

Commission on Sexual Orientation and the Law
Legislative Reference Bureau
State Capitol, Room 446
Honolulu, HI 96813

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

DRAFT MINUTES OF THE MEETING HELD
THURSDAY, JANUARY 4, 1996
(Continued to January 10, 1996)

I. Call to Order

The eighth meeting of the Commission on Sexual Orientation and the Law was called to order by Chairperson Thomas P. Gill at 9:15 a.m., at the State Capitol Building, Room 225, 415 South Beretania Street, Honolulu. Members present were:

Thomas P. Gill, Chairperson
Morgan Britt
Lloyd James Hochberg, Jr.

Nanci Kreidman
Marie A. "Toni" Sheldon
Robert H. Stauffer

L. Ku'umeaaloha Gomes was excused.

Ms. Pamela Martin of the Legislative Reference Bureau also attended the meeting.

Mr. Hochberg and Ms. Sheldon stated that their participation in today's meetings do not waive any claims in the civil complaint filed against the Governor, the Chairperson, the majority members of the Commission and the Acting Director of LRB. Mr. Hochberg and Ms. Sheldon requested that a copy of that complaint, Circuit Court of the First Circuit, Civil Complaint No. 95-4675-12, be attached to the minutes. It is attached as Attachment 1.

Ms. Martin noted that there were three handouts: (1) testimony submitted by Ward Stewart (attached at page T-1); (2) the Draft Minutes of the Meeting of December 7, 1995; and (3) suggested amendments by Dr. Stauffer to the minutes of October 25, 1995.

II. Approval of Minutes

The minutes of October 25, 1995 were addressed first. The Commission left off at page 30 of Ms. Sheldon's amendments. It was decided to review Dr. Stauffer's amendments to that point and then continue on a page-by-page basis. It was decided to work from the draft that was passed out. It is the original Draft minutes and Dr. Stauffer's amendments are written throughout the text and Ms. Sheldon's amendments refer to the pages of that draft.

Mr. Stauffer's amendment to add "because they were available" on page 1 was opposed by Mr. Hochberg and Ms. Sheldon.

Dr. Stauffer then moved to include the phrase in the minutes. Mr. Britt seconded the motion. After discussion, the motion was passed with the Chairperson, Mr. Britt, Ms. Kreidman, and Dr. Stauffer voting aye, and Mr. Hochberg and Ms. Sheldon voting nay.

The amendments proposed by Dr. Stauffer on pages 5 and 6 were withdrawn.

All other amendments proposed by Dr. Stauffer, on pages 26, 28, 33, 34, 35, and 37 were not objected to, and so adopted.

Ms. Sheldon moved to include her amendment on page 37. (A copy of Ms. Sheldon's amendments is attached as Attachment 2.) Mr. Hochberg seconded.

Mr. Britt spoke against the motion because the amendment did not add anything to the minutes. Ms. Sheldon spoke in favor commenting that the amendment reflects what happened. Mr. Hochberg called for the vote.

The motion did not pass with Mr. Hochberg and Ms. Sheldon voting aye, Mr. Britt voting nay and the Chairperson, Ms. Kreidman and Dr. Stauffer abstaining.

There was no objection to Dr. Stauffer's amendments on pages 39-40.

Ms. Sheldon then moved to have her amendment on page 41 accepted. Mr. Hochberg seconded the motion. After discussion, the motion passed, with Mr. Hochberg, Ms. Kreidman, Ms. Sheldon and Dr. Stauffer voting aye and Mr. Britt and the Chairperson abstaining.

Ms. Sheldon had three proposed amendments to page 43. Each one was addressed separately. There were no objections to the first and second amendments. There was objection to the third suggested amendment on page 43.

A motion to accept the third suggested amendment was made by Ms. Sheldon and seconded by Mr. Hochberg. During the discussion Dr. Stauffer expressed concern about the type of additions the Commission is taking time to insert. He does not question their accuracy but objects to taking selected one-sided quotations out of context, because indirectly that creates an inaccurate description of the meeting. Ms. Kreidman agreed with Dr. Stauffer and spoke in opposition of going along with these kinds of additions. Mr. Hochberg disagreed.

The motion did not pass with Mr. Hochberg and Ms. Sheldon voting aye; the Chairperson, Mr. Britt, and Ms. Kreidman voting nay; and Dr. Stauffer abstaining.

Dr. Stauffer added the phrase "in his opinion" to his amendments on page 45 and 48 and there was no objection. There was no objection to his amendment on page 46.

Ms. Sheldon added the phrase "in her opinion" to her amendment on page 47 and there was no objection.

Ms. Sheldon's four amendments to page 48 were taken separately. There was objection to the first amendment, no objection to the second amendment, the third amendment was withdrawn, and the fourth amendment was not objected to when Ms. Sheldon voluntarily withdrew the last sentence in that amendment.

Ms. Sheldon moved to have her first amendment on page 48 accepted. Mr. Hochberg seconded the motion. After discussion and a vote, the motion did not pass with Mr. Hochberg, and Ms. Sheldon voting aye; the Chair and Mr. Britt voting nay; and Ms. Kreidman and Dr. Stauffer abstaining.

Dr. Stauffer withdrew his amendment on page 49 and asked to have the testimony from the Quakers inserted in the minutes of today. The testimony of the Quakers follows:

#1:

The following minute [i.e., policy statement] was approved by Pacific Yearly Meeting [the regional organization of Quakers including California, Hawaii, and some other areas, including Mexico City] on Eighth-Month 4, 1995.

"A Loving Response to Hostility Against Sexual Minorities"

Background

Within the territory comprising our Yearly Meeting there are Friends [i.e., Quakers] and others who risk hostility, verbal abuse and physical violence because they are, or are perceived to be, members of sexual minorities (for example, lesbians, gays, bisexuals). There are growing campaigns to legalize discrimination based on sexual orientation.

All hostility separate us from God and from each other. As Friends, we seek a response that arises from the Light, and reaches out and cares for the needs and human dignity of those affected on all sides of this conflict.

Action Minute

Pacific Yearly Meeting of the Religious Society of Friends endorses all nonviolent efforts to establish and protect the civil rights of all persons despite their sexual orientation. We oppose all legislation or policy which disparages sexual minorities or abridges their basic constitutional rights.

#2:

The following minute was approved at Friends for Lesbian & Gay Concerns on Seventh-Month 6, 1995.

It is a fundamental to Friends' faith and practice that we affirm the equality and integrity of all human beings. Equally, we hold that the purpose of recognizing and affirming committed relationships is to strengthen our families and communities.

Therefore, it is our belief that it is consistent with Friends' historical faith and testimonies that we practice a single standard of treatment for all committed relationships.

Given that the State offers legal recognition to opposite-gender marriage and extends significant privileges to couples who legally marry, we believe that a commitment to equality requires that same-gender couples be granted the same rights and privileges.

Therefore, we believe that the State should permit gay and lesbian couples to marry and share fully and equally in the rights and responsibilities of marriage.

We invite Monthly Meetings [i.e., individual congregations], Yearly Meetings [i.e., regional divisions] and Quaker Organizations to consider a minute of support for legal recognition of same-gender marriages, and to communicate this support to their elected representatives.

Because of pending legislation and litigation, we urge a timely response.

The Commission took a recess at 10:27 and reconvened at 10:39. During the recess Ms. Loree Johnson submitted written testimony which is attached to these minutes at page T-4.

Two amendments, one proposed by Dr. Stauffer and one by Ms. Kreidman, were accepted as there were no objections.

The Commission had started to address Ms. Sheldon's amendment on page 54 when the Alarm System in the Capitol required the Commissioners to leave the building. Before it could be determined that it was a test, the Chair was forced to recess the meeting and called to reconvene for Wednesday, January 10, at 9:00 a.m in a room to be announced.

January 10, 1996

The meeting was reconvened by the Chairperson at 9:00 a.m in Room 224, State Capitol, on Wednesday, January 10, 1996. The members present were:

Thomas P. Gill, Chairperson
Morgan Britt
Ku'umeaaloha Gomes

Nanci Kreidman
Marie A. "Toni" Sheldon
Robert H. Stauffer

Lloyd James Hochberg, Jr. was excused.

Ms. Pamela Martin of the Legislative Reference Bureau also present.

Ms. Martin confirmed that the members had received the new edited draft version of the October 25, 1995 minutes which contained all the accepted changes to date and the remaining proposed changes except for those proposed by Ms. Sheldon on page 54 of the original, now page 45. Ms. Martin also stated that she had paraphrased certain proposed amendment language on page 55.

Ms. Martin had prepared a similar edited draft version of the November 8, 1995 minutes that included the proposed amendments as requested by Dr. Stauffer. Ms. Sheldon's substantive amendment had been withdrawn at an earlier meeting.

The Chairperson reviewed the items on the agenda. The unapproved minutes to date include October 25, 1995, November 8, 1995, November 22, 1995, and December 7, 1995. The members have had ample time to review them. In the interests of time the Chairperson asked if the Commission could just make any substantive comments regarding changes and leave all spelling and grammatical errors to the LRB staff.

Ms. Sheldon pointed to page 49 on the new edited version and requested that the statement, "The testimony of Dr. Ghali was not being considered" be added. Dr. Stauffer's amendments had deleted it. There was no objection and it was adopted.

She also pointed to page 45 on the new edited version and asked to have the phrase "his memos" changed to read "his lists (referring to the memos)". There was no objection and it was adopted.

Dr. Stauffer pointed out that a vote was missing for a motion that was on the table at the bottom of page 13. LRB staff said they would consult the tape and add it in.

Dr. Stauffer moved to accept the Minutes of the Meeting Held Wednesday, October 25, 1995, as presented and as amended above. Ms. Kreidman seconded the motion. The motion passed unanimously.

The Chair took up the Minutes of the November 8, 1995 meeting. Mr. Britt presented two amendments to page 4, one in paragraph 5 and one paragraph 7. The paragraph 5 amendment was to add "represented herself". There was no objection and it was adopted. The amendment in the seventh paragraph was "(See attached memorandum of Thomas Aitken)" there was no objection and in addition the Thomas Aitken memorandum was attached as Attachment 1 to the Minutes of November 8, 1995.

Ms. Kreidman made a motion to accept the Minutes of the Meeting Held November 8, 1995 as amended. The motion was seconded by Ms. Gomes. The motion passed unanimously.

The Chair then addressed the Draft Minutes of the Meeting held November 22, 1995. Ms. Sheldon pointed to the bottom of the second page in the ninth full paragraph and asked to replace "that explains that" with "where in his interpretation the". There was no objection and so it was adopted.

On page 7, in the second full paragraph, a reference to the LRB prepared "Suggested Incorporation of Amendments to Dr. Ghali's testimony" needs to be added, i.e. "(Attached as Attachment 4.)" There was no objection and so it was adopted.

On page 12, Ms. Sheldon pointed out in the second and last paragraphs the words "objects to supports" appeared. LRB staff confirmed that in both instances it should be simply "objects to". There were no objections and so it was adopted.

Ms. Kreidman moved to accept the Minutes of the Meeting Held November 22, 1995 as amended. Dr. Stauffer seconded. The motion passed unanimously.

The Chair then brought the Draft Minutes of the Meeting Held December 7, 1995, up for discussion. No substantive amendments were made, by the Commission members. LRB staff pointed to some errors that had been corrected.

Mr. Britt moved to accept the Minutes of the Meeting Held December 7, 1995. Dr. Stauffer seconded. The motion passed unanimously.

The Chair then stated that the only minutes left to be approved were the minutes of the meeting being held. He expressed concern that it would be a never-ending battle having another meeting to approve the minutes of the meeting that approved the minutes, etc. Ms. Martin stated that the law did not require the minutes to be approved.

Dr. Stauffer then made a motion to approve the Minutes of the Meeting Held January 4, 1996, subject to the Commissioner's review and comments of the draft minutes. Mr. Britt seconded. During discussion it was decided that if there were any substantive changes that LRB staff could not confirm then a another meeting could be called to resolve that, otherwise, upon review by the Commissioners, the minutes will be deemed accepted and adopted, including any comments. The motion passed unanimously.

Having no other business, the Chair entertained a motion from Mr. Britt to adjourn. The motion was seconded by Dr. Stauffer. The motion passed unanimously.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1995 DEC 21 PM 1:50

Of Counsel:
BECK & TAYLOR

SCOTT A. MAKUAKANE 3452-0
Century Square, Suite 1610
1188 Bishop Street
Honolulu, Hawaii 96813
Telephone: 536-1777

E. CHO
CLERK

Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARIE A. SHELDON and LLOYD)	CIVIL NO. 95-4675-12
JAMES HOCHBERG, JR.)	(Declaratory Judgment)
))
Plaintiffs,)	COMPLAINT FOR DECLARATORY AND
)	INJUNCTIVE RELIEF AND FOR ATTORNEY
VS.)	FEES; EXHIBITS A AND B; SUMMONS
))
BENJAMIN CAYETANO, in his capacity))
as Governor of the State of Hawaii;))
THOMAS P. GILL, in his capacity as))
Chairman of the Commission on Sexual))
Orientation and the Law; MORGAN))
BRITT, L. KU'UMEAALOHA GOMES,))
NANCI KREIDMAN, and ROBERT))
STAUFFER, in their capacities as))
members of the Commission on Sexual))
Orientation and the Law; and WENDELL))
K. KIMURA, in his capacity as Acting))
Director of the Legislative Reference))
Bureau,))
))
Defendants.))
))
))

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.
[Signature]
Clerk, Circuit Court, First Circuit

Attachment 1

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR ATTORNEY FEES**

Plaintiffs Marie A. Sheldon and Lloyd James Hochberg, Jr., by and through their attorney, file this Complaint for Declaratory and Injunctive Relief and for Attorney Fees against Benjamin Cayetano, in his official capacity as Governor of the State of Hawaii; Thomas P. Gill, in his official capacity as chairman of the Commission on Sexual Orientation and the Law; Morgan Britt, L. Ku'umeaaloha Gomes, Nanci Kreidman, and Robert Stauffer, in their official capacities as members of the Commission on Sexual Orientation and the Law; and Wendell K. Kimura, in his official capacity as Acting Director of the Legislative Reference Bureau.

A. PARTIES

1. Plaintiff Marie A. Sheldon ("Sheldon") is, and at all times relevant hereto was, a resident of the State of Hawaii. She was appointed by defendant Benjamin Cayetano to serve as a member of the Commission on Sexual Orientation and the Law (the "Commission"), which was created pursuant to Act 5, Session Laws of Hawaii 1995 ("Act 5").

2. Plaintiff Lloyd James Hochberg, Jr., ("Hochberg") is, and at all times relevant hereto was, a resident of the State of Hawaii. He was appointed by defendant Benjamin Cayetano to serve as a member of the Commission.

3. Defendant Benjamin Cayetano ("Cayetano") is, and at all times relevant hereto was, Governor of the State of Hawaii. He is being made a defendant in this action in his official capacity as Governor of the State of Hawaii.

4. Defendant Thomas P. Gill ("Gill") is, and at all times relevant hereto was, Chairman of the Commission. He was appointed to the Commission by Cayetano, and he is being made a defendant in this action in his official capacity as Chairman of the Commission.

5. Defendants Morgan Britt, L. Ku`umeaaloha Gomes, Nanci Kreidman, and Robert Stauffer are, and at all times relevant hereto were, members of the Commission. They were appointed to the Commission by Cayetano, and they are being made defendants in this action in their official capacities as members of the Commission.

6. Defendant Wendell K. Kimura is, and at all times relevant hereto was, Acting Director of the Legislative Reference Bureau of the State of Hawaii ("LRB"). He is being made a defendant in this action in his official capacity as Acting Director of the LRB.

B. JURISDICTION

7. This Court has jurisdiction over this action pursuant to sections 92-11, 92-12(b) and (c), 603-21.5(3), and 603-21.7(a)(3) of the Hawaii Revised Statutes, as amended.

C. STATEMENT OF THE CASE

8. In its 1995 session, the Hawaii State Legislature (the "Legislature") adopted Senate Bill 888, which was signed into law by Cayetano on March 24, 1995. This legislation became Act 5.

9. Act 5 repealed Section 6 of Act 217, Session Laws of Hawaii 1994 ("Act 217"). Act 217 created an eleven-member Commission on Sexual Orientation and the Law and charged that commission to perform certain functions. Act 5 established a completely new seven-member Commission on Sexual Orientation and the Law. The purpose of the Commission, as set out in Act 5, is to

- (1) Examine the major legal and economic benefits extended to married opposite-sex couples, but not to same-sex couples;
- (2) Examine the substantial public policy reasons to extend or not to extend such benefits in part or in total to same-sex couples; and

- (3) Recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples.

10. Act 5 directs the Commission to submit a report of its findings to the Legislature no later than twenty days prior to the convening of the 1996 regular session. By a letter dated December 15, 1995, Gill announced that the report would be published and distributed to the legislature and the public on or about December 22, 1995. Act 5 further provides that the Commission will cease to exist after July 1, 1996.

11. The seven members of the Commission were appointed by Cayetano. In accordance with Act 5, two of the members were nominated by Joseph Souki ("Souki"), who is Speaker of the House of Representatives of the State of Hawaii, and two were nominated by Norman Mizuguchi ("Mizuguchi"), who is President of the Senate of the State of Hawaii (the "Senate").

12. By separate letters from Cayetano dated August 10, 1995, Sheldon and Hochberg were informed that they had been appointed to the Commission. Copies of those letters are attached as Exhibits A and B, respectively. On information and belief, all seven members of the Commission were appointed in the same manner.

13. At no time were the appointments of the Commission members submitted to the Senate for advice and consent; at no time did the Senate advise and consent to the appointments; nor was any oath of office administered to or received from any of the Commission members.

14. The Commission met approximately 25 times between September 13, 1995 and December 13, 1995. On December 15, 1995, the Commission produced a report entitled *Report of the Commission On Sexual Orientation And the Law* dated December 8, 1995 (the "Report"). The Report was purportedly the material included in the draft circulated to Commission members on

December 7, 1995, subject to correction of such things as typographical errors and misnumbering of footnotes and appendices.

15. On or about December 15, 1995, Gill sent "advance copies" of the Report to Souki and Mizuguchi. In those "advance copies," the portion of the Report which had been prepared by Sheldon and Hochberg (the "Minority Report") had been altered, without Sheldon's and Hochberg's knowledge and consent, from the form of the Minority Report which had been approved by a 5-2 vote of the Commission on December 8, 1995.

16. In various places in the Report, the Commission quotes from and cites to purported minutes of meetings held in October, November and December of 1995. However, those minutes had not been reviewed or approved by the Commission prior to the completion of the Report, and some of those minutes have still not been reviewed and approved by the Commission. The Commission has scheduled a meeting on January 4, 1996, to complete the adoption of the minutes of Commission meetings.

17. From the outset, the five-member majority (the "Majority") of the Commission, consisting of Gill, Britt, Gomes, Kreidman, and Stauffer, steered the work of the Commission away from the charge contained in Act 5 and drafted the Report so as to invalidate the State of Hawaii's defense of section 572-1 of the Hawaii Revised Statutes, as amended, in *Baehr v. Miike*, Civil No. 91-1394, which is pending before the Circuit Court of the First Circuit, State of Hawaii. The Hawaii Equal Rights Marriage Project, a homosexual marriage lobbying group, announced on or about August 18, 1995, that its volunteers would work intensively with the Commission and that the Commission's recommendations would likely be ignored by the legislature but would be useful in the pending homosexual marriage litigation.

18. As drafted by Gill and the Majority, the Report is a response to the Hawaii Supreme Court opinion in *Baehr v. Lewin*, 74 Haw. 530 (1993), rather than a meaningful attempt to carry out the charge set out in Act 5. Thus, the Commission has failed to fulfill its duty under Act 5.

19. On or about November 1, 1995, Gill and the Majority denied the request of Father Chip Wheeler to testify at a meeting of the Commission. Father Wheeler was physically present at the meeting but was denied an opportunity to speak by a vote of 5-2. Gill and the Majority all voted to deny Father Wheeler the opportunity to testify.

20. Similarly, Gill and the Majority denied Sheldon's and Hochberg's request that Dr. Dallas Willard, Dr. Joseph Nicolosi, Professor Richard Duncan, and Roger Magnuson, Esq., (all of whom reside and work on the Mainland) be allowed to present testimony to the Commission by telephone. These individuals are nationally-recognized experts regarding the public policy reasons to extend or not to extend to same-sex couples whatever economic benefits are conferred by law upon married couples.

21. The Commission circumvented the statutory notice requirements relating to the Commission's December 6, 1995 meeting, which was to be set aside for receiving public comments on the draft of the Report which was published on or about November 27, 1995. On November 16, 1995, the LRB had, in accordance with section 92-7 of the Hawaii Revised Statutes, as amended, filed with the Office of the Lieutenant Governor of the State of Hawaii (the "Lt. Governor"), the Commission's Notice of Meeting and Agenda for the November 22, 1995 meeting. That Agenda did not call for the public to give testimony. On December 4, 1995, the LRB informed the Commission that it had failed to file with the Lt. Governor's office the notice of the Commission's long-awaited December 6, 1995 meeting within the time limit prescribed by section

92-7. Thus, the notice provided that the meeting for receiving public response to the draft Report would be held on December 7, 1995.

22. At the December 4 meeting, the LRB recommended that the Commission go forward with the December 6 meeting by amending the agenda of the November 22 meeting to include receipt of public testimony regarding the November 27, 1995 draft of the Report, and to treat the December 6 meeting as a continuation of the November 22 meeting. The Commission adopted the LRB's recommendation.

23. The December 6 meeting went forward under the amended agenda of the November 22 meeting, notwithstanding that the fact that the Lt. Governor's office notified telephone inquirers that the public comment meeting would be held on December 7, 1995, pursuant to the official notice published by the LRB on behalf of the Commission.

24. The amending of the November 22, 1995 meeting agenda on December 4, 1995 to permit consideration of additional information at the meeting to be held on December 6, 1995, was accomplished pursuant to a pattern of conduct engaged in by Gill and the Majority throughout the proceedings between the October 25, 1995 and December 13, 1995 Commission meetings.

25. During this period, the noticed meetings were not adjourned at the conclusion of the meetings as noticed, but instead were "recessed" to other dates and times, without subsequent public notice.

26. The Commission failed to keep written minutes of all meetings, and Gill and the Majority repeatedly refused to have included in the minutes information necessary to, among other things, record a true reflection of the matters discussed, and the views of participants expressed, at Commission meetings.

27. Gill, the Majority, and the LRB failed to make minutes available within thirty days as required by section 92-9 of the Hawaii Revised Statutes, as amended, despite many requests by Sheldon and Hochberg that the minutes be prepared by the LRB and adopted by the Commission.

28. Throughout the many meetings of the Commission, Gill and the Majority refused to discuss viewpoints which varied from the Majority's, but they assured Sheldon and Hochberg that they would be permitted to publish their views in the Minority Report, which would not be edited or otherwise modified by Gill or any other member of the Majority. However, in connection with producing the final Report (as embodied in the "advance copies" referred to above), Gill, the Majority, and/or the LRB deleted material from the Minority Report which had been included in prior drafts of the Minority Report. This was done without prior notice to Sheldon and Hochberg; Gill, the Majority, and the LRB also unilaterally refused to include information in the Minority Report which Sheldon and Hochberg had requested be included.

29. On December 7, 1995, Gill, the Majority, and the LRB for the first time disclosed the content of the final Report prepared by the Majority, which contained newly-added material in both the text and the Appendix to the Report.

30. When Sheldon and Hochberg saw the new material, they attempted on December 7, 1995, to add four responsive items to the appendix of the Report. Gill and the Majority voted to prohibit Sheldon and Hochberg from adding the responsive material.

31. By letter dated December 7, 1995, Souki requested that the Commission render a complete report to the Legislature, fully addressing both sides of this important issue, and that they include the responsive material which Sheldon and Hochberg had requested be added to the appendix to the Report. Gill and the Majority refused Souki's request.

32. On or about December 8, 1995, the Majority caused to be published nationwide on the Internet an announcement that the Report was about to be published and that interested parties should be vigilant about ordering copies of the Report, as there would be a limited number available for distribution. The Internet announcement also solicited support for the Majority's position in the Report. Other announcements regarding the progress of the work of the Commission have been published on the Internet by the Majority.

D. COUNT 1: THE ACTIONS OF THE COMMISSION ARE VOID AB INITIO BECAUSE NONE OF THE COMMISSIONERS SUBSCRIBED TO THE CONSTITUTIONALLY-REQUIRED OATH OF OFFICE, AND BECAUSE NONE OF THE COMMISSIONERS WERE APPOINTED WITH THE ADVICE AND CONSENT OF THE SENATE

33. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 32.

34. Section 26-34(a) of the Hawaii Revised Statutes, as amended, provides:

(a) *The members of each board and commission established by law shall be nominated and, by and with the advice and consent of the senate, appointed by the governor.* Unless otherwise provided by this chapter or by law hereafter enacted, the terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year for each board and commission. Unless otherwise provided by law, each term shall commence on July 1 and expire on June 30, except that the terms of the chairpersons of the board of agriculture, the board of land and natural resources, and the Hawaiian homes commissions shall commence on January 1 and expire on December 31. No person shall be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission shall not exceed eight consecutive years.

(Emphasis added.)

35. Article XVI section 4 of the Constitution of the State of Hawaii provides:

All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as to the best of my ability."

As used in this section, "eligible public officers" means the governor, the lieutenant governor, the members of both houses of the legislature, the members of the board of education, the members of the national guard, State or county employees who possess police powers, district court judges, *and all those whose appointment requires the consent of the senate.*

(Emphasis added.) Moreover, Article V section 6 of the Hawaii State Constitution provides, in part, that the "governor shall nominate and, by and with the advice and consent of the senate, appoint *all officers for whose election or appointment provision is not otherwise provided for by this constitution or by law.* If the manner or removal of an officer is not prescribed in this constitution, removal shall be as provided by law.

36. Accordingly, since the appointment of Commission members was subject to the advice and consent of the Senate, the Commission members were required by Article XVI section 4 of the Constitution of the State of Hawaii to subscribe to an oath of office prior to commencing Commission work.

37. No oath of office whatsoever, much less the one required by Article XVI section 4 of the Constitution of the State of Hawaii, was subscribed to by any of the members of the Commission.

38. Since the Commission has not operated in accordance with the terms of the Constitution of the State of Hawaii, its work is void ab initio, and this Court should declare all of the actions of the Commission to date, including (but not limited to) the rendering of the Report, to be null and void, and the Court should issue an order permanently enjoining the publication or distribution of the Report or any copies thereof as official government documents. Permanent and

irreparable harm will result to the public if the Report is published under the seal of the State of Hawaii as an official government document.

E. COUNT 2: THE COMMISSION REFUSED TO ALLOW PUBLIC TESTIMONY BY AN ATTENDEE OF A REGULAR COMMISSION MEETING, IN VIOLATION OF HAWAII REVISED STATUTES SECTION 92-3

39. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 38.

40. On or about November 1, 1995, Father Chip Wheeler attended a regular Commission meeting and sought permission to offer oral testimony. By a 5-2 vote, Gill and the Majority rejected Sheldon's and Hochberg's request that Father Wheeler be allowed to testify. The reason given at the time was that the November 1, 1995 meeting was a continuation of a previous meeting, at which public testimony had been allowed, and that the Commission was not obligated to afford interested persons a further opportunity to present oral testimony on November 1, 1995.

41. Section 92-3 of the Hawaii Revised Statutes, as amended, provides:

Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. *The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item.* The boards may provide for reasonable administration or oral testimony by rule.

(Emphasis added.) The terms "boards" and "meeting," as used in section 92-3, are defined in section 92-2. Section 92-2(1) provides that "boards" includes "any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions," and section 92-2(3) provides

that "meeting" means "the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power."

42. Clearly, the Commission's refusal to allow Father Wheeler to testify on November 1, 1995 was a wilful violation of section 92-3 of the Hawaii Revised Statutes, as amended.

43. Section 92-11 of the Hawaii Revised Statutes, as amended, provides that any "final action taken in violation of section . . . 92-3 . . . shall be voidable upon proof of wilful violation. A suit to void any final action shall be commenced within ninety days of the action."

44. The seriousness of the Commission's violation of section 92-3 is emphasized by section 92-1 of the Hawaii Revised Statutes, as amended, which provides:

In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

45. The Commission's flaunting of the provisions of section 92-1 and 92-3 of the Hawaii Revised Statutes, as amended, with respect to Father Wheeler completely undermines the credibility of the Report, and the Report, being the final action taken by the Commission, should be

voided by this Court. Allowing the Report to stand as an official government document in light of the Commission's violation of sections 92-1 and 92-3 with respect to Father Wheeler would irreparably harm the public.

F. COUNT 3: ON THE ADVICE OF THE LRB, THE COMMISSION REFUSED TO ALLOW MAINLAND EXPERTS TO OFFER PUBLIC TESTIMONY BY TELEPHONE RELATING TO THE POLICY QUESTIONS WHICH THE COMMISSION WAS CHARGED TO CONSIDER.

46. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 45.

47. On or about October 11, 1995, Sheldon and Hochberg requested that the Commission allow Dr. Dallas Willard, Dr. Joseph Nicolosi, Professor Richard Duncan, and Roger Magnuson, Esq., (the "Mainland Experts") be allowed to present testimony to the Commission by telephone. These individuals are nationally-recognized experts regarding the public policy reasons to extend or not to extend to same-sex couples whatever economic benefits are conferred by law upon married couples. All of them live and work on the Mainland, and none of them were available to appear before the Commission in person at any of the Commission's meetings.

48. By a 5-2 vote, and acting upon advice obtained from the LRB, Gill and the Majority refused to hear the testimony of the Mainland Experts, in wilful violation of section 92-3 and 92-1 of the Hawaii Revised Statutes, as amended.

49. The Commission's flaunting of the provisions of section 92-3 of the Hawaii Revised Statutes, as amended, with respect to the Mainland Experts completely undermines the credibility of the Report, and the Report, being the final action taken by the Commission, should be voided by this Court. Allowing the Report to stand as an official government document in light of

the Commission's violation of sections 92-1 and 92-3 with respect to the Mainland Experts would irreparably harm the public.

G. COUNT 4: THE COMMISSION FAILED TO PRODUCE MINUTES OF ITS MEETINGS IN VIOLATION OF HAWAII REVISED STATUTES SECTION 92-9.

50. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 49.

51. Section 92-9 of the Hawaii Revised Statutes, as amended, provides:

(a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other *information that any member of the board requests be included* or reflected in the minutes.

(b) The minutes shall be public records and *shall be available within thirty days after the meeting* except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) All or any part of a meeting of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting.

(Emphases added.)

52. The Commission has not approved minutes of several meetings going back more than thirty days, although the Majority has cited in the Report to purported minutes of meetings which have not been reviewed and approved by the Commission. Moreover, Gill and the Majority have refused to include in meeting minutes information requested by Sheldon and Hochberg to be included, which information accurately reflects things which occurred in Commission meetings.

53. The Commission's violations of section 92-9 of the Hawaii Revised Statutes, as amended, constitute further violations of section 92-1, and they further undermine the credibility of the Report.

54. Section 92-12(c) of the Hawaii Revised Statutes, as amended, provides:

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.

55. Moreover, section 92-12(d) of the Hawaii Revised Statutes, as amended, provides:

(d) The proceedings for review shall not stay the enforcement of any agency decisions; but *the reviewing court may order a stay* if the following criteria have been met:

- (1) There is likelihood that the party bringing the action will prevail on the merits;
- (2) Irreparable damage will result if a stay is not ordered;
- (3) No irreparable damage to the public will result from the stay order; and
- (4) Public interest will be served by the stay order.

(Emphasis added.)

(Emphasis added.)

56. Because the Commission's violations of section 92-9 of the Hawaii Revised Statutes both undermine the credibility of the Report and violate the public trust and the policy set out in section 92-1, the Court should both order that the Report be voided and that the distribution of copies of the Report in any form which purports to represent that the Report is an official government document, be stayed.

H. COUNT 5: THE REPORT FOCUSES ON DERAILING THE STATE'S POSITION IN *BAEHR V. MIIKE* RATHER THAN ON CARRYING OUT THE COMMISSION'S CHARGE UNDER ACT 5.

57. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 55.

58. The Report pretends to address the questions posed by the Legislature in Act 5, but it clearly is little more than an attempt to advocate the position that the State of Hawaii has no compelling interest in denying marriage licenses to same-sex couples, which is the issue before the court in *Baehr v. Miike*. That the Majority would take this tack was announced before the Commission began its work. Thus, the Report is unresponsive to the Legislature's charge and this Court should order it void.

59. Furthermore, since the obvious intent of the Report is to influence ongoing litigation, substantial harm could result to the public if the Report is disseminated under the guise of being an official government document. Accordingly, publication of the Report should be enjoined.

I. COUNT 6: THE MAJORITY AND/OR THE LRB EDITED THE MINORITY REPORT AFTER IT WAS APPROVED BY THE COMMISSION, AND THE DELETIONS MADE BY THE MAJORITY AND/OR THE LRB SHOULD BE RESTORED TO THE MINORITY REPORT.

60. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 58.

61. After the Commission had voted 5-2 on December 8, 1995 to approve the Report (including the Minority Report), the Majority and/or the LRB edited the Minority Report by deleting certain material, without the knowledge or consent of Sheldon and Hochberg.

62. The editing of the Minority Report by the Majority and/or the LRB was contrary to representations that had been made to Sheldon and Hochberg by the Majority to the effect that the Majority would not attempt to affect the content of the Minority Report.

63. The editing of the Minority Report by the Majority and/or the LRB was clearly in violation of both the spirit and the letter of section 92-1 of the Hawaii Revised Statutes, as amended, and, on that ground, the Court should order that the deleted material be restored to the Minority Report.

J. COUNT 7: THE MAJORITY INSERTED MATERIAL INTO THE REPORT IN SUCH A WAY AS TO PREVENT SHELDON AND HOCHBERG FROM RESPONDING TO IT, AND THE MAJORITY HAS REFUSED TO ALLOW SHELDON AND HOCHBERG TO ADD APPENDICES TO THE REPORT WHICH WILL MAKE THE REPORT MORE BALANCED.

64. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 62.

65. On December 7, 1995, Sheldon and Hochberg received "final" copies of the portion of the Report prepared by the Majority, and at that time learned that the Majority had added material to the Report to which Sheldon and Hochberg wished to respond.

66. Sheldon and Hochberg requested that certain specified materials be added to the appendix of the Report in response to the Majority's newly-added material, but Gill and the Majority voted 5-2 to disallow the adding of any further appendices to the Report.

67. The Majority's refusal to allow Sheldon and Hochberg to add materials to the Report which would balance materials added by the Majority at the last minute was a clear violation of both the spirit and the letter of section 92-1 of the Hawaii Revised Statutes, as amended, and, on that ground, the Court should order that the material requested by Sheldon and Hochberg be added to the Report.

K. COUNT 8: THE MAJORITY CIRCUMVENTED NOTICE REQUIREMENTS WITH RESPECT TO COMMISSION MEETINGS

68. Sheldon and Hochberg reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 67.

69. Section 92-7 of the Hawaii Revised Statutes, as amended, provides:

(a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible.

(c) If the written public notice is filed in the office of the lieutenant governor or the appropriate county clerk's office less than six calendar days before the meeting, the lieutenant governor or the appropriate county clerk shall immediately notify the chairperson of the board, or the director of the department within which the board is established or placed, of the tardy filing of the meeting notice. *The meeting shall be canceled as a matter of law, the chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting, and no meeting shall be held.*

(d) No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(Emphasis added.)

70. On the advice of the LRB, the Commission wilfully and improperly amended the agenda of the Commission's November 22 meeting so as to circumvent the clear provisions of section 92-7 of the Hawaii Revised Statutes, as amended, which required (among other things) that the December 6, 1995 meeting of the Commission "be cancelled as a matter of law."

71. Accordingly, this Court has the authority, pursuant to section 92-11, to void the Report, and the Court should do so in order to prevent irreparable harm to the public.

WHEREFORE, Sheldon and Hochberg pray that this Court grant the following relief:

A. A declaratory judgment that the work of the Commission was carried out in violation of Article XVI section 4 of the Constitution of the State of Hawaii, and that the policies, practices and acts complained of herein are illegal and unconstitutional.

B. A declaratory judgment that the acts of the Majority violated Chapters 92 and 26 of the Hawaii Revised Statutes, as amended, and on that ground are illegal.

C. A declaratory judgment that the appointments of the Commissioners and the acts of the Commission constitute ultra vires acts and that the appointments are null and void.

D. A declaratory judgment that the Report is null and void, based upon the Majority's wilful violations of sections 92-3 and 92-7 of the Hawaii Revised Statutes, as amended.

E. An order temporarily staying implementation of the Commission's recommendations and restraining the defendants, their agents, representatives, and all others acting by, through, and under them from:

(1) Commencing or conducting further meetings to discuss and to prepare, publish or distribute the Report, or to finalize any additional minutes of meetings.

(2) Presenting the Report to the legislature and the public.

(3) Allowing the LRB to give administrative support to any member of the Commission.

F. A preliminary and permanent injunction staying implementation of the Commission's recommendations and enjoining the defendants from:

(1) Commencing or conducting further meetings to discuss and to prepare, publish or distribute the Report, or to finalize any additional minutes of meetings.

(2) Presenting the Report to the legislature and the public.

(3) Allowing the Legislative Reference Bureau to give administrative support to any member of the Commission.

G. An order awarding Plaintiffs reimbursement of attorneys fees and expenses of this litigation as provided in section 92-12 of the Hawaii Revised Statutes, as amended.

H. An order directing the Majority to publish in the Internet, to the "Marriage Mailing List" subscribers (located at and accessed by typing "majordomo@abacus.oxy.edu") a copy of this Court's order granting any or all of the relief prayed for in this complaint, in order to notify those seeking to publish, distribute, or use the Report of the status of the validity (if any) of the Report.

I. As alternative relief, (1) an order directing the Majority and the LRB to include in the final version of the Report the material which Sheldon and Hochberg sought to have added in response to the last-minute additions to the Majority's portion of the Report, and (2) an order directing the Majority and the LRB to restore the portions which the Majority and/or the LRB deleted from the version of the Minority Report which was approved by the Commission on December 8, 1995.

J. Such other and further relief as this court deems just and equitable.

DATED: Honolulu, Hawaii, December 21, 1995.

Scott A. Makuakane
Scott A. Makuakane

SCOTT A. MAKUAKANE
Attorney for Plaintiffs



EXECUTIVE CHAMBERS
HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

August 10, 1995

Ms. Marie A. "Toni" Sheldon
Pauahi Tower, Suite 1200
1001 Bishop Street
Honolulu, Hawaii 96813

Dear Ms. Sheldon:

It is my pleasure to appoint you to the Commission on Sexual Orientation and the Law, effective immediately.

Act 005, Session Laws of Hawaii 1995, establishes the commission which is attached for administrative purposes to the Legislative Reference Bureau. The purpose of the commission is to 1) examine the major legal and economic benefits extended to married opposite-sex couples, but not to same-sex couples; 2) examine the substantial public policy reasons to extend or not to extend such benefits in part or in total to same-sex couples; and 3) recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples.

You have a tremendous task ahead of you and I thank you for your willingness to serve on this very important commission.

With warmest personal regards,

Very truly yours,

BENJAMIN J. CAYETANO

EXHIBIT "A"



EXECUTIVE CHAMBERS
HONOLULU

BENJAMIN J. CAYETANO
GOVERNOR

August 10, 1995

Mr. Lloyd James Hochberg, Jr.
1188 Bishop Street
Suite 1610
Honolulu, Hawaii 96813

Dear Mr. Hochberg:

It is my pleasure to appoint you to the Commission on Sexual Orientation and the Law, effective immediately.

Act 005, Session Laws of Hawaii 1995, establishes the commission which is attached for administrative purposes to the Legislative Reference Bureau. The purpose of the commission is to 1) examine the major legal and economic benefits extended to married opposite-sex couples, but not to same-sex couples; 2) examine the substantial public policy reasons to extend or not to extend such benefits in part or in total to same-sex couples; and 3) recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples.

You have a tremendous task ahead of you and I thank you for your willingness to serve on this very important commission.

With warmest personal regards,

Very truly yours,


BENJAMIN J. CAYETANO

EXHIBIT "B"

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARIE A. SHELDON and LLOYD) CIVIL NO.
JAMES HOCHBERG, JR.) (Declaratory Judgment)
)
Plaintiffs,) SUMMONS
)
VS.)
)
BENJAMIN CAYETANO, in his capacity)
as Governor of the State of Hawaii;)
THOMAS P. GILL, in his capacity as)
Chairman of the Commission on Sexual)
Orientation and the Law; MORGAN)
BRITT, L. KU'UMEAALOHA GOMES,)
NANCI KREIDMAN, and ROBERT)
STAUFFER, in their capacities as)
members of the Commission on Sexual)
Orientation and the Law; and WENDELL)
K. KIMURA, in his capacity as Acting)
Director of the Legislative Reference)
Bureau,)
)
Defendants.)
)
_____)

SUMMONS

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to serve upon SCOTT A. MAKUAKANE, ESQ., Plaintiffs' attorney, whose address is Beck & Taylor, Attorneys at Law, 1188 Bishop Street, Suite 1610, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service.

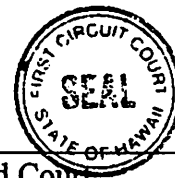
If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, DEC 21 1995

B. CHO



Clerk of the above-entitled Court

Ward Stewart
2085 Ala Wai Blvd.
Honolulu, Hawaii
96815

December 26, 1995

The Governor's Commission on Sexual Orientation and the Law
C/O Legislative Reference Bureau
State Capital, Room 446
Honolulu, Hawaii
96813

Following: testimony which I would wish to have placed before the committee.

.....

We have heard a steady drumbeat through these discussions to the effect that what we do here in Hawaii will somehow destroy the inviolable models of family and marriage.

While some "Christian" groups claim to be promoting what they choose to call family values; my family supports the values of integrity, honesty and unconditional love. This issue needs dialogue and understanding, not hostile rhetoric. Rigid, fundamentalist thinking will not solve this dilemma.

During the discussion of this matter we have heard an assertion made by those who would keep us in the closet; an assertion you will hear often in these discussions of same-gender marriage. The implication of this would deny us liberty, would deny us the pursuit of happiness and would deny us even life itself. This is a peculiar notion that homosexuality involves a "choice," a sinful choice made for bad reasons. We have heard over and over again that this unfortunate choice can be remedied. All we have to do is "change."

On our side of the aisle we are here to assure you that homosexuality is not, repeat, not a matter of choice. Sexual orientation is part of the very basis, the bricks and mortar of personality. For any practical purpose it is immutable, fixed. This opinion was held by Sigmund Freud. This view is now that of the American Psychiatric Association, the vast majority of churchmen, and the overwhelming majority of homosexuals themselves. What we have here is the work of a small and vociferous minority who claim to speak for family, and American Values and, indeed, for God himself.

It is clear to me that homosexuality is not a choice, not something that can be casually changed. It is equally clear to me that hatred and bigotry are choices. These are cruel choices and can be changed.

In recent history the Mormons, the Christian Scientists, the Seventh Day Adventists and the handlers of serpents have ALL defended their freedom to worship in minority ways. They have all, properly, sought protection in our wonderful constitution. Now, an intolerant minority of these same folk would deny such protection to me and my ohana. In the name of what they have chosen to call "*Family Values*" they would deny me and my family our very right to exist.

Here in Hawaii Nei where we have a long and rich history of tolerance for people of all races, religions, ancestry and gender we must not deny full civil rights to our citizens on religious grounds. Remember that slavery, miscegenation laws and apartheid were all, in their wretched day, firmly bible based, the word of God given.

Pat Robertson, Jerry Falwell, Pat Buchanan, the Rutherford Klan, and an army of hate-mongers are on the move. Their objective is to have the United States declared a "Christian" country. Here in multi-ethnic Hawaii this idea can be seen as the poison that it is! Here where the worship of Pele is part of our fabric we must be appreciative of freedom of religion and the separation of church and state.

Hate is not a Christian value, a family value, or a traditional American value. To deny people their rights because they are different is surely cruel, un-Christian, and un-American. To legislate such a denial is a step backwards. Do not take it.

Some years ago, during the civil-rights struggle with school integration we heard of bussing and school busses as if they had not existed before. Suddenly busses were a major American issue and concern. Jesse Jackson spoke then and said, "Its not the bus, its us!" He was exactly right. Now we hear that we will destroy marriage and family values. Its not marriage its us! make no mistake about it, the issue is the same, the mischief is the same, the challenge is the same.

Last year a famous American stood up and greatly surprised his neighbors by saying --

"Gays and lesbians are a part of every American family. They should not be shortchanged in their effort to better their lives and serve their communities. . . It's time America realized that there was no gay exemption in the right to 'life, liberty, and the pursuit of happiness.'

Barry Goldwater - July 1994

The enemy here is our old human failing of prejudice and intolerance -- fear of those who are perceived as being "different."

The only way I know to combat this cruelty is to announce to the world that we are here, we are your friends and neighbors, your brothers and sisters; we are cops and firemen, nurses and doctors, clergy and rubbish collectors, heroes and villains. In short, we are you.

I can only suppose that the wish to stand up in public and avow our commitment to our lives by appearing slightly foolish must seem odd to the majority. To us it is of profound significance. I am sixty-five years old and grew up in the bad old days of repression and dark night. My lover and I have been together for thirty-nine years and we are very proud of this. Proud of what we have made of our lives. Just think how you might feel if you and your spouse came to your golden wedding anniversary and were permitted to tell no one; were forced to celebrate this milestone of your lives among a few intimates and behind closed doors at that.

We can do better than that -- we will do better than that!

Omnia Vincit Amor--



Ward Stewart

Loree Johnson
935 California Avenue, Unit A-4, Suite 329
Wahiawa, Hawaii 96786

Testimony to Support the Traditional Marriage Resolution

Refuting rationale for same-sex marriage:

- A. Homosexuality is a 'special class' based upon sexual orientation.
1. The Supreme Court's 3-point criteria for determining "minority" status does not apply to homosexuals, who are not deprived of opportunities.
 2. Even though homosexual behavior is a choice, like religion, it is not on the same ethno/cultural level.
- B. Homosexuality deserves equal public approval as heterosexuality.
1. Although it is claimed there is a biological predisposition for homosexuality (and therefore it is not a choice), science has not yet produced evidence of it. According to the November 1995 edition of the *Scientific American*, there is NO "gay" gene. Furthermore, the homosexuals who have abandoned the lifestyle attest that 'sexual orientation' can change.
- C. "Commitment" to partner should warrant marital benefits.
1. I do not expect that the degree of commitment I feel toward a friend (conjugal or not) should qualify me for a newly create "class" of people, who derive benefits equal to those of another class.
- D. Sodomy laws should be equally enforced among heterosexuals.
1. The act of sodomy alone is insufficient to account for the aggregate social implications inherent with the advancement of the politically laden "gay agenda."
- E. Religion cannot dictate civil law.
1. Conversely, law cannot dictate religion.
 2. Article I of the *Bill of Rights* states Congress cannot make a law which prohibits the free exercise of religion; Hawaii augments that law.
 3. Legalizing same-sex marriage would restrict free expression of the Biblical repudiation of homosexual behavior; thus prohibiting the free exercise of religion.
 4. Before the State could sanction same-sex marriage (and teach it in government schools) it would have to repeal the protection clause over free exercise of religion.

F. Homosexuals require extra protection because of "hate crimes"

- 1. Women and children are beaten to death daily; so why aren't "hate crime" protections laws extended to them?**
- 2. It was the homosexuals who stormed across society's old borders and assaulted traditional American positions, who painted themselves as VICTIMS of social and legal persecution.**
- 3. Homosexuals act out against citizens who disagree with their analysis of the sexual nature of mankind. They call them derogatory names; and demonstrate lewd sexual acts while parading nude in front of St. Patrick's Cathedral, the Castro district, and elsewhere; they disrupt Sunday services and vandalize churches. Who, then, is persecuting whom?**

G. Government should not be in the business of sanctioning marriage.

- 1. Abolishing marriage laws would further erode the best hope society has for raising healthy children. The most recent social research confirms that youth crime is directly related to single parenting. The prevention of "high risk" children is best achieved with two biological parents married to each other and living at home. As with all moral breakdown, homosexual marriage would produce more angry, confused, dysfunctional and violent youth.**
- 2. Government has the obligation to support public policy which promotes the general welfare. By preserving heterosexual marriage, the government encourages traditional families who provide many needed services that the government cannot supply.**
- 3. At a time of budget shortfalls, it is inconceivable that the state would extend costly medical benefits to sexual partners of state employees, while dropping 5,642 permanently disabled people from public assistance. These folks face a bleak future of homelessness, as they will never be able to physically support themselves. How can the state conscionably favor homosexual unions over charity for the permanently disabled, and continue to refer to themselves as a civilized society?**