,874,000 visitors to Hawaii. An additional 172,500 gay visitors would increase the annual flow of tourists by 2.5%. Suppose we assume that 5% of current visitors to Hawaii are gay, reflecting a possible higher propensity for travel among the 3% of the U.S. population which is gay. Then the total number of gay tourists would increase to approximately 7.5% of the new total. It seems unlikely that an increase in the proportion of gay tourists from 5% to 7.5% of the total would be sufficient to significantly lower the value of tourism to the other 92.5% of the visitors.

Heterosexual tourists are, however, likely to notice public weddings of same-sex couples, including those of resident gay couples from Hawaii. The impact of such public visibility on Hawaii's image as a resort destination and on tourism revenues is uncertain. Tourism could decrease if some tourists are uncomfortable with public same-sex weddings, or could increase if public same-sex weddings make Hawaii a more exotic, interesting tourist destination.

Excerpt from the Minutes of October 11, 1995, Testimony of Sumner La Croix and James Mak, Professors of Economics, University of Hawaii, Pages T-28, 29.

Data References for Mak La Croix Testimony on Effects on Tourism

1. Assumptions that (a) 3% of the U.S. population is gay and (b) 15% of gay people will have a demand for marriage are taken from Jennifer Garuda Brown's 1995 *Southern California Law Review* article.
2. Data on Westbound visitor expenditures are from the *State of Hawaii Data Book*, 1993-94, p. 184. Data on length of stay are from *State of Hawaii Data Book*, 1993-94, p. 180. The relationship between income and expenditure is derived from *State of Hawaii Data Book*, 1993-94, p. 191.

Excerpt from the Minutes of October 11, 1995, Testimony of Sumner La Croix and James Mak, Professors of Economics, University of Hawaii, Pages T-28, 29.




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November 28, 1995

To: Thomas P. Gill
Chair, Commission on Sexual Orientation and the Law

From: Sumner La Croix 
Professor, Department of Economics, University of Hawaii

Re: Draft Report of the Commission (dated 11/22/95)

I am writing to you to correct the misrepresentation of my testimony in Chapter 5 (the Minority Report) of the Draft Report. Let me address a few specific issues.

1. The Minority Report states (p. 69) that "Dr. La Croix could not estimate whether the net effect on tourism dollars would be positive or negative." However, Professor James Mak and I submitted written testimony to the Commission ("Public Policy Issues: How Will Same Marriage Affect Hawaii's Tourism Industry?") in which we stated that the additional tourists traveling to Hawaii to enter into a same-sex marriage would generate "\$127 million of income annually over five years for Hawaii's households." The Minority Report distorts our views on this subject.
2. The Minority Report states (p. 65) that "[u]nless data show that most or all same-sex couples have greatly unequal income, Dr. Ghali, Professor Roth, and Dr. La Croix agree that there is no reason to assume a general tax benefit from marriage." My position is that there is a tax benefits from marriage if some same-sex couples have unequal incomes.
3. The Minority Report uses Dr. Ghali's testimony to attempt to refute my analysis of major benefits not extended to same-sex couples. However, Dr. Ghali's analysis is generally directed toward another question: he analyzes whether the extension of such benefits to same-sex couples would improve social welfare. These are two very different questions, and I have not addressed the second question. In many cases (p. 63), Dr. Ghali's criticism amounts only to a call for more research that would allow the major benefits denied to same-sex couples to be quantified more precisely.
4. In sum, my analysis indicates that there are major economic benefits that are extended to married opposite-sex couples that are not extended to same-sex couples. Moreover, Professor Mak and I both expect that the impact on tourism would be positive.

An Equal Opportunity/Affirmative Action Institution

Memorandum to Thomas P. Gill, Chairperson, dated November 28, 1995, from Sumner La Croix, Professor, Department of Economics, University of Hawaii, regarding Draft Report of the Commission.

Testimony
Presented to
State of Hawaii
Commission on Sexual Orientation
and the Law

Regarding the Impact of Having
Same-Sex as Compared to Opposite-Sex Parents
on the Development of Children

Robert J. Bidwell, MD

November 8, 1995

Excerpt from the Minutes of November 8, 1995, Testimony of Robert J. Bidwell, M.D., Pages T-3 through T-7.

Pediatrics, like many other professional disciplines, was late in addressing the issues of homosexuality, lesbian/gay parenting, and the impact of these on children, adolescents and families. Fortunately, my profession is making up for lost time and has begun a careful examination of these important subjects. A fairly extensive pediatric literature has developed on homosexuality and adolescence. The literature on gay and lesbian parenting is more sparse. In 1994, however, an excellent examination of the topic appeared in *Pediatrics in Review* (Gold, et al, 1994), one of the most respected journals in pediatrics; my testimony will attempt to summarize their review as well as provide information from more recent data appearing in journals identified through "MedLine" and "PsychLit" searches.

In September 1994, the article "Children of Gay or Lesbian Parents" by M.A. Gold, et al, appeared in *Pediatrics in Review*, an official publication of the American Academy of Pediatrics (Gold, et al, 1994). Among other issues relevant to pediatrics, it provided estimates of the prevalence of gay/lesbian parenting in the U.S. and a review of the literature on the development of children whose parents are gay or lesbian. They estimated that there are from 1 to 5 million lesbian mothers and 1 to 3 million gay fathers in the U.S., and that 6 to 14 million people have one or more gay or lesbian parents.

In reviewing the literature on the development of children of gay and lesbian parents Gold, et al, acknowledge the fact that the data is incomplete because many studies have had small numbers of subjects, non-random subject selection, narrow racial or socioeconomic representation and no long-term longitudinal follow-up. Nevertheless, they present the results of two recent large-scale reviews of the literature related to this topic which are summarized below. In 1992, C.J. Patterson reviewed 12 studies that overall looked at 300 children of gay and lesbian parents, all compared, in their respective studies, to equal numbers of children of heterosexual parents (Patterson, 1992). Taken as a whole, the reviewed studies provided the following findings:

1. There were no differences in the development of sexual orientation, gender identity or sexual role behavior between children of gay/lesbian parents and those of heterosexual parents.
2. Adolescent sexual orientation was similar in children from homosexual and heterosexual families (5-8% in both groups acknowledging homosexual attraction or behavior).
3. Both groups of children had equivalent rates of psychiatric disturbance and behavioral or emotional problems.
4. There were no statistically significant differences in personality characteristics, locus of control, moral maturity, or intelligence.
5. Children of lesbian mothers spent more time with their mothers' male friends and had more contact with their fathers than did children of single heterosexual mothers.

Excerpt from the Minutes of November 8, 1995, Testimony of Robert J. Bidwell, M.D., Pages T-3 through T-7.

6. Children growing up in gay and lesbian families were shown to be more tolerant of diversity and more open to discussion of sexuality issues and interpersonal relationships than children in heterosexual families.
7. Children of gay/lesbian parents are less likely to be victims of parental sexual or physical abuse than children of heterosexual parents.

Gold, et al, next looked at F.W. Bozett's review of the literature on gay fathers (Bozett, 1989). This literature has more often focused on parenting style than on child development. Taken as a whole these studies suggest that:

1. There is no evidence that gay or heterosexual fathers differ in problem-solving, providing recreation for children or in encouraging autonomy.
2. Paternal attitudes did differ: Gay fathers were less traditional, more nurturing, invested more in their paternal role and viewed their paternal role more positively than heterosexual fathers.

Finally, Gold, et al, note that studies have shown that children brought up in two-adult homes, regardless of the gender of the two adults, adjust better than those raised by single parents. Gold, et al, summarized their review of the issue of children of gay or lesbian parents by stating:

There are no data to suggest that children who have gay or lesbian parents are different in any aspects of psychological, social, and sexual development from children in heterosexual families. There has been fear that children raised in gay or lesbian households will grow up to be homosexual, develop improper sex-role behavior or sexual conflicts, and may be sexually abused. There has been concern that children raised by gay or lesbian parents will be stigmatized and have conflicts with their peer group, thus threatening their psychological health, self-esteem, and social relationship. These fears and concerns have not been substantiated by research.

I will briefly summarize the research reports identified by "MedLine" and PsychLit" that have appeared since 1993 which relate to the children of gay/lesbian parents. In 1993, O'Connell published a study of 11 young adults (aged 16 to 23 years) whose mothers were lesbian (O'Connell, 1993). These offspring expressed a perceived need for some secrecy as teenagers about maternal sexual orientation in order to preserve friendships and had unrealized fears of male devaluation and homosexuality that abated over time. They exhibited "profound loyalty" and protectiveness toward their mothers, openness to diversity and sensitivity to the effects of prejudice.

A second study by Flaks, et al, compared the 3 to 9 year old children of 15 lesbian couples born through donor insemination with 15 matched heterosexual-parent families (Flaks, et al, 1995). There was no significant difference between the two groups of children in cognitive functioning

Excerpt from the Minutes of November 8, 1995, Testimony of Robert J. Bidwell, M.D., Pages T-3 through T-7.

and behavioral adjustment. There was no difference in the parents' relationship quality and parenting skills except that lesbian couples exhibited more parenting awareness skills than did heterosexual couples.

Finally, a British study by Tasker and Golombok (Tasker and Golombok, 1995), attempted a longitudinal study of teenagers and young adults from lesbian and heterosexual single-parent homes. Those raised by lesbian mothers functioned well both as children and as adults. For children of lesbian parents the teen years were more difficult, although "this did not appear to be attributable to any difficulty in family relationships within the home, but to concerns about presenting their family background to others."

In summary, while the data on gay/lesbian parenting is still incomplete there is much that is known. In examining the breadth of the professional literature there is no evidence to date that the physical, emotional, psychological or social health of the children of gay or lesbian parents is compromised by the sexual orientation of their parents. While there is some data to suggest that for some teenagers the adolescent years may be difficult as they attempt to avoid the stigma of having parents who are "different", there is no data to suggest that deep or lasting harm results. As one author suggests, "Pain does not mean damage". While no parent wants their child to experience pain, in my work as a pediatrician, I have seen pain, which is a fact of life, lead to increased maturity, strength, and sensitivity to the pain of others. This observation is supported in the literature on the experience of children of gay/lesbian parents.

Gay and lesbian parenting is a fact of life as well. Our Hawaiian Islands are home to thousands of gay and lesbian parents and their children. Marriage can only strengthen the relationship of two people who have committed themselves to each other. Research shows that children from two-parent families are at an advantage over children from single-parent homes, regardless of the sexual orientation of the parents. Societal recognition will strengthen these families and over time, reduce the stigma or embarrassment that may be felt by some children, especially as they enter adolescence, because they have families that may be "different" from others. I urge you to carefully review the articles that accompany my testimony, and hope that you come to this conclusion—that recognition of same-sex relationships will strengthen our community's gay and lesbian families and benefit their children.

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Excerpt from the Minutes of November 8, 1995, Testimony of Robert J. Bidwell, M.D., Pages T-3 through T-7.

SPECTRUM INSTITUTE

A Non-Profit Corporation Promoting Respect For Human Diversity

November 30, 1995

Thomas F. Coleman
Executive Director

Hon. Tom Gill,
Chairperson
Commission on Sexual
Orientation and the Law
Honolulu, Hawaii

Re: Comment on Draft of Final Report

Dear Mr. Gill:

Today I received a copy of the Commission's report. I would like to commend you for your thoroughness and patience in studying these difficult issues.

I would like to make a correction to the majority report which, at several places, refers to me as Thomas P. Coleman or omits my middle initial. (p. C-2, p. 27 fn 99, p. 31 fn 113, p. 36 fn 123, p. 38 fn 128, p. 39 fn 129.) My correct name is Thomas E. Coleman. Thank you in advance for making this correction.

I would also like to make the following correction and comments regarding the minority report. The minority report states, at page 91, "Mr. Coleman stated that he is a homosexual." I'm not sure if the meeting was tape recorded, but if it was and if the tape is reviewed carefully, you will find that I never stated that I am a homosexual. It would be appropriate for that sentence in the minority report to be deleted since such a comment was never made by me at the hearing. If the author of the minority report refuses to delete this sentence, I believe that it would be the prerogative of the majority to delete it from the final report.

I would also like to comment on footnote 242 in the minority report. Had the minority done a proper search of available computer databases, they would have discovered that, during the past seven years, I was mentioned and quoted in more than 30 newspaper and magazine articles dealing with domestic partnership or discrimination on the basis of marital status and sexual orientation. Articles mentioning "Thomas F. Coleman" have appeared in the following publications (attached): Time Magazine, Los Angeles Times, New York Times, Los Angeles Daily Journal, Washington Post, Wall Street Journal, San Francisco Chronicle, Long Beach Press Telegram, Seattle Post-Intelligencer, McCall's, Orlando Sentinel, Los Angeles Daily News, and U.S. News and World Report. The minority's failure to discover any of these articles casts doubt on their research abilities.

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Letter from Thomas F. Coleman to Commission regarding comments to November 22, 1995 Draft Report, dated November 30, 1995.

SPECTRUM INSTITUTE

Tom Gill
November 30, 1995
Page 2

The failure of the minority to discover references to "Spectrum Institute" probably stems from the fact that the media has usually referred to the "Family Diversity Project," which is a project of Spectrum Institute, rather than referring specifically to the corporate name of "Spectrum Institute." I have enclosed a brochure about Spectrum Institute, which lists its two major projects, one of which deals with family diversity. I believe that this brochure was previously submitted to the Commission.

Also, so that the record will be clear regarding the activities of Spectrum Institute, I am enclosing letters from various organizations which we have assisted in the past few months. They include: American Association of Retired Persons, ACLU Foundation, Service Employees International Union, City of Atlanta, and the Los Angeles City Council.

Finally, the minority's insinuation that I have not written anything on the topics under study by the Commission is certainly misleading. I submitted many government reports to the Commission staff, including, I believe: Report of the Anti-Discrimination Task Force of the California Insurance Commissioner, Final Report of the Los Angeles City Attorney's Task Force on Marital Status Discrimination, Final Report of the Los Angeles City Task Force on Family Diversity, and excerpts from the final report of the Governor's Commission on Personal Privacy -- all of which I authored.

To counter the innuendos regarding the bona fides of Spectrum Institute, and to dispel the myth that I have not been quoted by the media as an expert in the field of marital status and sexual orientation discrimination, it would certainly be proper for the majority to make some appropriate comment in the Majority Response to the Minority Report, even if in a footnote.

Good luck in finalizing your work, and thank you for the opportunity to participate in this historic project.

Sincerely,



THOMAS F. COLEMAN

Letter from Thomas F. Coleman to Commission regarding comments to November 22, 1995 Draft Report, dated November 30, 1995.

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Andrew Koppelman
Assistant Professor

December 4, 1995

Hawaii Commission on Sexual Orientation and the Law
Fax: (808) 587-0681

Dear Commissioners,

Herewith are my comments on your November 22 draft report. As a general matter, its recommendations are eminently sensible and well-reasoned. These comments address a few details of the report that, in my opinion, can be improved. It also addresses a few egregious errors in the minority report.

On p. 29, n. 97, a good source to cite would be Samuel Marcossan, "The 'Special Rights' Canard in the Debate Over Lesbian and Gay Civil Rights," 9 Notre Dame J. L. Ethics & Pub. Pol'y 137 (1995).

On pp. 30-34, it would be helpful for purposes of educating the public if the report explained the way in which the Baehr v. Lewin court relied on the analogy with Loving v. Virginia. I have defended this analogy extensively in my own writing. See, e.g., my "Why Discrimination Against Lesbians and Gay Men is Sex Discrimination," 69 N.Y.U. L. Rev. 197 (1994).

On p. 32, n. 102, the obligatory citation would be to Charlotte Patterson, "Children of Lesbian and Gay Parents," Child Development 63:1025-42 (1992), cited on p. G-7 of your report, which is the most comprehensive review to date of the studies that have been done of children of lesbian and gay parents. Pp. 71-74 of the minority report ought to be answered here. The discussion of children there is sheer fantasy, consisting in claims about the inferior quality of parenting by lesbians and gays that are entirely unsupported, indeed refuted, by all the evidence we now have. This part of the minority report slanders many responsible, caring parents, evidently without bothering to find out whether there is any basis at all for its claims. (Patterson's survey is not cited or addressed, nor are any of the studies she cites.) It is reprehensible for public officials to make such cavalier, groundless, and damaging claims.

On p. 33 of the majority report and pp. 68-69 of the minority

Letter from Andrew Koppelman letter to Commission regarding comments to November 22, 1995 Draft Report, dated December 4, 1995.

report, Jennifer Gerarda Brown's important conclusions about the likely economic effects of recognizing same-sex marriage are rejected on the basis of testimony before the Commission, the content of which is left unspecified. All we are told is that two economists disagree with Brown. If you reject her arguments, you ought to say why. You seem persuaded by the "tipping" argument, but this is addressed well on pp. 806-810 of her article, which deserves an answer in the text of the report.

On p. 34 n. 11, you indicate that the summary of Hawaii polls reproduced on the last page of the draft, which somewhat prejudicially puts "same-sex 'marriage'" in scare quotes, is from an unknown source. I have a copy of the source in my possession. It is the August, 1994 issue of Michael Gabbard's newsletter, Stop Promoting Homosexuality Hawaii, p. 4.

On the weaknesses of the procreation-based argument against same-sex marriage, you may find helpful pp. 273-277 of my N.Y.U. Law Review article, cited above. In particular, the argument is inconsistent with Turner v. Safley, 482 U.S. 78 (1987), in which the U.S. Supreme Court held that prison inmates, some of whom are serving life sentences and so cannot procreate, have a right to marry.

On p. 38, the Commission briefly discusses the argument, presented on p. 89 of the minority report, that churches would be forced to marry same-sex couples even if their faith forbids them from sanctifying such unions. This is a silly argument that does not deserve extended discussion, but a couple of illustrations might help to show how silly it is. There are already marriages recognized by every state that some religions refuse to recognize. Many rabbis will not celebrate intermarriages between Jews and non-Jews. The Catholic church will not celebrate marriages in which one of the parties is divorced, and the former spouse is still living. The legal right of Jewish and Catholic clergy to discriminate in this way has never, so far as I am aware, been questioned by anyone.

Finally, the minority report's description, on pp. 83-84 of its report, of the process by which the American Psychological Association decided that homosexuality is not a pathology, blatantly misrepresents one of its sources, Ronald Bayer's book Homosexuality and American Psychiatry. Bayer's study is largely an account of how the views of such therapists as Charles Socarides, on whom the minority report relies heavily, became discredited as inconsistent with all the evidence. Bayer observes, on p. 34, that Socarides' arguments for treating homosexuality as a pathology are "sometimes opaque." It is astonishing that the minority cites his book as supportive of its views. It may be helpful to the Commission to have a summary of the relevant intellectual developments.

The history is basically as follows. The modern psychiatric proponents of the disease view have relied on the claim (disagreeing with Freud) that all human beings were constitutionally predisposed to heterosexuality and that only overwhelming environmental forces, specifically massive fears induced during childhood, could divert sexual object choice toward a same-sex object. These writers, principally Sandor Rado, Irving Bieber, and Socarides, all thought that this diversion is caused by severe early developmental disturbances. All therefore concluded that homosexuality must invariably be associated with severe personality disorders. (There were differences of opinion as to how early the trauma occurred, and therefore how profound the consequent disturbance was. These views are described in Bayer, Homosexuality and American Psychiatry, pp. 28-38.) The only homosexuals any of these doctors knew, of course, were their patients, who had come to them precisely because they were leading troubled lives. "Since it was assumed that all homosexuals suffered from a pathological condition there was no question about the methodological soundness of relying upon patients for a more general understanding of the disorder." Bayer, p. 41.

The reason why the disease theory has now been abandoned by most psychiatrists and psychologists is that this prediction has been demonstrated to be false, most importantly by Evelyn Hooker's studies, which found that psychologists judging projective test results of matched pairs of male homosexuals and heterosexuals could not distinguish the homosexuals from the heterosexuals, and categorized two-thirds of the members of both categories as of average adjustment or better. Evelyn Hooker, "The Adjustment of the Male Overt Homosexual," 21 J. Projective Techniques 18 (1957). Hooker's work is discussed in Bayer, Homosexuality and American Psychiatry, pp. 49-53. See also Sylvia A. Law, "Homosexuality and the Social Meaning of Gender," 1988 Wisc. L. Rev. 187, 212-14, and citations therein. The disease theory also misconstrued the nature of homosexual desire, which it held could not be the basis of enduring, loving relationships. Thus Socarides wrote that mutual love "cannot be achieved in any homosexual relationship on an enduring basis," because "there are multiple underlying factors which constantly threaten any ongoing homosexual relationship: destruction, mutual defeat, exploitation of the partner and the self, oral-sadistic incorporation, aggressive onslaughts, and attempts to alleviate anxiety -- all comprising a pseudo-solution to the aggressive and libidinal conflicts that dominate and torment the individuals involved." Charles W. Socarides, "Homosexuality -- Basic Concepts and Psychodynamics," 10 Int'l J. Psychiatry 118, 119, 122 (1972). It has since been documented that many homosexual relationships are, except for the sex of the participants and the legal status of the union, indistinguishable from heterosexual marriages. A study of San Francisco bay area gays found that 29% of the men, and almost three-fourths of the women, were currently involved in a stable relationship. Alan Bell & Martin Weinberg,

Homosexualities (New York: Simon and Schuster, 1978), pp. 91, 97. Many of these couples foster the same intimacy, caring, and enduring commitment that are valued in the most successful heterosexual marriages. See Kath Weston, Families We Choose: Lesbians, Gays, Kinship (New York: Columbia University Press, 1991); Letitia Anne Peplau, "Research on Homosexual Couples: An Overview," 8 J. Homosexuality 3 (Winter 1982), and citations in both of these works.

Notwithstanding this evidence, some psychiatrists continue to insist that homosexuality is a disease. Their reasons for thinking so, however, have become increasingly obscure. Consider the murky formulations of Socarides, the most prominent member of the faction of the psychiatric community that still holds the disease view.

Heterosexual object choice is outlined from birth by anatomy and then reinforced by cultural and environmental indoctrination. It is supported by universal human concepts of mating and the traditions of the family unit, together with the complementariness and contrast between the two sexes. Everything from birth to death is designed to perpetuate the male-female combination. This pattern is not only culturally ingrained, but anatomically outlined. The term "anatomically outlined" does not mean that it is instinctual to choose a person of the opposite sex. The human being is a biologically emergent entity derived from evolution, favoring survival.

Charles Socarides, "Homosexuality," in Silvano Arieti, ed., American Handbook of Psychiatry, 2nd. ed. (New York: Basic Books, 1974), v. 3, p. 291; quoted in Bayer, Homosexuality and American Psychiatry, pp. 34-35. The argument seems quite mystical, and it is hard to imagine any empirical evidence that could have any impact on this view. The Commission's conclusion that sectarian religious views are not an appropriate basis for public policymaking is entirely applicable here.

I hope these comments are helpful, and look forward to seeing the final report.

Sincerely,



Andrew Koppelman

DISCUSSION OF SOME BENEFITS WHICH MAY ACCRUE TO INDIVIDUALS
FROM EXTENDING MARITAL BENEFITS TO DOMESTIC PARTNERS

A Testimony Before the Commission on Sexual Orientation and the Law

Moheb Ghali
Retired Professor of Economics, University of Hawaii

The Commission has heard testimonies by Professor Sumner La Croix and Mr. David Shimabukuro regarding the possible benefits to individuals which may be available should domestic partners be extended rights now available only to married couples. The purpose of my testimony is to clarify some of the points raised in these two testimonies and to point the need for specific information without which the value and the costs of the potential benefits cannot be evaluated. I will attempt as much as possible to indicate which areas are worth pursuing, and the data that would be required.

Underlying much of what follows is a concept on which all economists agree: in any redistributive economic policy corresponding to each benefit extended there is a cost of equal or greater magnitude. This is so because as long as we are dealing with distribution not production in an economic environment with resource constraints, benefit to an individual is a cost to another. Had there been free benefits, there would be no point of policy decisions. The cost will thus be at least equal to the benefit. I say at least because the implementation of the policy and the administration of the benefit transfer will require some resources which some may call bureaucratic cost, administrative costs, or deadweight loss, but by whatever name, they are additional costs.

These cost should not mean that redistributive policies are inherently bad. In some instances there are overarching social objectives which justify the additional costs. Realizing this places an added importance on the need for precise definitions and accurate measurements of the benefits, as we know the cost will be at least that much, and that this is the information which policy makers need if they are to properly discharge their responsibilities.

I will confine my remarks to the benefits discussed in those testimonies, however, I will be happy to provide further remarks which may help the Commission in its deliberations on any other potential benefits which may be brought before you.

1. Benefits from Marriage with a Small Expected Value

Economists and statisticians use a concept "expected value" to measure the value of a future benefit which an individual may or may not receive. The expected value of a benefit is the economic value of the benefit multiplied by the probability that the individual will actually get that benefit. Thus if there is very small probability, say 1 in a 1000 chance,

that I will take advantage of a particular benefit, say waiver of the nonresident tuition differential at the UH, and that differential is \$1,500, the expected value of that benefit to me is only \$1.50 ($\$1,500 \times .001$). If taking advantage of the benefit will occur in the future, say 5 years hence, economists apply a discount to the expected value of the benefit. For example, if the nonresident tuition waiver may be used five years hence, the \$1.50 needs to be discounted (say at 10% interest rate), yielding a present value of the 96 cents. Because, many of the benefits listed by Professor La Croix under this heading have very small probabilities of being used, as he correctly points out, the expected value of each benefit is small, and the sum of the discounted expected values of this group of benefits is likely to be small. While it is possible to collect data to measure the discounted expected values of these benefits, I do not believe the magnitude of the benefits is sufficient to justify the cost of the data acquisition.

2. One time only Benefits from Marriage.

One can ensure that assets are efficiently transmitted to beneficiaries at death by having a simple will, for which one can use the very inexpensive simple forms available in stationary stores. If one needs to establish a trust, it must be for other reasons, and those reasons apply to people regardless of their marital status. Durable powers of attorney do not require marital status, one need not be related to an individual to grant that individual a durable powers of attorney. The only case I can think of where marital status confer a benefit, is dying without a valid will. Under these conditions a spouse would be treated differently from a domestic partner. But the remedy is currently available and is very inexpensive: a simple will. I do not believe that data or measurement are warranted for this category of potential benefits.

3. Retirement Health Insurance Benefits:

Currently spouses are covered by the retiring spouse's medical insurance, a benefit which is not available to non-spouses. The value of the benefits to a "spouse" is calculated by Professor La Croix at \$1,464 for a medical insurance and \$533.20 for Medicare Part B policy. The total is \$1,997.20 per person annually. What I would like to point out is that the benefits to one person are costs to someone else, and that cost considerations must be introduced in the discussion. The Health Fund, or the private employer will face increased costs of almost \$2,000 per eligible person. It is crucial to collect data in order to calculate the estimated fiscal impact on the ERS and the Health Fund, for an informed decision on the potential cost of extending the coverage to non-married couples depends on the costs as well as the benefits. It is also important to evaluate whether a general increase in employee contributions will be required or will the additional cost be covered by State tax revenues. Data from the ERS on the average (say over 10 years) annual cost of spousal medical coverage, as well as an estimate of the number of domestic partners who are expected to benefit are needed. These data are indispensable to reaching an informed decision.

4. Retirement Pension Benefits:

Professor La Croix lists the three options offered to the retiree by ERS. However, he does not consider in his discussion Option 1, rather he concentrates his analysis on the other two options. All three options have the same expected value. Option 1: receiving a lump-sum payment is available to all retirees. Choosing that option, one can buy an annuity from a private sector insurance company and designate any beneficiary one chooses. If the rate of return in the private sector is higher than in the ERS, one can actually get a better income stream doing that.

Now regarding Options 2 and 3, the ERS uses the term "designated beneficiary" not spouse. As Mr. Shimabukuro pointed out in his testimony, a domestic partner, or anyone else, can be designated as the beneficiary under these options, under the existing ERS definitions. Thus there are no additional benefits to be realized in the pension plan.

5. Health Insurance:

If it is true, as Professor La Croix states, that most of the couples who are domestic partners in Hawaii are working, and thus, each individual is covered by health insurance, there is no problem to be solved. It is possible that one of the domestic partners will not be working and thus will have no health coverage unless the other domestic partner purchases it.

For a number of years economists have studied the problem of the allocation of time within a family, including the division of labor between the spouses. Economists consider a spouse's decision to work at home rather than enter the labor force as an economic decision made by the family, hopefully rationally, realizing the implications regarding loss of income, benefits of not working, tax implications, as well as health coverage, social security and other taxes, and retirement benefits. Considering the costs of non-participation in the labor market and the economic value to the family of the non-market work at home, a spouse will work at home if the expected gain exceeds the costs, and that cost includes purchase of the additional health insurance coverage. True, providing health coverage for non-working spouses but not for non-working domestic partners makes the cost of staying home higher by \$1,251.48 for the domestic partner than the cost of staying home for the spouse. It is unlikely, however, that compared to the forgone income from employment that the \$1,251.48 is the determining factor in the choice of whether or not to work. Economists agree that government subsidies distort market prices and resource allocation, thus a subsidy to non-working spouses affects the efficiency of resource allocation. But economists also agree (in what is called theory of the second-best) that two wrongs do not make a right: balancing a subsidy to one group by a subsidy to another can increase the inefficiency in resource allocation.

Finally, if for the sake of equity, rather than efficiency in resource allocation, one is willing to subsidize the choice of a domestic partner to stay home rather than work, someone will

have to pay that extra \$1,251.48 so that the benefits can be extended. Again, the benefits to a group must be balanced against the cost of an identical magnitude (assuming no administrative costs) to another group. That balancing is a political decision. However, the politicians will need data on the possible magnitude of this subsidy, and the alternate sources for its financing if they are to make informed decisions. Here data are needed on the number of domestic partners who do not participate in the labor market, and an analysis of the alternative ways of funding the coverage.

6. Major Tax Considerations:

The Federal tax code's differential treatment of married and single individuals applies, as Professor La Croix points out, both ways: it gives an advantage for married couples with highly unequal incomes and penalizes a married couple with equal incomes. It is not clear, however that domestic partners will gain as a group if they get "married". Unless data show that most or all same-sex couples are of the unequal income category, there is no reason to assume a general benefit. Data on the distribution of incomes of domestic partners are needed for a conclusion to be reached regarding the potential impact of the Federal tax code. Legal analyses are needed to determine if the Federal tax filing status of domestic couples would change as a result of State action.

The advantage of deferring the transfer tax on estates valued at over \$600,000 can be accomplished by anyone through the creation of trusts. One does not even need to establish a trust to defer the payment of estate taxes when the first partner dies. If property (real estate and financial and personal assets) are all held by the partners as joint tenants, there will be no transfer at the death of one of the partners. After the death of the surviving partner, the tax liability occurs: but that is the same as would happen to a married couple. If one's choice is not to hold assets in joint tenancy, one can then establish trusts. That too holds for married couples.

7. Death Benefits:

Under the current ERS rules, as Mr. Shimabukuro testified, the benefits payable upon the death in-service of an employee are available only to the surviving spouse (until re-married) and the dependent children (under age 18) if the employee was under the noncontributory plan. If the member was under the contributory plan, the beneficiary, who can be a non-spouse would get the ordinary death benefits, and if the death was accidental, the beneficiary also gets the members accumulated contributions. The only benefit exclusive to spouses under the contributory plan is an additional pension.

Data on the number of cases of in-service death as a percent of the total active membership over the past five years would give a reasonable estimate of the probability of the death benefits. The average payment per case of in service death over the past five years would be a reasonable estimate of the benefit value. Both of these data should be

easily available from the ERS. The benefit value multiplied by the probability would yield the expected value of the death benefits. This figure, the expected value of death benefits to survivors of non-contributory members is needed to measure both the potential benefits and costs of any policy change.

Similarly, the expected value of the exclusive spouse pension under the contributory plan can be calculated to evaluate the potential benefit and cost of policy change.

8. Hawaiian Home Lands Lease

Professor La Croix list as the last of the major benefits the right of a surviving partner to maintain a lease on Hawaiian Home Lands parcel after the death of the Hawaiian partner who held the lease on the parcel. There is a cost to extending this benefit that must be evaluated. As long as there is a shortage of Hawaiian home sites, which may be evidenced by waiting lists, to allow the domestic partner to remain in the Hawaiian Home Lands property, thus saving \$4,812 annually in rent, means that an eligible Hawaiian family is denied that property, and is paying rent elsewhere. To the extent that the Hawaiian family on the waiting list pays a rent higher than the \$4,812 annually (as they are likely to have dependent children in the family), there is an inefficiency in the allocation of resources. Data on the excess demand for Hawaiian Home Lands parcels should be easily available.

To evaluate this potential benefit, one needs to know the frequency of domestic partnerships that occupy Hawaiian Home Lands properties at this time. An opinion survey of Hawaiian community attitude towards granting the rights to domestic partners of Hawaiians in preference to other Hawaiian families would be helpful, as it will ultimately be the Hawaiian Home Lands that will make the decision regarding the extension of this benefit to domestic partners.

Conclusion:

Data are needed only for the benefits discussed above under 3 and 5 (medical), and 7 (death while in service). Much of these data could be by analysis of the historical data of the ERS. A more significant effort would be needed to conduct the opinion survey needed under 8.

HAWAII, TOURISM AND SAME-SEX MARRIAGE

A Testimony Before the Commission on Sexual Orientation and the Law

Moheb Ghali

Retired Professor of Economics, University of Hawaii

I. Introduction

In an article published recently¹ Professor Jennifer G. Brown sets out to prove that there are great financial rewards to the first state that legalizes same-sex marriages. In the third paragraph of the article she states that "The tourism revenue from same-sex marriages could exceed \$4 billion." The \$4 billion figure appears many times throughout the paper, and should, in Professor Brown's opinion, provide a compelling reason for Hawaii to consider the legalization of such marriages.

For Professor Brown's suggestion to be considered the public policy debate on the issue, one needs to examine its merits as a viable economic option. As we show below, the benefit estimated by Brown are groundless and her argument is without merit when viewed as an economic argument.

II. Methodology and the Underlying Model

We begin by discussing a methodological issue important to assessing the value of the estimates provided by Professor Brown. The argument developed in the paper is based on an *underlying economic model* implicit in the calculations of economic impacts she performs. The economic model Professor Brown uses is the most primitive Keynesian type where unemployment and excess capacity are caused solely by insufficiency of effective demand. The notion of the multiplier comes out of the Keynesian demand type model where the structure of the economy is depicted in very few (four or five) equations. Such a device is of not much value in policy discussions. First, the structure of the economy and the interactions between its various sectors are much more complex than can be depicted by such a model². Secondly, the production side of the economy is entirely ignored in such demand sided models. Also ignored in such models are the supply of factors of production and the changes in the supply over time through the regional

¹ This testimony is condensation of a more detailed analysis which is available from the author

mobility of capital and labor.³ All these elements and their interactions, as well as the dynamic structure of the economy do play significant roles in determining the response of economic variables such as personal income, employment and government revenues to a stimulus such as increased tourism. The use of a "multiplier" to calculate the impact of increased tourists expenditures is clearly improper.

It should be noted that, except in naive static models, the multiplier is not instantaneous; the successive rounds of expenditures occur over time. It is not, therefore proper to take the present value and simply multiply it by the "multiplier".

Nor is the impact of tourists' expenditures temporally invariant. The response of the economy to a stimulus of a given magnitude will vary from year to year depending on such factors as the rate of capacity utilization, the unemployment rate, the interest rate and the rate of inflation, among other factors, and these do vary over time.. The structure of the economy itself changes over time making impact predictions beyond a handful of years untenable. Yet Professor Brown uses "the multiplier", a single number which is constant over time, to estimate 20 year effects.

These complexities do not mean that nothing can be done to estimate the impact of increased tourism. Much can and has been done, and specifically for Hawaii. A realistic model which incorporates the dynamic features and the varied interactions and feedbacks in the economy can be constructed and its coefficients estimated (the coefficients need to be re-estimated periodically to capture any structural changes). The model can then be used to simulate the response of the various economic variables to any stimulus or combination of stimuli. A study of this type examining the impact of tourism growth in Hawaii is available, and while it is dated, the methodology is clear and the parameter estimates can be easily updated.⁴

These remarks on the "multiplier" used by Professor Brown to generate the economic impact of the initial tourists' spending apply equally to the use of the other "multipliers" "to generate the increase in household wealth, in government revenues" and in jobs listed in Table 5⁶.

Finally, the employment multiplier, an extension of the income multiplier, which converts the additional income into additional "jobs" is not a very useful concept. Even if

one regarded labor as homogeneous, and in reality this assumption is false, the impact of a given expenditure increase on employment will depend, as we pointed out above, on a number of variables such as capacity utilization, the extent of unemployment, the state of technology, the wage rate, not to mention the supply of labor and the factors which influence it.

III. The Residency Requirement

Turning from methodology to one of the assumptions made by Professor Brown, we find that the same-sex couple would travel to the first state that legalizes same-sex marriage and spend 10 days, which Professor Brown recommends that the state impose as a residency requirement. The possible negative impact of a 10 day residency requirement is dismissed in a cavalier manner in a footnote. It is clear that Professor Brown either underestimates or is unaware of the number of Japanese citizens who visit Hawaii to get married. The effect of imposing a 10 day residency requirement may be losing all of that market. The demand of these tourists is certainly elastic as there are other alternative destinations. Any serious consideration of a residency requirement should closely investigate the potential impact on that market.

IV. Migration As A Possible Outcome

Will the married couple return to their home state? Professor Brown asserts, with great confidence but with no evidence, that "... almost all of the couples who come to the state to wed will return to their home states. Although the legal change may induce some gay and lesbian couples to move permanently to the first-mover state in search of a gay-friendly place, it is likely that couples will take up residence in the first-mover state only if they had employment opportunities there."⁷ This is an assertion about an empirical issue that cannot, because of its potential impact, be taken at face value, rather it deserves serious research. Statements made by Professor Brown elsewhere in the paper in conjunction with a widely accepted economic proposition lead us to the opposite conclusion. The well known economic proposition is due to Professor Charles Tiebout, states that "People vote with their feet." If the freedom of movement is unrestricted, people will select to live in the communities and jurisdictions which best reflect their

preferences. If there is only one state that is "a gay-friendly place" one would expect migration by same-sex couples to that state.

Same-sex couples getting married certainly would have a very strong incentive to move to the first-mover state, as it, by definition, grants them all the rights and benefits of a married couple. These rights need not be recognized upon return to the home state. Many states have a "marriage evasion provision" which invalidates a marriage solemnized in another state if the couple were married in that state specifically to evade the laws of their home state. Confronted with the numerous benefits the same-sex couple are entitled to under the laws of Hawaii and the almost certainty that their home state will neither recognize their marriage nor grant them the rights and benefits, same-sex couples voting with their feet is the likely outcome given their mobility.

Should migration of same-sex couples to Hawaii occur, what would be the impact? According to Professor Brown estimation there will be 140,250 marriages in each of the first five years and 25,500 marriages per year thereafter. If we assume that only one fourth of the couples who get married will choose to migrate to Hawaii, certainly not an unreasonable assumption in view of the expected benefits, we can expect 35,000 couples or 70,000 individuals to be added to Hawaii's population in each of the first five years, and 12,570 each year thereafter. The impact on housing, infrastructure such as utilities and roads, labor markets and government services can be quite large.

V. The Four Billion Dollars Question

Returning to the \$4 billion: is it true that "Four billion dollars rest on the table, waiting for one of the players to seize the prize." ?⁸ At this point we need to recall our initial discussion of the underlying economic model. The model assumes the existence of unemployment and excess capacity for the increased demand to generate increased real income and employment, otherwise only inflation, or as happened in the 1980's "stagflation" would result. It is therefore crucial to consider whether the \$4 billion represents an increase in real income, that is output, and whether the employment increases predicted by Professor Brown will occur.

First, it is necessary to keep in mind that the \$4 billion is the present value of a stream of income spread over 20 years. As such, the \$4 billion calculation requires that

the conditions of "Keynesian type deficiency in effective demand" persist over that 20 year period. Professor Brown cites evidence of excess capacity in hotels (a decline of 2% in occupancy rates in 1993, although she also cites an increase in room rates of 3% for the past three years), and a corresponding decline in luxury hotel values as evidence of deficiency in demand. She gives the sluggishness of the Japanese and the United States economies, and the attraction of other travel destinations as the reasons for the excess capacity⁹. Neither of these are expected to last for twenty years. Even if they did, the market adjustment to asset prices will after a period of time clear the excess capacity. It is very likely that the asset market adjustment period is considerably less than 20 years.

Secondly, even if the excess capacity in hotel rooms were to persist (and I do not believe it will), hotel rooms are not the only input in the production of tourists services. No evidence is given by Professor Brown of excess supply of labor in the services sector, nor that if such surplus currently exists will persist for 20 years. Infrastructure is also an input in the production of tourist services. There is strong evidence that the current stock of capital in infrastructure, such as roads, is fully utilized. Had hotel rooms been the only input required in the production of tourist services, or had the various inputs been fully substitutable, Professor Brown's argument would be viable if one can document the persistence of excess capacity for twenty years into the future. As it is, the limitations on the supply of any one or a group, of the inputs needed to produce tourists services during any portion of the 20 years makes the calculations of income and employment increases on the basis of a Keynesian model irrelevant.

VI. Conclusions

Where does this leave the \$4 billion? We did not discuss Professor Brown's assumptions regarding the number of gay men and lesbians in the United states, regarding the percentage of those who would choose to travel to Hawaii for marriage. Nor did we discuss the assumption regarding the \$6,000 expenditures per wedding¹⁰¹. We did not discuss those assumptions because if the underlying model used to generate the results is not valid, assumptions about initial expenditures are irrelevant, and the simple calculations provided are groundless. Professor Brown has chosen to present her argument as an economic proposition. We treated it as such and found it has no merit.

¹ Jennifer Gerarda Brown, "Competitive Federalism And the Legislative Incentives to Recognize Same-Sex Marriage," *Southern California Law Review*, Vol. 68, No. 4, (1995), pp. 745-839.

² See for example: Moheb Ghali and Bertrand Renaud, *The Structure and Dynamic Properties of a Regional Economy*, Lexington Books, D.C. Heath and Company, Lexington, Toronto, London, 1975.

³ For the role of supply in regional growth see Moheb Ghali, M. Akiyama and J. Fujiwara, "Models of Regional Growth, An Empirical Evaluation," *Regional Science and Urban Economics*, 11(1981) pp. 175-190. North Holland. For the effects of factor mobility on regional growth see Moheb Ghali, M. Akiyama, and J. Fujiwara, "Factor Mobility and Regional Growth," *The Review of Economics and Statistics*, LX, No., (1978), pp. 78-84, Harvard University.

⁴ See Moheb Ghali, ed., *Tourism and Regional Growth*, Studies in Applied Regional Science, Vol. 11, Martinus Nijhoff Social Sciences Division, Leiden, 1977.

⁵ Furthermore, because the naive nature of the model underlying the calculations it is not clear whether some of these items are additive. Is the increase in government tax revenue a part of the increased income or is it in addition? That is, is the increase in income increase in personal income, gross output or disposable income. Is the increase in household wealth in addition to the increase in income? By what mechanism is this wealth created: appreciation of property? savings? or is it the present value of the stream of incomes to the households?

⁶ Note that the figure Brown uses for "the multiplier" is based on a 1983 study using 1970-1980 data. Although the footnote to the table from which the figure is derived (Table 211 State of Hawaii Data Book) states that the figures have been revised, no reference or documentation for the revisions are provided.

⁷ Brown, p.815.

⁸ Brown, p.836.

⁹ Brown also cites the potential military base closings as a future possible negative impact. Most military personnel stationed in Hawaii live on the base or in private residential areas. Many shop in the military exchange stores. Those who are visitors are likely to stay in the Hale Koa, a military hotel in a prime Waikiki location and with very low room prices.

¹⁰ Professor Brown is willing to entertain the possibility that: "If the \$6,000 assumption seems inflated, the impact of an even more conservative assumption can be easily calculated. Assuming that same-sex weddings would generate only one-half as much tourism revenue (\$3,000 per wedding) simply halves the impact on the state economy: Legalizing same-sex marriage would still generate two billion dollars in tourism...."

¹¹ Brown, p.776. A glaring example of careless calculations producing meaningless numbers is given in her Table 6. The revenues and wealth and jobs calculated using Hawaii's tourist expenditures, length of stay, "multiplier" "government revenue multiplier, and employment multiplier are assumed to hold for states as diverse as Nevada, Vermont and California.

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November 7, 1995

Commission on Sexual Orientation and the Law
State of Hawaii

RE: Testimony for Wednesday, November 8, 1995

Members of the Commission:

I must begin with a formal complaint regarding the distance I traveled in order to attend the hearing, and the expense involved. We on the Neighbor Islands have not been given equal access to, nor equal voice in, these hearings which could ultimately affect us.

I have come from Pahoia on the Big Island. I am the mother of three and the grandmother of two, and have lived on the Big Island for ten years. Last year I served on the Pahoia High and Intermediate School SCBM as a representative, and will address you today regarding an issue in Pahoia which is germane to sexual orientation-based public policy and relevant to the commission.

In December 1993 Tom Aitken, seventh and eighth grade counselor at Pahoia School, wrote in *Island Lifestyles*, a local monthly magazine for the homosexual community, "I am a DOE counselor. I have organized a Project 10... in my school." "Project 10" is an advocacy and promotional tool for "gay" counselors in our schools to draw students into a homosexual social and political identity without their parents' involvement, knowledge or consent.

Project 10 was brought to remote Pahoia through the "back door," unbeknown to parents, community and district and state school administrators. At the time of Mr. Aitken's *Island Lifestyles* letter neither the parents, the community, the Hawaii State Board of Education nor the Department of Education were aware of the program's existence. Parents learned later that Pahoia Project 10 had been implemented a full year earlier by unilateral approval from the school principal as a suicide prevention program.

The philosophy of Project 10 as stated in its curriculum is based on the belief that homosexual thoughts, feelings, fantasies and behavior make one a homosexual, and that if an individual is a homosexual, he is "gay" politically and socially. It characterizes the Project 10 counselor, preferably a homosexual, as non-directive in his guidance. It addresses the problems of suicide, alcohol, drug abuse, and school drop out with the need to "reinforce" the student's "gay" identity.

The project 10 package included:

- Developmental services which support "gay affirmative goals" (Project 10 Handbook) mandating that homosexuality be presented as equally desirable with heterosexuality irrespective of parents' and students' beliefs.
- A "coming out of the closet" process, creating an us vs. them mentality facilitated by a "gay" school counselor and initially confidential from parents.
- Referral of students without parental knowledge to "gay" community groups whose sexual standards are permissive.

Excerpt from the Minutes of November 8, 1995, Testimony of Diane Sutton, Pages T-86 and T-87.

Parental and community disapproval of the Project 10 program in Pahoehoe last year resulted in its suspension and deference to School-Community Based Management. As SCBM representative I am often asked questions on the program's status, and my answer is that Project 10 is dormant, not dead.

How can it be, people ask, after two hearings documenting parental and community opposition to Project 10, that there is risk of reimplementation? Gay activists' tenacious efforts to resuscitate it combined with administrators' obfuscation and hesitancy to challenge it could result in its reimplementation regardless of public sentiment.

On October 11 this year Mr. Aitken celebrated "gay coming out day" by placing one of these pink triangles in each teacher's box at Pahoehoe School. It reads, "I will educate myself on the diversity of sexualities, in order to better understand differences and similarities among straights, lesbians, bisexuals, gays, transgenders, transexuals, crossdressers, and drag queens. I will not tolerate put downs based on sexuality (fag, lezie, etc.) and will pursue infractions with the same zeal as racist slurs." At least one teacher displayed it on the classroom wall.

Pahoehoe Project 10's link to your task of examining public policy effects of extending marriage benefits to same-sex couples in Hawaii could be summarized as the domino effect. We would be remiss to look the other way and deny that the concern I've presented to you has bearing on your work here today.

On the subject of teen suicide, nationally known expert Dr. Charles Socarides, clinical professor of psychiatry at Albert Einstein College of Medicine who has treated more than a thousand clients involved in homosexuality wrote that suicides of "homosexual youth" are not the result of society's hostile environment, as the world is more accepting of homosexuals than it ever was.

He states, "Kids can't come to terms with themselves. They can't stop this unnatural behavior. They wish someone would help them, and they despair of this. They know it is against the biological realities of life."

In a letter printed in the Honolulu Advertiser on August 10, 1994, Mr. Floyd Shaw wrote, "I have been in the gay community for over 35 years . . . let us clarify this suicide matter. I have had two of my best friends (brothers) kill themselves because they were gay. They did not commit suicide because they were not accepted - we all loved them. They killed themselves, as others may do, because they did not want to be gay and felt they had no alternative. Of course they do!"

I argue on the civil grounds that parents are mandated by state law to send their children to public school. Legal sanctioning of same-sex marriage would most certainly result in endorsement of school programs which without parental involvement have the purpose or effect of encouraging or supporting homosexuality as a positive lifestyle alternative, programs which our community is already on record as not supporting.

Respectfully,

Diane Sutton

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November 9, 1995

Chairman and All Commissioners,
Commission on Sexual Orientation and the Law
State of Hawaii

Dear Chairman Gill,

RE: Discriminatory and inappropriate treatment by commissioners during the presentation of my testimony at the November 8, 1995 meeting

One purpose of Hawaii State Commission on Sexual Orientation and the Law as stated includes discussion of "substantial public policy reasons to extend or not to extend (major legal and economic benefits extended to married opposite-sex couples) . . . to same-sex couples," which, as an invited guest, I flew from the Big Island on November 8 to address.

During my testimony (approximately seven minutes long) I was interrupted at least three times by a commissioner, and at one point called a liar. These repeated and hostile interruptions resulted in my unintended omission of one entire paragraph of spoken testimony, having the outcome of effectively silencing me and obstructing my speech.

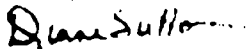
Rude interruptions and verbal assaults from the commission as I and others were attempting to speak rendered it clear that the commission is stacked with individuals who have already made up their minds and are committed to promotion of a pro-homosexual rights political agenda.

When at one point in my testimony I was literally stopped from speaking due to harassment by Commissioner Morgan Britt, you stated in an attempt to restore order that there is a wide range of opinions and convictions on the subject.

However, my treatment, and behavior by a large majority of the commissioners toward other speakers who followed me that day, revealed that the subject is really not open to consideration. In a supposedly free environment I found the one-sided and unbalanced promotion of a single viewpoint and ridicule to those not in agreement extremely disturbing.

Responsible individuals with balancing views should have been appointed to this important commission to ensure proper balance and adherence to guidelines. Incidents like the above described clearly show a breakdown in the character and legitimacy of this commission and discredit its work.

Sincerely,



Diane Sutton

Cc: All Commission on Sexual Orientation and the Law Members
Governor Ben Cayetano
Representative Joseph M. Souki, Speaker of the House of Representatives, State of Hawaii
Senator Norman Mizuguchi, President of the Senate, State of Hawaii

Letter to Commission from Diane Sutton, dated November 9, 1995.

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