

ORIGINAL

SHAWN A. LUIZ (6855)
Attorney at Law
1132 Bishop Street
Suite 1520
Honolulu, Hawaii 96813
Telephone: (808) 538 - 0500
Facsimile: (808) 538 - 0600
E - mail: attorneyluiz@msn.com

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 28 2011
at 10 o'clock and 30 min 32 M.
SUE BEITIA, CLERK

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE
OF PRAISE; CARL E. HARRIS;
LIGHTHOUSE OUTREACH CENTER)
ASSEMBLY OF GOD; JOE HUNKIN,)
JR.)

Plaintiffs,

vs.

NEIL ABERCROMBIE, in his official
capacity as Governor of the State of)
Hawaii; LORETTA J. FUDDY, in her)
official capacity as Director of Health of)
the State of Hawaii; STATE OF)
HAWAII,)

Defendants.

CV 11: 00790 JMS KSC

PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION; PLAINTIFFS'
MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION;
DECLARATION OF CARL E.
HARRIS; EXHIBITS "1"- "4";
DECLARATION OF SHAWN A.
LUIZ; EXHIBITS "5"- "6"

HEARING:

DATE:

TIME:

JUDGE

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Plaintiffs, EMMANUEL TEMPLE, THE HOUSE OF PRAISE, CARL E. HARRIS, LIGHTHOUSE OUTREACH CENTER ASSEMBLY OF GOD; and JOE HUNKIN, JR., bring this action pursuant to 42 U.S.C. Section 1983 and Federal Rules of Civil Procedure (“FRCP”) Rule 65, to ask this court to issue a temporary restraining order (“TRO”) against the Defendants, ABOVE NAMED, [from enforcing Act 1 against Plaintiffs] who violated the 1st, 5th and 14th amendments to the United States Constitution in enacting Act 1, also known as Senate Bill 232, without providing immunity to religious entities and their clergy, officers and congregation from being compelled to follow the requirements of Act 1. **Defendants are going to implement Act 1 on January 1, 2012, a National and State Holiday.**

Time is of essence because Defendants are implementing Act 1 without providing the federal constitutional immunity (freedom of religion and freedom of association) guaranteed to plaintiffs as citizens of the United States. Plaintiffs are unable to wait for normal court scheduling and/or proceedings.

Plaintiffs therefore request that this court issue a TRO, and, in the interest of judicial economy, that the court subsequently and immediately issue a preliminary injunction upon the expiration of the TRO. The attached memorandum and the exhibits and declarations attached thereto support this motion.

Plaintiffs respectfully request that the TRO and preliminary injunction require the following of the Defendants:

Defendants cannot implement Act 1 until a trial on the merits has occurred in federal court as to whether Defendants violated the 1st, 5th and 14th amendments in enacting Act 1 in its present form.

DATED: Honolulu, Hawaii, December 28, 2011



SHAWN A. LUIZ

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE) CIVIL NO: _____
OF PRAISE; CARL E. HARRIS;)
LIGHTHOUSE OUTREACH CENTER)
ASSEMBLY OF GOD; JOE HUNKIN,)
JR.)

Plaintiffs,)

vs.)

NEIL ABERCROMBIE, in his official)
capacity as Governor of the State of)
Hawaii; LORETTA J. FUDDY, in her)
official capacity as Director of Health of)
the State of Hawaii; STATE OF)
HAWAII,)

Defendants.)
_____)

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Plaintiffs, EMMANUEL TEMPLE, THE HOUSE OF PRAISE and CARL
E. HARRIS, its Bishop and Pastor, and LIGHTHOUSE OUTREACH CENTER
ASSEMBLY OF GOD and JOE HUNKIN, JR., its Pastor bring this action
pursuant to 42 U.S.C. Section 1983 and Federal Rules of Civil Procedure

(“FRCP”) Rule 65, to ask this court to issue a temporary restraining order (“TRO”) against the Defendants, above-named (hereinafter “Defendants”) [from enforcing Act 1 against Plaintiffs]; Defendants have failed to comply with the 1st, 5th and 14th Amendments of the United States’ Constitution subsequently discussed, which are required by said law. **Defendants have announced their intention to implement Act 1 on January 1, 2012, a National and State Holiday.**

Time is of essence because Defendants are going to implement Act 1 on January 1, 2012, a National and State Holiday; Act 1 fails to comply with Plaintiffs’ federal constitutional rights guaranteed as U.S. Citizens by the 1st, 5th and 14th amendments.

Plaintiffs are unable to wait for normal court scheduling and/or proceedings to obtain necessary relief.

Plaintiffs therefore request that this court issue a TRO, and, in the interest of judicial economy, that the court subsequently and immediately issue a preliminary injunction upon the expiration of the TRO. This attached memorandum and the exhibits and declarations attached thereto support this motion.

II. PARTIES

Plaintiff EMMANUEL TEMPLE, THE HOUSE OF PRAISE is a Domestic Nonprofit Corporation whose purpose is to advance and promote the worship of God; to engage in and promote the study of the Holy Scriptures; and to advance the

gospel of Jesus Christ. Plaintiff, CARL E. HARRIS at all times relevant to the matters alleged here, is a Bishop and Pastor of Emmanuel Temple, House of Praise and is a resident of Honolulu, Hawaii. Plaintiff LIGHTHOUSE OUTREACH CENTER ASSEMBLY OF GOD is a Domestic Nonprofit Corporation whose purpose is for religious purposes to worship the Lord, Sunday school, outreach program, day care, men & women ministry assoc.; JOE HUNKIN, JR. is a Pastor of Lighthouse Outreach Center Assembly of God and is a resident of Honolulu, Hawaii.

Defendants are the State of Hawaii as the principal and employer of its agents and employees. Defendant NEIL ABERCROMBIE as Governor is the final decision maker who signed into law Act 1. Defendants at all times pertinent hereto, were and are located in the District of Hawaii.

As a final decision maker, Governor ABERCROMBIE is ultimately responsible for ensuring compliance with all applicable federal statutory laws, including but not limited to, the First Amendment, Due Process Clause to the Fifth Amendment of the United States Constitution, made applicable upon the states by the Fourteenth Amendment and other federal law referenced above.

LORETTA J. FUDDY is sued in her official capacity as Director of Health of the State of Hawaii. As a final decision maker, Director Fuddy is ultimately responsible for ensuring compliance with all applicable federal statutory laws,

including but not limited to, the First Amendment, Due Process Clause to the Fifth Amendment of the United States Constitution, made applicable upon the states by the Fourteenth Amendment and other federal law referenced above.

III. STANDARD FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

The standard for a temporary restraining order are the same as those for a preliminary injunction. Bieros v. Nicola, 857 F.Supp. 445, 446, (E.D.Pa. 1194). The Court may issue a preliminary injunction if the moving party demonstrates either (1) a likelihood of success on the merits and a possibility of irreparable injury if the injunction is not issued, or (2) that serious questions are raised as to the merits and the balance of hardships tips sharply in the movant's favor. United States v. Nutri-Cology, Inc., 982 F.2nd 394, 397 (9th Cir. 1992); Half Moon Bay Fisherman's Mktg. Ass'n v. Carlucci, 857 F. 2nd 505, 507 (9th Cir. 1988). These alternative tests are, in effect, extremes on a continuum with points at which the degree of harm and likelihood of success are inversely related. United States v. Odessa Union Warehouse Co-op, 833 F. 2^d 172, 174 (9th Cir. 1987).

In addition to the traditional factors, the Court may consider the public's interest concerning the injunction sought. Id. at 176. See also Alaska v. Native Village of Venetie, 856 F. 2nd 1384, 1388-89 (9th Cir. 1988). In the absence of statutory guidance, a motion for a preliminary injunction is addressed to the discretion of the Court. Syanon Found., Inc. v. California, 444 U.S. 1307 (1979)

Courts have consistently exercised their discretion to not require the moving party to post a bond where either (1) the party lacks financial resources, or (2) the suit is brought to protect an important federal interest. See 7 Moore;s Federal Practice ¶ 65.09 (1995); 11A Wright, Miller & Kane, Federal Practice and Procedure Section 2954 (1995). See also Bass v. Richardson, 338 F. Supp 478, 490 (D. N.Y. 1971) (the district court, in granting motion for preliminary injunction brought by plaintiff class seeking to restrain cut-backs in benefits under New York’s Medicaid program, declared that “it is clear to us that indigents, suing individually or as class plaintiffs, ordinarily should not be required to post a bond under Rule 65(c”); Doe v. Perales, 782 F. Supp. 201 (D. N. Y. 1991) (bond not required when elderly Medicaid recipients brought suit to enjoin New York officials from implementing changes which would have reduced Medicaid benefits); California ex rel. Van de Kamp v. Tahoe Reg’l Planning Agency, 766 F. 2nd 1319 (9th Cir. 1985) (district court exercised discretion to allow environmental group seeking injunction prohibiting Lake Tahoe regional planning agency from taking any action to amend regional plan to proceed without posting a bond).

IV. THE PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

A. Defendants are persons subject to 42 USC Section 1983.

The United States Supreme Court held in WILL v. MICHIGAN DEPARTMENT OF STATE POLICE ET AL., 491 U.S. 58; 109 S. Ct. 2304; 105 L. Ed. 2d 45 (1989) that neither a State nor its officials acting in their official capacities are "persons" under § 1983 in a suit seeking money damages. However, again the Court specifically noted in WILL at footnote 10 on pages 71, 2312, and 58, respectively that Ex parte Young remains the law of the land.

n10 **Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because "official-capacity actions for prospective relief are not treated as actions against the State."** Kentucky v. Graham, 473 U.S., at 167, n. 14; Ex parte Young, 209 U.S. 123, 159-160 (1908). This distinction is "commonplace in sovereign immunity doctrine," L. Tribe, American Constitutional Law § 3-27, p. 190, n. 3 (2d ed. 1988), and would not have been foreign to the 19th-century Congress that enacted § 1983, see, e. g., In re Ayers, 123 U.S. 443, 506-507 (1887); United States v. Lee, 106 U.S. 196, 219-222 (1882); Board of Liquidation v. McComb, 92 U.S. 531, 541 (1876); Osborn v. Bank of United States, 9 Wheat. 738 (1824). City of Kenosha v. Bruno, 412 U.S. 507, 513 (1973), on which Justice Stevens relies, see *post*, at 93, n. 8, is not to the contrary. That case involved municipal liability under § 1983, and the fact that nothing in § 1983 suggests its "bifurcated application to municipal corporations depending on the nature of the relief sought against them," 412 U.S., at 513, is not surprising, since by the time of the enactment of § 1983 municipalities were no longer protected by sovereign immunity. *Supra*, at 67-68, n. 7.

There is no 11th Amendment immunity for either prospective relief or attorney fees and costs. In order to vindicate the supremacy of federal law, the Supreme Court has held that supreme officials can be sued for a prospective relief in the nature of injunctions and declaratory judgments for alleged violations of federal law without being entitled to the protection of the Eleventh Amendment.

See Pennhurst State School & Hospital v. Halderman, 465 US 89, 104 S.Ct. 900, 79 LE2d 67 (1984); Ex parte Young, 209 US 123, 28 S.Ct. 441, 52 LE 714 (1908); Green v. Mansour, 474 US 64, 106 S.Ct. 423, 88 LE2d 371 (1985) reh den 474 US 1111 (1986).

This exception to the general rule concerning a states' Eleventh Amendment immunity, although narrowly construed, extends beyond action seeking injunctive relief to prohibit unconstitutional acts and includes declaratory relief actions for violations of federal statutes. Barnes v. Cohen, 749 F2d 1009 (3rd Cir Pa 1984) cert. den Cohen v. Betson, 471 US 1061, 105 S.Ct. 2126, 85 LE2d 490 (1985) and Continental Insurance Co v. Illinois Department of Transportation, 709 F.2d 471 (7th Cir Ill 1983).

As for attorney fees and costs which are not barred by the Eleventh Amendment see, Hutto v. Finney, 437 US 678, 98 S.Ct. 2565, 57 LE2d 522 (1978) reh den 439 US 1122 (1979) [noting also that Congress intended to abrogate states' Eleventh Amendment immunity for attorney's fees under 42 USC § 1988].

By enacting Act 1 without providing full religious immunities (freedom of religion and freedom of association), the State of Hawaii has put itself in direct conflict with the First Amendment to the federal constitution.

The First Amendment provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Both the

establishment and Free Exercise Clauses of the First Amendment apply to the States under the Fourteenth Amendment. The free exercise clause prohibits the government from (denying benefits to, or imposing burdens on) someone on the basis of the person's religious beliefs. The first amendment also protects freedom of association and belief.

In Boy Scouts of Am. v. Dale, 530 U.S. 640, 643-644 (U.S. 2000), Petitioners were the Boy Scouts of America and the Monmouth Council, a division of the Boy Scouts of America (collectively, Boy Scouts). The Boy Scouts are a private, not-for-profit organization engaged in instilling its system of values in young people. The Boy Scouts asserted that homosexual conduct was inconsistent with the values it sought to instill. Respondent was James Dale, a former Eagle Scout whose adult membership in the Boy Scouts was revoked when the Boy Scouts learned that he was an avowed homosexual and gay rights activist. The New Jersey Supreme Court held that New Jersey's public accommodations law required that the Boy Scouts admit Dale. The case presented the question whether applying New Jersey's public accommodations law in this way violated the Boy Scouts' First Amendment right of expressive association. The U.S. Supreme Court held that it did. Boy Scouts of Am. v. Dale, 530 U.S. 640, 643-644 (U.S. 2000); see also *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981) ("Religious beliefs need not be

acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection").

In Boy Scouts of Am., the Boy Scouts asserted that it "teaches that homosexual conduct is not morally straight," and that it did "not want to promote homosexual conduct as a legitimate form of behavior". The Court accepted the Boy Scouts' assertion:

We need not inquire further to determine the nature of the Boy Scouts' expression with respect to homosexuality. But because the record before us contains written evidence of the Boy Scouts' viewpoint, we look to it as instructive, if only on the question of the sincerity of the professed beliefs.

Boy Scouts of Am. v. Dale, 530 U.S. 640, 651 (U.S. 2000).

Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557, 132 L. Ed. 2d 487, 115 S. Ct. 2338 (1995) is illustrative on this point. In Hurley, the U.S. Supreme Court considered whether the application of Massachusetts' public accommodations law to require the organizers of a private St. Patrick's Day parade to include among the marchers an Irish-American gay, lesbian, and bisexual group, GLIB, violated the parade organizers' First Amendment rights. The U.S. Supreme Court stated:

We observed: "[A] contingent marching behind the organization's banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the organized marchers would suggest their view that people of

their sexual orientations have as much claim to unqualified social acceptance as heterosexuals The parade's organizers may not believe these facts about Irish sexuality to be so, or they may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing to keep GLIB's message out of the parade. But whatever the reason, it boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control." 515 U.S. at 574-575.

Here, we have found that the Boy Scouts believes that homosexual conduct is inconsistent with the values it seeks to instill in its youth members; it will not "promote homosexual conduct as a legitimate form of behavior." Reply Brief for Petitioners 5. As the presence of GLIB in Boston's St. Patrick's Day parade would have interfered with the parade organizers' choice not to propound a particular point of view, the presence of Dale as an assistant scoutmaster would just as surely interfere with the Boy Scout's choice not to propound a point of view contrary to its beliefs.

Boy Scouts of Am. v. Dale, 530 U.S. 640, 653-654 (U.S. 2000) explaining *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 132 L. Ed. 2d 487, 115 S. Ct. 2338 (1995).

The U.S. Supreme Court stated further in Boy Scouts of Am.:

The Boy Scouts takes an official position with respect to homosexual conduct, and that is sufficient for First Amendment purposes...

Boy Scouts of Am. v. Dale, 530 U.S. 640, 655 (U.S. 2000)...

...Having determined that the Boy Scouts is an expressive association and that the forced inclusion of Dale would significantly affect its expression, we inquire whether the application of New Jersey's public accommodations law to require that the Boy Scouts accept Dale as an assistant scoutmaster runs afoul of the Scouts' freedom of expressive association. We conclude that it does.

Boy Scouts of Am. v. Dale, 530 U.S. 640, 656 (U.S. 2000)...

...As the definition of "public accommodation" has expanded from clearly commercial entities, such as restaurants, bars, and hotels, to membership

organizations such as the Boy Scouts, the potential for conflict between state public accommodations laws and the First Amendment rights of organizations has increased...

Boy Scouts of Am. v. Dale, 530 U.S. 640, 657 (U.S. 2000)...

...The state interests embodied in New Jersey's public accommodations law do not justify such a severe intrusion on the Boy Scouts' rights to freedom of expressive association. That being the case, we hold that the First Amendment prohibits the State from imposing such a requirement through the application of its public accommodations law....

Boy Scouts of Am. v. Dale, 530 U.S. 640, 659 (U.S. 2000)...

....JUSTICE STEVENS' dissent makes much of its observation that the public perception of homosexuality in this country has changed. See post, at 37-39. Indeed, it appears that homosexuality has gained greater societal acceptance. See *ibid.* But this is scarcely an argument for denying First Amendment protection to those who refuse to accept these views. The First Amendment protects expression, be it of the popular variety or not...

Boy Scouts of Am. v. Dale, 530 U.S. 640, 660 (U.S. 2000).

Finally the Court concluded in *Boy Scouts of America*:

We are not, as we must not be, guided by our views of whether the Boy Scouts' teachings with respect to homosexual conduct are right or wrong; public or judicial disapproval of a tenet of an organization's expression does not justify the State's effort to compel the organization to accept members where such acceptance would derogate from the organization's expressive message. "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U.S. at 579.

The judgment of the New Jersey Supreme Court is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Boy Scouts of Am. v. Dale, 530 U.S. 640, 661 (U.S. 2000).

Boy Scouts of America shows the imminent and immediate danger Plaintiffs will be subject to (injunctions, civil fines and civil penalties) if Act 1 takes effect on January 1, 2012. Act 1 merely exempts Plaintiffs from performing the civil union itself; it does not exempt Plaintiffs for refusing to rent their church grounds for same sex ceremonies and receptions; and further to be subject to damages and fined should it refuse to allow a sacrilege on its grounds. Compare Exhibit 1 with 3 and 4. Exhibits 5 and 6 show the absurdity of the State, through State action, attempting to dictate how a church interprets its own canon laws and religious doctrines and beliefs. Exhibits 5 and 6 and Boy scouts of America demonstrate why the First Amendment was put in place to guarantee religious freedom despite the misguided efforts of State's to interfere with the free exercise of one's religious beliefs through State anti-discrimination laws that are preempted by Article III of the U.S. Constitution.

For example the imminent injuries for refusing to rent their church grounds for same sex ceremonies and receptions include, HRS § 489-7.5, which provides:

§ 489-7.5. Suits by persons injured; amount of recovery, injunctions.

(a) Any person who is injured by an unlawful discriminatory practice, other than an unlawful discriminatory practice under part II of this chapter, may:

(1) Sue for damages sustained, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit; and

(2) Bring proceedings to enjoin the unlawful discriminatory practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit.

(b) The remedies provided in subsection (a) shall be applied in class action and de facto class action lawsuits or proceedings provided that:

(1) The minimum \$1,000 recovery provided in subsection (a) shall not apply in a class action or a de facto class action lawsuit; and

(2) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this part and deterrence from violation of its provisions.

(c) The remedies provided in this section are cumulative and may be brought in one action.

HRS § 489-8, entitled “Civil penalty”, further provides:

(a) It shall be unlawful for a person to discriminate unfairly in public accommodations.

(b) Any person, firm, company, association, or corporation who violates this part shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the civil rights commission on behalf of the State. The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. Each day of violation under this part shall be a separate violation.

(c) This section shall not apply to violations of part II of this chapter.

V. A GREAT POSSIBILITY OF IRREPARABLE HARM EXISTS

Without the requested temporary injunction and preliminary injunction, Plaintiffs are subject to injunctive relief, civil damages and civil fines for refusing to rent their church grounds for same sex ceremonies and receptions.


VI. THE BALANCE OF HARDSHIPS FAVORS THE PLAINTIFF

The balance of hardship favors Plaintiffs because the entering of this TRO and preliminary injunction will allow Plaintiffs to retain their 1st, 5th and 14th amendment rights. Moreover, Defendants will not suffer any hardship in being temporarily delayed in implementing what amounts to a wrongful infringement upon religious liberty and freedom of association as guaranteed by the First Amendment to the U.S. Constitution. Moreover, Defendants will not suffer any significant hardship in the delay when balanced against the irreparable harm to Plaintiffs. Without the entering of this TRO and preliminary injunction, Plaintiffs will be unable maintain their 1st, 5th and 14th Amendment rights without being subjected to injunctions, fines and other penalties for refusing to rent their church grounds for same sex ceremonies and receptions.

VII. CONCLUSION

In conclusion, Plaintiffs respectfully request that this Court enter an order granting a TRO and preliminary injunction in accordance with F.R.C.P. Rule 65 mandating that Act 1 cannot be implemented until a trial on the merits.

Dated: Honolulu, Hawaii, December 28, 2011.


SHAWN A. LUIZ
Attorney for Plaintiffs

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE)	CIVIL NO. _____
OF PRAISE; CARL E. HARRIS;)	
LIGHTHOUSE OUTREACH CENTER)	DECLARATION OF
ASSEMBLY OF GOD; JOE HUNKIN,)	CARL E. HARRIS
JR.)	
)	
Plaintiffs,)	
)	
vs.)	
)	
NEIL ABERCROMBIE, in his official)	
capacity as Governor of the State of)	
Hawaii; LORETTA J. FUDDY, in her)	
official capacity as Director of Health of)	
the State of Hawaii; STATE OF)	
HAWAII,)	
)	
Defendants.)	

DECLARATION OF CARL E. HARRIS

CARL E. HARRIS, pursuant to 28 U.S.C. Section 1746, hereby declares as follows:

1. I am the named Plaintiff in the above-captioned case. I have personal knowledge and am competent to testify as to the matters contained in this Declaration.
2. I am the current Pastor and Bishop of “EMMANUEL TEMPLE, THE HOUSE OF PRAISE”, a Domestic Nonprofit Corporation whose purpose is to

advance and promote the worship of God; to engage in and promote the study of the holy scriptures; and to advance the gospel of Jesus Christ.

3. Same sex marriage and civil unions are against the teachings of the gospel of Jesus Christ.

4. I oppose Act 1 because of the teachings of the gospel of Jesus Christ.

5. Act 1 does not provide religious institutions, churches and houses of worship with immunity from the filing of civil rights complaints in public accommodations.

6. In New Jersey, California, and Hawaii, same sex couples have sought to rent the properties of religious institutions, churches and houses of worship for marriages, civil unions and receptions. When the religious institutions, churches and houses of worship refused, the same sex couples have pursued civil rights complaints against said religious institutions, churches and houses of worship.

7. Because of my duties as Pastor and Bishop, I am aware that this year, the Hawaii Civil Rights Commission accepted a complaint from a same sex couple against a church which refused to rent its property for a same sex couple to perform a same sex marriage. The Hawaii Civil Rights Commission did not dismiss the same sex discrimination complaint, and is investigating despite the religious liberty and freedom of association guaranteed by the federal constitution.

8. Because of my stance regarding same-sex unions and marriages, I am under imminent and immediate threat commencing on January 1, 2012 of being investigated; incurring attorneys fees and costs in defending my religious liberties; being enjoined and fined by the Hawaii Civil Rights Commission for refusing to rent my facilities to same sex couples.

9. Attached as Exhibit "1" is a true and correct copy of Act 1.

10. Attached as Exhibit "2" is a true and correct copy of the Legislative's acknowledgment of the Hawaii Civil Rights Commission's unconditional support for Act 1 without religious liberty protections/amendments.

11. Attached as Exhibit "3" is a true and correct copy of the HB 1244 which was never enacted. The bill's enactment would have assured religious liberty/freedom of association consistent with the First Amendment to the U.S. Constitution. In refusing this provision, the Hawaii Legislature has assured a conflict between the State of Hawaii's anti-discrimination statutes and the First Amendment to the U.S. Constitution.

12. Attached as Exhibit "4" is a true and correct copy of the SB 1447, which was never enacted. The bill's enactment would have assured religious liberty/freedom of association consistent with the First Amendment to the U.S. Constitution. In refusing this provision, the Hawaii Legislature has assured a

conflict between the State of Hawaii's anti-discrimination statutes and the First Amendment to the U.S. Constitution.

13. All of these exhibits were either produced by myself or received in the ordinary course of business.

14. To this date, the Defendants have failed to provide the full religious liberty immunities/freedom of association guaranteed by the federal constitution in either Act 1 or HRS 368; 378; 489; or 515.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, December 26, 2011


CARL E. HARRIS



GOV. MSG. NO. 1101

RECEIVED

2011 FEB 24 A 9:41

EXECUTIVE CHAMBERS
HONOLULU

HSE OF REPS/SENATE

NEIL ABERCROMBIE
GOVERNOR

February 23, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

to President
to Speaker
Members
Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on February 23, 2011, the following bill was signed into law:

SB232 SD1 HD1

RELATING TO CIVIL UNIONS.
ACT 001 (11)

Alaka
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

EXHIBIT "1"

Approved by the Governor
on FEB 23 2011

ACT 001

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 232
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO CIVIL UNIONS.

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

1 SECTION 1. The intent of this measure is to recognize
2 civil unions in Hawaii. By establishing the status of civil
3 unions in this State, it is not the legislature's intent to
4 revise the definition or eligibility requirements of marriage
5 under chapter 572, Hawaii Revised Statutes.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

"CHAPTER

CIVIL UNIONS

11 § -1 Definitions. As used in this chapter, unless the
12 context otherwise requires:

13 "Agent" means the person or persons appointed as an agent
14 or agents by the department of health pursuant to section 572-5.

15 "Civil union" means a union between two individuals
16 established pursuant to this chapter.

17 "Partner" means an individual who is a party to a civil
18 union established pursuant to this chapter.



1 **§ -2 Eligibility to enter into a civil union.** A person
2 shall be eligible to enter into a civil union only if the person
3 is:

4 (1) Not a partner in another civil union, a spouse in a
5 marriage, or a party to a reciprocal beneficiary
6 relationship pursuant to chapter 572C;

7 (2) At least eighteen years of age; and

8 (3) Not related to the other proposed partner in the civil
9 union, as provided in section -3.

10 **§ -3 Civil unions void; when.** A civil union shall be

11 void between the following persons: parent and child,
12 grandparent and grandchild, two siblings, aunt and nephew, aunt
13 and niece, uncle and nephew, uncle and niece, and persons who
14 stand in relation to each other as ancestor and descendant of
15 any degree whatsoever.

16 **§ -4 Solemnization; license to perform; refusal to join**
17 **persons in a civil union.** (a) A civil union shall become valid
18 only upon completion of a solemnization by a person licensed in
19 accordance with this section.

20 (b) Any judge or retired judge, including a federal judge
21 or judge of another state who may legally join persons in
22 chapter 572 or a civil union, may solemnize a civil union. Any



1 ordained or licensed member of the clergy may solemnize a civil
2 union. Solemnization may be entirely secular or may be
3 performed according to the forms and usages of any religious
4 denomination in this State. Nothing in this section shall be
5 construed to require any person authorized to perform
6 solemnizations of marriages or civil unions to perform a
7 solemnization of a civil union, and no such authorized person
8 who fails or refuses for any reason to join persons in a civil
9 union shall be subject to any fine or other penalty for the
10 failure or refusal.

11 (c) Nothing in this section shall be construed to require
12 any person authorized to perform solemnizations pursuant to
13 chapter 572 or civil unions pursuant to this chapter to perform
14 a solemnization of a civil union, and no such authorized person
15 who fails or refuses for any reason to join persons in a civil
16 union shall be subject to any fine or other penalty for the
17 failure or refusal.

18 (d) No agent may solemnize a civil union; nor may any
19 assistant or deputy of the agent solemnize a civil union.

20 (e) No person shall perform the solemnization of a civil
21 union without first having obtained a license from the
22 department of health. The department of health shall issue



1 licenses to solemnize civil unions in the same manner as it
2 issues licenses pursuant to chapter 572. The department of
3 health may revoke or suspend a license to solemnize civil
4 unions. Any penalties or fines that may be levied or assessed
5 by the department of health for violation of chapter 572 shall
6 apply equally to a person licensed to solemnize civil unions.

7 **§ -5 Applicants for civil union; license required;**
8 **limitations.** (a) No persons may be joined in a civil union in
9 this State unless both partners have:

- 10 (1) Met the requirements of section -2;
- 11 (2) Complied with section -6 and, if applicable,
- 12 section -7; and
- 13 (3) Been issued a license by an agent in the judicial
- 14 circuit in which a civil union is to be solemnized or
- 15 in which either person resides, which license shall
- 16 bear the certification of the agent that the persons
- 17 named therein have met the requirements of section
- 18 -2 and have complied with section -6 and, if
- 19 applicable, section -7.

20 (b) The license, when certified by the agent, is
21 sufficient authority for any person authorized to perform a
22 civil union solemnization in this State to join the persons in a



1 civil union; provided that the solemnization is performed not
2 more than thirty days after the date of issuance. The license
3 shall become void thirty days after issuance.

4 **§ -6 Application for license for persons who wish to**
5 **enter into a civil union; fee.** (a) No license for a civil
6 union may be issued by an agent until both applicants have
7 appeared before the agent and applied for the license. The
8 application for the license shall be completed in its entirety,
9 dated, signed, and sworn to by each applicant and shall state
10 each applicant's full name, date of birth, birthplace,
11 residence, social security number, whether single, widowed, or
12 divorced, and whether the applicant is under the supervision or
13 control of a conservator or guardian. If the application is
14 signed and sworn to by the applicants on different dates, the
15 earlier date shall be deemed the date of the application. The
16 agent shall issue a copy of this chapter to any person applying
17 for a license.

18 (b) The fee for a license to enter into a civil union
19 shall be an amount equal to the amount prescribed in section
20 572-5, and all amounts collected by the agent as application
21 fees under this chapter shall be retained or remitted and
22 apportioned in the same manner as prescribed in section 572-5.



1 **§ -7 Persons under control of conservator or guardian.**

2 (a) No civil union license may be issued to any applicant under
3 the supervision or control of a conservator or guardian,
4 appointed in accordance with chapter 560, unless the written
5 consent of the conservator or guardian is signed, notarized, and
6 filed with the agent.

7 (b) Any person who enters into a civil union without the
8 consent provided for in subsection (a) shall acquire no rights
9 by that civil union in the property of any person who was under
10 the control or supervision of a conservator or guardian at the
11 time the civil union was entered into.

12 **§ -8 Record of solemnization; reported by whom;**
13 **affidavit; evidentiary weight of certificate or affidavit. (a)**

14 Each person who solemnizes a civil union shall certify upon the
15 civil union license certificate the fact, time, and place of the
16 solemnization of the civil union and return the certificate to
17 the agent within three business days following the solemnization
18 of the civil union, or as may otherwise be prescribed by the
19 department of health.

20 (b) If any person who has solemnized a civil union fails
21 to return the certificate to the agent as required under
22 subsection (a), the partners joined in a civil union may provide



1 the agent with a notarized affidavit attesting to the fact that
2 they were joined in a civil union and stating the date and place
3 of the solemnization of the civil union. Upon the receipt of
4 that affidavit by the agent, the civil union of the partners
5 shall be deemed to be valid as of the date of the solemnization
6 of the civil union stated in the affidavit.

7 (c) The certificate required by subsection (a) or an
8 affidavit received pursuant to subsection (b) shall be prima
9 facie evidence of the facts stated therein.

10 **§ -9 Benefits, protections, and responsibilities.**

11 Partners to a civil union lawfully entered into pursuant to this
12 chapter shall have all the same rights, benefits, protections,
13 and responsibilities under law, whether derived from statutes,
14 administrative rules, court decisions, the common law, or any
15 other source of civil law, as are granted to those who contract,
16 obtain a license, and are solemnized pursuant to chapter 572.

17 **§ -10 Civil unions performed in other jurisdictions.**

18 All unions entered into in other jurisdictions between two
19 individuals not recognized under section 572-3 shall be
20 recognized as civil unions; provided that the relationship meets
21 the eligibility requirements of this chapter, has been entered



1 into in accordance with the laws of that jurisdiction, and can
2 be documented.

3 § -11 **References and inclusions.** A party to a civil
4 union shall be included in any definition or use of the terms
5 "spouse", "family", "immediate family", "dependent", "next of
6 kin", and other terms that denote the spousal relationship, as
7 those terms are used throughout the laws of the State."

8 SECTION 3. Chapter 231, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§231- Effect of civil union. All provisions of the
12 Internal Revenue Code referred to in this chapter that apply to
13 a husband and wife, spouses, or person in a legal marital
14 relationship shall be deemed to apply in this chapter to
15 partners in a civil union with the same force and effect as if
16 they were "husband and wife", "spouses", or other terms that
17 describe persons in a legal marital relationship."

18 SECTION 4. Chapter 235, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "§235- Effect of civil union. All provisions of the
22 Internal Revenue Code referred to in this chapter that apply to



1 a husband and wife, spouses, or person in a legal marital
2 relationship shall be deemed to apply in this chapter to
3 partners in a civil union with the same force and effect as if
4 they were "husband and wife", "spouses", or other terms that
5 describe persons in a legal marital relationship."

6 SECTION 5. Chapter 236D, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§236D- Effect of civil union. All provisions of the
10 Internal Revenue Code referred to in this chapter that apply to
11 a husband and wife, spouses, or person in a legal marital
12 relationship shall be deemed to apply in this chapter to
13 partners in a civil union with the same force and effect as if
14 they were "husband and wife", "spouses", or other terms that
15 describe persons in a legal marital relationship."

16 SECTION 6. Section 580-1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§580-1 Jurisdiction; hearing. Exclusive original
19 jurisdiction in matters of annulment, divorce, and separation,
20 subject to section 603-37 as to change of venue, and subject
21 also to appeal according to law, is conferred upon the family
22 court of the circuit in which the applicant has been domiciled

1 or has been physically present for a continuous period of at
 2 least three months next preceding the application therefor. No
 3 absolute divorce from the bond of matrimony shall be granted for
 4 any cause unless either party to the marriage has been domiciled
 5 or has been physically present in the State for a continuous
 6 period of at least six months next preceding the application
 7 therefor. A person who may be residing on any military or
 8 federal base, installation, or reservation within the State or
 9 who may be present in the State under military orders shall not
 10 thereby be prohibited from meeting the requirements of this
 11 section. The family court of each circuit shall have
 12 jurisdiction over all proceedings relating to the annulment,
 13 divorce, and separation of civil unions entered into in this
 14 State in the same manner as marriages."

15 SECTION 7. Section 572-1.6, Hawaii Revised Statutes, is
 16 repealed.

17 [~~§572-1.6~~] ~~Private solemnization not unlawful.~~ Nothing
 18 ~~in this chapter shall be construed to render unlawful, or~~
 19 ~~otherwise affirmatively punishable at law, the solemnization of~~
 20 ~~same sex relationships by religious organizations, provided that~~
 21 ~~nothing in this section shall be construed to confer any of the~~




1 ~~benefits, burdens, or obligations of marriage under the laws of~~
2 ~~Hawaii."]~~

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 9. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect on January 1, 2012,
9 provided sections 3, 4, and 5 of this Act shall apply to taxable
10 years beginning after December 31, 2011.

APPROVED this 23 day of FEB, 2011



GOVERNOR OF THE STATE OF HAWAII

STAND. COM. REP. NO.

2

Honolulu, Hawaii

JAN 26 2011

RE: S.B. No. 232
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 232 entitled:

"A BILL FOR AN ACT RELATING TO CIVIL UNIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to extend the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union by recognizing the status of civil unions in Hawaii, without revising the definition or eligibility requirements of marriage under chapter 572, Hawaii Revised Statutes.

Your Committee received testimony in support of this measure from Governor Neil Abercrombie, Lieutenant Governor Brian Schatz, Board of Education member Kim Coco Iwamoto, Hawaii Civil Rights Commission Executive Director William Hoshijo, and a significant number of private organizations and concerned individuals. Your Committee received testimony in opposition to this measure from many private organizations and concerned individuals. Finally, your Committee received comments on this measure from several individuals.

Your Committee finds that the Legislature has considered the question of whether to recognize civil unions in our State several times over the last few years. In 2009, a bill substantially similar to the current measure, H.B. No. 444 (2009), was introduced in the House of Representatives. After lengthy public hearings and deep consideration, however, the measure foundered.

2011-0935 SSCR SMA-1.doc



EXHIBIT "2"

The following year, during the 2010 Regular Session, H.B. No. 444, S.D. 1 (2009) was resurrected and subsequently passed both houses of the Legislature before the bill was ultimately vetoed by the then-Governor. The issue is once again before the Legislature.

Your Committee recognizes that there are strong opinions and persuasive arguments on both sides of this controversial issue, as expressed ably by advocates and concerned citizens in committee hearings during the course of the last few years. These arguments involve civil rights, religion, equal protection of the laws, the education of our children, and the very core question of how our society should function. Your Committee believes that the Legislature represents a useful public forum to continue the discussion among members of our community regarding the impact of civil unions in these areas. As such, your Committee scheduled this measure for hearing early in this legislative session and recommends that the Senate pass the measure as amended in order to provide a forum for thorough dialogue on this issue.

Accordingly, your Committee has amended this measure by making technical, nonsubstantive changes for purposes of style and clarity.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 232, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 232, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair

The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 232	JDL	1/25/11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike			✓	
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
TOTAL	3	0	2	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 232
S.D. 1

A BILL FOR AN ACT

RELATING TO CIVIL UNIONS.

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

1 SECTION 1. The intent of this measure is to recognize
2 civil unions in Hawaii. By establishing the status of civil
3 unions in our State, it is not the legislature's intent to
4 revise the definition or eligibility requirements of marriage
5 under chapter 572, Hawaii Revised Statutes.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 "CHAPTER

10 CIVIL UNIONS

11 § -1 Definitions. As used in this chapter, unless the
12 context otherwise requires:

13 "Agent" means the person or persons appointed as an agent
14 or agents by the department of health pursuant to section 572-5.

15 "Civil union" means a union between two individuals
16 established pursuant to this chapter.

17 "Partner" means an individual who is a party to a civil
18 union established pursuant to this chapter.



1 § -2 Eligibility to enter into a civil union. A person
2 shall be eligible to enter into a civil union only if the person
3 is:

4 (1) Not a partner in another civil union, a spouse in a
5 marriage, or a party to a reciprocal beneficiary
6 relationship pursuant to chapter 572C;

7 (2) At least eighteen years of age; and

8 (3) Not related to the other proposed partner in the civil
9 union, as provided in section -3.

10 § -3 ~~Civil unions void; when.~~ A civil union shall be
11 void between the following persons: parent and child,
12 grandparent and grandchild, two siblings, aunt and nephew, aunt
13 and niece, uncle and nephew, uncle and niece, and persons who
14 stand in relation to each other as ancestor and descendant of
15 any degree whatsoever.

16 § -4 Solemnization; license to perform; refusal to join
17 persons in a civil union. (a) A civil union shall become valid
18 only upon completion of a solemnization by a person licensed in
19 accordance with this section.

20 (b) Any judge or retired judge, including a federal judge
21 or judge of another state who may legally join persons in
22 chapter 572 or a civil union, may solemnize a civil union. Any



1 ordained or licensed member of the clergy may solemnize a civil
2 union. Solemnization may be entirely secular or may be
3 performed according to the forms and usages of any religious
4 denomination in this State. Nothing in this section shall be
5 construed to require any person authorized to perform
6 solemnizations of marriages or civil unions to perform a
7 solemnization of a civil union, and no such authorized person
8 who fails or refuses for any reason to join persons in a civil
9 union shall be subject to any fine or other penalty for the
10 failure or refusal.

11 (c) Nothing in this section shall be construed to require
12 any person authorized to perform solemnizations pursuant to
13 chapter 572 or civil unions pursuant to this chapter to perform
14 a solemnization of a civil union, and no such authorized person
15 who fails or refuses for any reason to join persons in a civil
16 union shall be subject to any fine or other penalty for the
17 failure or refusal.

18 (d) No agent may solemnize a civil union; nor may any
19 assistant or deputy of the agent solemnize a civil union.

20 (e) No person shall perform the solemnization of a civil
21 union without first having obtained a license from the
22 department of health. The department of health shall issue



1 licenses to solemnize civil unions in the same manner as it
2 issues licenses pursuant to chapter 572. The department of
3 health may revoke or suspend a license to solemnize civil
4 unions. Any penalties or fines that may be levied or assessed
5 by the department of health for violation of chapter 572 shall
6 apply equally to a person licensed to solemnize civil unions.

7 § -5 Applicants for civil union; license required;
8 limitations. (a) No persons may be joined in a civil union in
9 this State unless both partners have:

10 (1) Met the requirements of section -2;

11 (2) Complied with sections -6 and, if applicable,
12 section -7; and

13 (3) Been issued a license by an agent in the judicial
14 circuit in which a civil union is to be solemnized or
15 in which either person resides, which license shall
16 bear the certification of the agent that the persons
17 named therein have met the requirements of section
18 -2 and have complied with sections -6 and, if
19 applicable, section -7.

20 (b) The license, when certified by the agent, is
21 sufficient authority for any person authorized to perform a
22 civil union solemnization in this State to join the persons in a



1 civil union; provided that the solemnization is performed not
2 more than thirty days after the date of issuance. The license
3 shall become void thirty days after issuance.

4 § -6 Application for license for persons who wish to
5 enter into a civil union; fee. (a) No license for a civil
6 union may be issued by an agent until both applicants have
7 appeared before the agent and applied for a license. The
8 application for the license shall be completed in its entirety,
9 dated, signed, and sworn to by each applicant and shall state
10 each applicant's full name, date of birth, birthplace,
11 residence, social security number, whether single, widowed, or
12 divorced, and whether the applicant is under the supervision or
13 control of a conservator or guardian. If the application is
14 signed and sworn to by the applicants on different dates, the
15 earlier date shall be deemed the date of the application. The
16 agent shall issue a copy of this chapter to any person applying
17 for a license.

18 (b) The fee for a license to enter into a civil union
19 shall be an amount equal to the amount prescribed in section
20 572-5, and all amounts collected by the agent as application
21 fees under this chapter shall be retained or remitted and
22 apportioned in the same manner as prescribed in section 572-5.



1 § -7 Persons under control of conservator or guardian.

2 (a) No civil union license may be issued to any applicant under
3 the supervision or control of a conservator or guardian,
4 appointed in accordance with chapter 560, unless the written
5 consent of the conservator or guardian is signed, notarized, and
6 filed with the agent.

7 (b) Any person who enters into a civil union without the
8 consent provided for in subsection (a) shall acquire no rights
9 by that civil union in the property of any person who was under
10 the control or supervision of a conservator or guardian at the
11 time the civil union was entered into.

12 § -8 Record of solemnization; reported by whom;
13 affidavit; evidentiary weight of certificate or affidavit. (a)
14 Each person who solemnizes a civil union shall certify upon the
15 civil union license certificate the fact, time, and place of the
16 solemnization of the civil union and return the license to the
17 agent within three business days following the solemnization of
18 the civil union, or as may otherwise be prescribed by the
19 department of health.

20 (b) If any person who has solemnized a civil union fails
21 to return the certificate to the agent as required under
22 subsection (a), the partners joined in a civil union may provide



1 the agent with a notarized affidavit attesting to the fact that
2 they were joined in a civil union and stating the date and place
3 of the solemnization of the civil union. Upon the receipt of
4 that affidavit by the agent, the civil union of the partners
5 shall be deemed to be valid as of the date of the solemnization
6 of the civil union stated in the affidavit.

7 (c) The certificate required by subsection (a) or an
8 affidavit received pursuant to subsection (b) shall be prima
9 facie evidence of the facts stated therein.

10 ~~§ -9 Benefits, protections, and responsibilities.~~

11 Partners to a civil union lawfully entered into pursuant to this
12 chapter shall have all the same rights, benefits, protections,
13 and responsibilities under law, whether derived from statutes,
14 administrative rules, court decisions, the common law, or any
15 other source of civil law, as are granted to those who contract,
16 obtain a license, and are solemnized pursuant to chapter 572.

17 § -10 Civil unions performed in other jurisdictions.

18 All unions between two individuals not recognized under section
19 572-3 shall be recognized as civil unions; provided that the
20 relationship meets the eligibility requirements of this
21 chapter."



1 SECTION 3. Section 572-1.6, Hawaii Revised Statutes, is
2 repealed.

3 [~~§572-1.6~~ Private solemnization not unlawful. Nothing
4 in this chapter shall be construed to render unlawful, or
5 otherwise affirmatively punishable at law, the solemnization of
6 same sex relationships by religious organizations; provided that
7 nothing in this section shall be construed to confer any of the
8 benefits, burdens, or obligations of marriage under the laws of
9 Hawaii."]

10 SECTION 4. A party to a civil union shall be included in
11 any definition or use of the terms "spouse", "family",
12 "immediate family", "dependent", "next of kin", and other terms
13 that denote the spousal relationship, as those terms are used
14 throughout the law.

15 SECTION 5. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken.

20 SECTION 7. This Act shall take effect on January 1, 2012.

21



Report Title:

Civil Unions

Description:

Extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union. Takes effect 1/1/2012. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 1244

A BILL FOR AN ACT

RELATING TO SOLEMNIZATION.

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

1 SECTION 1. Section 572-1.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[F]~~§572-1.6 ~~[+]~~ Private solemnization of same sex
4 relationships not unlawful[-]; refusal to provide services, etc.

5 (a) Nothing in this chapter shall be construed to render
6 unlawful, or otherwise affirmatively punishable at law, the
7 solemnization of same-sex relationships by religious
8 organizations ~~[, provided that nothing]~~ or religious or
9 charitable organizations operated, supervised, or controlled by
10 a religious institution or organization. Nothing in this
11 section shall be construed to confer any of the benefits,
12 burdens, or obligations of marriage under the laws of Hawaii.

13 (b) Religious institutions or organizations, or religious
14 or charitable organizations operated, supervised, or controlled
15 by a religious institution or organization, shall not be
16 required to provide to an individual or individuals, services,
17 accommodations, benefits, advantages, facilities, goods, or
18 privileges that are related to a solemnization or celebration of

HB HMS 2011-1540



EXHIBIT "3"

H.B. NO. 1244

1 a same-sex relationship, such as a same-sex marriage or a civil
2 union between persons of the same sex, if the solemnization or
3 celebration is in violation of the institution or organization's
4 religious beliefs and faith. Any refusal to provide services,
5 accommodations, benefits, advantages, facilities, goods, or
6 privileges that is made in accordance with this subsection shall
7 not create any civil claim or cause of action, or result in any
8 state action to penalize or withhold benefits from the
9 institution or organization that refused."

10 SECTION 2. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect upon its approval.

13

INTRODUCED BY:

J. M. South BR

JAN 25 2011



H.B. NO. 1244

Report Title:

Solemnization; Lawful

Description:

Allows for the refusal of services or accommodations related to the solemnization of same-sex marriages, civil unions, and other same-sex unions on religious grounds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 1447

JAN 26 2011

A BILL FOR AN ACT

RELATING TO REFUSAL TO PROVIDE SERVICES OR ACCOMMODATIONS FOR
THE SOLEMNIZATION OR CELEBRATION OF SAME-SEX MARRIAGES,
CIVIL UNIONS, AND OTHER SAME-SEX UNIONS ON RELIGIOUS
GROUNDS.

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

1 SECTION 1. Chapter 572, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§572- Refusal to provide services or accommodations
5 related to the solemnization or celebration of same-sex
6 marriages, civil unions, or other same-sex unions on religious
7 grounds. (a) Notwithstanding any other provision of law to the
8 contrary, a religious institution shall not be required to
9 provide benefits to an individual or individuals if the request
10 for the benefits is related to the solemnization or celebration
11 of a same-sex marriage, civil union, or other same-sex union and
12 the solemnization or celebration is in violation of the beliefs
13 or faith of the religious institution. Any refusal to provide
14 the benefits in accordance with this section shall not create
15 any civil claim or cause of action, or result in any state



EXHIBIT "4"

S.B. NO. 1447

1 action to penalize or withhold benefits from the religious
2 institution.

3 (b) For purposes of this section:

4 "Benefits" means services, accommodations, benefits,
5 advantages, facilities, goods, or privileges.

6 "Religious institution" means a religious institution or
7 organization or a religious or charitable organization that is
8 operated, supervised, or controlled by a religious institution
9 or organization."

10 SECTION 2. If an Act is enacted during the 2011
11 legislative session that amends the Hawaii Revised Statutes by
12 adding a new chapter relating to civil unions, then the revisor
13 is authorized to insert the new section established under
14 section 1 of this Act into the new chapter in lieu of adding the
15 new section to chapter 572, Hawaii Revised Statutes.

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

18

INTRODUCED BY:

Anna Inoué
Mike Gribble
Donald A. Ioua
Will Eyo



S.B. NO. 1447

Report Title:

Refusal to Provide Benefits; Solemnization or Celebration of Same-Sex Marriages; Civil Unions; Same-Sex Unions on Religious Grounds

Description:

Exempts from liability a religious institution or religious or charitable organization operated, supervised, or controlled by a religious institution, that refuses to provide services or accommodations relating to the solemnization or celebration of a same-sex marriage, civil union, or other same-sex union on religious grounds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE)	CIVIL NO. _____
OF PRAISE; CARL E. HARRIS;)	
LIGHTHOUSE OUTREACH CENTER)	DECLARATION OF
ASSEMBLY OF GOD; JOE HUNKIN,)	SHAWN A. LUIZ
JR.)	
)	
Plaintiffs,)	
)	
vs.)	
)	
NEIL ABERCROMBIE, in his official)	
capacity as Governor of the State of)	
Hawaii; LORETTA J. FUDDY, in her)	
official capacity as Director of Health of)	
the State of Hawaii; STATE OF)	
HAWAII,)	
)	
Defendants.)	

DECLARATION OF SHAWN A. LUIZ

I, SHAWN A. LUIZ, pursuant to 28 U.S.C. Section 1746, hereby declares as follows:

1. I am the counsel of record for the named Plaintiffs in the above-captioned case. I have personal knowledge and am competent to testify as to the matters contained in this Declaration.

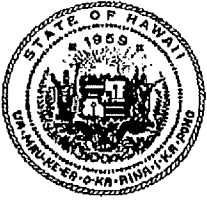
2. Attached as Exhibit "5" is a true and correct copy of the Hawaii Civil Rights Commission Chairs' opposition to HB 1244's religious liberty protections.

3. Attached as Exhibit "6" is a true and correct copy of the Hawaii Civil Rights Commission Executive Director's opposition to HB 1244's religious liberty protections.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, December 27, 2011


SHAWN A. LUIZ



HAWAI'I CIVIL RIGHTS COMMISSION

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

February 8, 2011
State Capitol Auditorium
2:15 p.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the House Committee on Judiciary

From: Coral Wong Pietsch, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1244

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

The HCRC opposes H.B. No. 1244 in large measure, because the bill would establish a broad religious exemption to laws of general applicability, including the public accommodations anti-discrimination law that fall under HCRC jurisdiction. However, the HCRC supports the establishment of a narrow religious exemption which would allow clergy who are authorized to perform marriages to refuse to perform solemnizations of civil unions.

S.B. No. 232, S.D. 1, which is currently under consideration, proposes an express religious exemption allowing clergy who are authorized to perform marriages to refuse to perform solemnizations of civil unions. The HCRC has supported this narrowly crafted religious exemption, consistent with free exercise of religion and other religious exemptions in our civil right laws.

EXHIBIT "5"

However, this bill creates an exemption that is much broader in scope and vague in definition and parameters. Religious organizations provide a range of social services (marriage counseling, adoption and foster care services, etc.), some funded by state funding through grants or purchase of service contracts. Many own, operate, or control enterprises that offer goods, services, or facilities to the general public as public accommodations. Under the vague and overly broad language of the bill, these religious organizations could arguably be exempted from legal obligations to provide those services in a non-discriminatory manner to same sex couples who are married or in civil unions, on the basis that such relationships violate the organization's religious beliefs.

Impact of the proposed exemption

H.B. No. 1244 expressly provides:

(b) Religious institutions or organizations, or religious or charitable organizations operated, supervised or controlled by a religious institution or organization, shall not be required to provide to an individual or individuals, services, accommodations, benefits, advantages, facilities, goods, or privileges that are related to a solemnization or celebration of a same-sex relationship, such as a same-sex marriage or a civil union between persons of the same sex, if the solemnization or celebration is in violation of the institution or organization's religious beliefs and faith. Any refusal to provide services, accommodation, benefits, advantages, facilities, goods, or privileges that is made in accordance with this subsection shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from the institution or organization that refused.

The proposed statutory exemption is vague and overly broad. The newly created exemption could arguably allow religious institutions or organizations to discriminate against same-sex couples in civil unions in: 1) social services to the public, both state and privately funded; 2) use of church facilities that are offered to the general public for a fee (e.g., grounds, halls, catering services) for marriages and other celebrations; and 3) commercial enterprises owned, operated, or controlled by a religious institution or organization that rent out accommodations or facilities or sells goods or services.

Basis for HCRC Opposition

The proposed exemption would allow religious institutions and organizations to discriminate on the basis of a protected basis, sexual orientation, that does not conform with their religious doctrines and beliefs. This exemption to discriminate would not be religious ceremonies, but would extend to social services and

Case 1:11-cv-00790-JMS-KSC Document 4-7 Filed 12/28/11 Page 3 of 3 PageID #: 72

public accommodations. Arguably, it would allow religious organizations that own, operate, or control places of public accommodations to discriminate against same-sex couples who are married or in civil unions in the provision of services, accommodations, benefits, advantages, facilities, goods, or privileges. This broad exemption conflicts with the H.R.S. chapter 489 protections against discrimination in places of public accommodations on the basis of sexual orientation, and diminishes the legitimacy and recognition of civil unions (if enacted). Religious exemptions to laws of general applicability, including civil rights laws that prohibit discrimination, should be narrowly drawn. The HCRC opposes the establishment of such a broad exemption to the public accommodations law that falls under HCRC jurisdiction.

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 6:18 PM
To: JUDtestimony
Cc: William.D.Hoshijo@hawaii.gov
Subject: Testimony for HB1244 on 2/8/2011 2:15:00 PM
Attachments: HB 1244 HCRC test. House JUD 2-8-11.doc

Testimony for JUD 2/8/2011 2:15:00 PM HB1244

Conference room: Auditorium
Testifier position: oppose
Testifier will be present: Yes
Submitted by: William Hoshijo
Organization: Hawai'i Civil Rights Commission
Address: 830 Punchbowl St., Rm. 411 Honolulu, Hawai'i
Phone: 586-8636
E-mail: William.D.Hoshijo@hawaii.gov
Submitted on: 2/7/2011

Comments:

If there is any problem or question regarding this testimony, please contact Bill Hoshijo at the email address above.

EXHIBIT "6"



HAWAI'I CIVIL RIGHTS COMMISSION

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

February 8, 2011
State Capitol Auditorium
2:15 p.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the House Committee on Judiciary

From: Coral Wong Pietsch, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1244

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

The HCRC opposes H.B. No. 1244 in large measure, because the bill would establish a broad religious exemption to laws of general applicability, including the public accommodations anti-discrimination law that fall under HCRC jurisdiction. However, the HCRC supports the establishment of a narrow religious exemption which would allow clergy who are authorized to perform marriages to refuse to perform solemnizations of civil unions.

S.B. No. 232, S.D. 1, which is currently under consideration, proposes an express religious exemption allowing clergy who are authorized to perform marriages to refuse to perform solemnizations of civil unions. The HCRC has supported this narrowly crafted religious exemption, consistent with free exercise of religion and other religious exemptions in our civil right laws.

However, this bill creates an exemption that is much broader in scope and vague in definition and parameters. Religious organizations provide a range of social services (marriage counseling, adoption and foster care services, etc.), some funded by state funding through grants or purchase of service contracts. Many own, operate, or control enterprises that offer goods, services, or facilities to the general public as public accommodations. Under the vague and overly broad language of the bill, these religious organizations could arguably be exempted from legal obligations to provide those services in a non-discriminatory manner to same sex couples who are married or in civil unions, on the basis that such relationships violate the organization's religious beliefs.

Impact of the proposed exemption

H.B. No. 1244 expressly provides:

(b) Religious institutions or organizations, or religious or charitable organizations operated, supervised or controlled by a religious institution or organization, shall not be required to provide to an individual or individuals, services, accommodations, benefits, advantages, facilities, goods, or privileges that are related to a solemnization or celebration of a same-sex relationship, such as a same-sex marriage or a civil union between persons of the same sex, if the solemnization or celebration is in violation of the institution or organization's religious beliefs and faith. Any refusal to provide services, accommodation, benefits, advantages, facilities, goods, or privileges that is made in accordance with this subsection shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from the institution or organization that refused.

The proposed statutory exemption is vague and overly broad. The newly created exemption could arguably allow religious institutions or organizations to discriminate against same-sex couples in civil unions in: 1) social services to the public, both state and privately funded; 2) use of church facilities that are offered to the general public for a fee (e.g., grounds, halls, catering services) for marriages and other celebrations; and 3) commercial enterprises owned, operated, or controlled by a religious institution or organization that rent out accommodations or facilities or sells goods or services.

Basis for HCRC Opposition

The proposed exemption would allow religious institutions and organizations to discriminate on the basis of a protected basis, sexual orientation, that does not conform with their religious doctrines and beliefs. This exemption to discriminate would not be religious ceremonies, but would extend to social services and

public accommodations. Arguably, it would allow religious organizations that own, operate, or control places of public accommodations to discriminate against same-sex couples who are married or in civil unions in the provision of services, accommodations, benefits, advantages, facilities, goods, or privileges. This broad exemption conflicts with the H.R.S. chapter 489 protections against discrimination in places of public accommodations on the basis of sexual orientation, and diminishes the legitimacy and recognition of civil unions (if enacted). Religious exemptions to laws of general applicability, including civil rights laws that prohibit discrimination, should be narrowly drawn. The HCRC opposes the establishment of such a broad exemption to the public accommodations law that falls under HCRC jurisdiction.