



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

March 24, 2017

1:30 p.m.

Present: Liann Ebesugawa, Joan Lewis, and Joakim Peter, Commissioners; Livia Wang and Bill Hoshijo, staff.

Excused: Linda Krieger, Artemio Baxa, Commissioners.

In Chair Linda Krieger's absence, Commissioner Liann Ebesugawa called the meeting to order.

Approval of Minutes

The minutes of the February 24, 2017, meeting were approved. (m/s/p Lewis/Peter; all).

Executive Director's Report

In Deputy Executive Director (DED) Marcus Kawatachi's absence, Executive Director (ED) Bill Hoshijo presented a FY 2017 HCRC Mediation Program year to date summary.

Summary & Details (7/1/16 through 3/17/17)

Referrals:	27
Dispositions:	28
Settlements:	19
Non-agreements:	9
Settlement Rate:	67.9 %
Employment cases settled:	19
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	12
State-only settlements	7

Primary Bases for Complaints Settled in Mediation

Sex	5 (3 pregnancy)
Ancestry	4
Disability	3
Race	2
Age	2
Arrest and Court Record	1
Color	1
Retaliation	1

Dispositions by Mediation Center

Mediation Center of the Pacific	12/16	(settlement rate 75 %)
Mediation Services of Maui	2/3	(settlement rate 66.7%)
Private Mediators	2/2	(settlement rate 100%)
Ku'ikahi Mediation Services (Hilo)	2/5	(settlement rate 40 %)
West Hawaii Mediation Center	0/1	(settlement rate 0%)
Kauai Economic Opportunity, Inc.	1/1	(settlement rate 100%)

OVERALL 19/28 (settlement rate 67.9%)

ED Hoshijo also presented a data and production report showing caseload data through March 17, 2017.

As of March 17, 2017 the report showed 160 open cases, a decrease of 15 cases from the number reported as of February 24, 2017. Of those, 1 (0.6%) was filed in 2012, 0 (0%) in 2013, 1 (0.6%) in 2014, 10 (6.3%) in 2015, 81 (50.6%) in 2016, and 67 (41.9%) in 2017.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2012	2013	2014	2015	2016	2017	Total
Housing Cases	1	0	0	3	13	9	26
Response Monitoring	0	0	1	4	23	43	71
Mediation	0	0	0	1	16	5	22
Pending Assignment	0	0	0	0	1	0	1
Active Investigation	0	0	0	2	28	10	40
TOTAL	1	0	1	10	81	67	160

ED Hoshijo went over the year to date data for the past five fiscal years:

Category	7/1/12 – 3/17/13	7/1/13 – 3/17/14	7/1/14 – 3/17/15	7/1/15 – 3/17/16	7/1/16 – 3/17/17
PCQ Received	513	506	478	479	444
Intake Decision	551	476	483	532	464
Complaint Filed	237	222	223	297	253

Investigation Closed	250	266	231	341	310
Notice of Cause	4	0	9	14	12
Enforcement Closure	5	4	7	20	9

ED Hoshijo reported that there were no actions or pending actions for subpoena enforcement.

ED Hoshijo reported on the HCRC-EEOC-HSCSW public training scheduled for May 10, 2017, with a focus on women and immigrants in the workplace.

He also reported that, in the wake of continuing reports of anti-Muslim acts and sentiment, HCRC staff was planning outreach to the Muslim community.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported on the *Bate* appeal, recapping the Hawai'i Supreme Court argument that took place on March 9, 2017.

The *Elento* appeal remained pending.

Legislation -2017 Session

The Commissioners reviewed Legislative Summary 3, updated to include HCRC position, bill status, and staff recommendations on new bills, and took action on bills not previously addressed, deciding on HCRC positions as follows:

NEW BILLS

HB 1033 HD1

Relating to Administrative Procedure

Amends HRS § 91-1 to include agencies as "persons" eligible to file declaratory relief petitions under HRS § 91-8. Addresses Hawai'i Supreme Court decision in *RGIS Inventory Specialist v. HCRC*, 104 Hawai'i 158 (2004) in which the Court held that HAR § 12-46-61, which allowed the Executive Director to file declaratory relief petitions was invalid pursuant to HRS §§ 91-1 and 91-8 because the ED was an agency, not a person and agencies were excluded from definition of "persons" who could file declaratory relief petitions.

Status: ref. to JDL; hrg. before JDL on 3/1, passed w/ amendments.

Discussion: Staff recommendation was to support because this will allow the ED to file petitions for declaratory relief to the Commission and other agencies to clarify statutes and rules.

HCRC position: Support, per staff recommendation. (m/s/p Lewis/Peter; all in favor).

SB 502 SC1 HD1 **Relating to in vitro fertilization coverage**
Amends HRS § 431:10A-116.5 to ensure equal access to IVF procedures to include same-sex couples, unmarried women and male-female couples where male infertility is the relevant factor.

Status: ref. to HLT, CPC, FIN; hrg. before HLT on 3/14, passed w/ amendments; hrg. before CPC on 3/23,

Discussion: Staff recommendation was to support because same-sex couples, unmarried women and unmarried male-female couples where male infertility is the relevant factor are currently excluded from the coverage requirements.

HCRC position: Support, per staff recommendation. (m/s/p Lewis/Peter; all in favor).

HCR 125 **Declaring Hawaii to be a ho‘okipa (welcoming) state.**
HR 76 Declares that immigration is a federal function and that local law
SCR 104 enforcement agencies should decline to work with federal immigration
 agencies and requests Governor to appoint a Ho‘okipa Commission to
 ensure a safe, secure and welcoming community for everyone, including
 immigrants.

Status: HCR 125/HR 76 ref. to JUD; hrg. before JUD on 3/23
SCR 105 ref. to CPH, WAM; hrg. before CPH on 3/23

Discussion: Staff recommendation was to support.

HCRC position: Support, per staff recommendation. (m/s/p Peter/Lewis; all in favor).

HCR 166 **Urging the Governor, AG, Mayors and state and county leaders to**
 firmly uphold the federal and state constitutions to preserve and
 protect civil rights and to ensure the safety of immigrants in our
 communities.
Encourages state and local officials not to cooperate with ICE officials in
executing unconstitutional policies and in line with Kanawai Mamalahoe
(law of the splintered paddle) work to insure the safety of all Hawai‘i’s
people.

Status: ref. to JUD

Discussion: Staff recommendation was to support.

HCRC position: Support, per staff recommendation. (m/s/p Lewis/ Peter; all in favor).

HCR 207 **Affirming the legislature's commitment to full and equal rights for**
HR 135 **women.**
Affirms the legislature's commitment to advancing the equal rights of
women under the law and in society.

Status: ref. to HUS, JUD; hrg. before HUS on 3/22

Discussion: Staff recommendation was to support.

HCRC position: Support, per staff recommendation. (m/s/p Peter/Lewis; all in favor).

SCR 97 **Requests the AG to continue to take any legal action necessary against**
SR 41 **the President's EOs restricting immigration from Muslim countries**

Status: ref. to JDL, WAM

Discussion: Staff recommendation was to support, because the Muslim travel ban executive orders discriminate on the bases of national origin and religion.

HCRC position: Support, per staff recommendation. (m/s/p Lewis/Peter; all in favor).

SCR 142 **Requests the UH Center for Philippine Studies to convene a working**
SR 64 **group to determine the need to redress for the disproportionate**
 conviction and execution of people of color in Hawai'i during the
 territorial period.
During the territorial period almost 95% of the executed were people of
color, a large number of them being Filipino. Asks the UH Center for
Philippine Studies to convene a working group to determine the need for
redress, including but not limited to apology, education and other
programs.

Status: ref. to HRE/IAA, JDL

Discussion: Staff recommendation was to support.

HCRC position: Support, per staff recommendation. (m/s/p Lewis/Peter; all in favor).

BILLS STILL ALIVE

EMPLOYMENT

HB 1031 HD1 SD1 Relating to criminal history record checks

SB 897 SD2

Authorizes the Child Support Enforcement Agency and the Depts. of Taxation, Labor and Human Services to conduct criminal history record checks for employees, applicants and contractors who will have access to federal tax information.

Status: SB 897 ref. to JDL/HMS, WAM; hrg. before JDL/HMS on 2/13, passed w/ amendments to change effective date to 2050; decision making before WAM on 2/24, passed w/ amendments authorizing DLIR to conduct checks under HRS Chapter 371 so that it can conduct checks on all contractors who have access to federal tax info; crossed 3/7; ref. to JUD, FIN; no hearings held.

HB 1031 ref. to JUD, FIN; hrg. before JUD on 2/7, passed w/ amendments to change effective date to 2050, passed unamended; hrg. before FIN on 2/23, passed unamended; crossed 3/3; ref. to JDL, WAM; hrg. before JDL on 3/22, passed w/ amendments.

HCRC position: No opposition. Monitor – required under federal law, still subject to § 378-2.5.

SB 675 SD1 HD1

HB 809 HD1

Exceptions to Fair Employment Practices Act (HCC bill)

Narrows exceptions which allow employers to not hire or discharge for any reasons unrelated to specified sections of HRS Chapter 378 instead of requiring employers to show reasons related to the ability of the individual to perform the work.

Status: SB 675 ref. to JDL; hrg. on 2/22 before JDL, decision making on 2/27, passed w/ amendments also allowing employers to discharge pursuant to an employee policy that is applied in a non-discriminatory fashion, also changing effective date to 2059; crossed on 3/7; ref. to LAB, JUD; hrg. before LAB on 3/16, passed w/ technical amendments and changing effective date to 2050

HB 809 ref. to LAB, JUD; hrg. before LAB on 2/14, passed w/ amendments changing the effective date to 2050; no hrg. before JUD.

HCRC position: Oppose. In both 2016 and 2017, the Hawai'i Chamber of Commerce legislative package included proposals to legislatively address (reverse) Adams v. CDM Media USA, Inc., 135 Hawai'i 1 (2015). In 2016, the HCRC opposed S.B. No. 3036, based on these concerns:

The amendments to HRS 378-3(3) proposed in S.B. No. 3036 and its S.D.1, ostensibly intended to clarify or correct the meaning of a "legitimate, nondiscriminatory reason" in which the Supreme Court used a "just cause" standard, i.e., the reason has to be related to the individual's

ability to perform the job duties. The bill could be interpreted to result in the following unintended consequences:

- 1) Eliminating the requirement in the Shoppe / McDonnell Douglas analysis that requires an employer's proffered articulated reason for its action be both legitimate and nondiscriminatory. This would allow employers to carry their burden by articulating virtually any reason other than a discriminatory reason for their actions, even explanations that are illegitimate and not worthy of credence.
- 2) Arguably create an affirmative defense for employers that does not exist, where an employer can overcome circumstantial evidence discrimination claim by showing any plausible reason for its action that is not based on a prohibited bases, regardless of the circumstantial evidence of discriminatory intent.
- 3) Possibly undermine and diminish employer responsibility for adverse acts that are partly, but not wholly, motivated by discriminatory intent, a departure from state and federal law on mixed motive cases.

HB 814 HD2
SB 429 SD2 HD1

Relating to Uniform Employee and Student Online Privacy Act

Adopts uniform laws on protecting the online accounts of employees and students from employers and educational institutions. Includes exception for employers to comply with federal or state laws.

Status: HB 814 ref. to LAB, JUD; hrg. before LAB on 2/12, passed w/ amendments adding civil action for AG; hrg. before JUD on 2/28, passed with amendments excluding accounts that employer or educational institution establish under their domain with notice that they may ask for login info; crossed 3/9; ref. to CPH, JDL; no hearings held.

SB 429 ref. to JDL/HRE, CPH/WAM; hrg. before JDL/HRE on 2/2, passed w/ amendments adding civil action for AGs, employees and students to enforce; decision making before CPM/WAM on 2/28, passed 2/ amendments deleting provision that allowed employers and ed. inst. To request access to online accounts, clarifies that act doesn't affect employers' obligation to investigate harassment under HRS Chapter 378; crossed 3/7; ref. to LAB, JUD; hrg. before LAB on 3/21, passed w/ amendments.

HCRC position: Support intent, if language included for direct cause of action and express language to the effect that employer's obligation and authority to investigate discriminatory harassment is not diminished.

PUBLIC ACCOMMODATIONS

HB 475 HD1 SD1
SB 1156

Relating to Movie Theatres

Eliminates sunset provision and makes permanent the requirements that a motion picture theater in more than two locations in the state must provide: 1) open movie captioning; and 2) audio description upon request or any picture that is produced and offered with audio description.

Status: HB 475 ref. to EDB, FIN; hrg. before EDB on 2/15, passed 2/ amendments extending sunset to 2020 and requiring DBEDT to conduct a survey on practical and financial impact Act 19 on movie theaters; hrg. before FIN on 3/1, passed unamended; crossed 3/7; ref. to ETT, CPH/JDL ; hrg. before ETT on 3/13, passed w/ amendments back to original bill; nrg. Before CPH/JDL on 3/29

SB 1156 ref. to CPH, JDL; hrg. before CPH on 2/9, passed unamended; decision making before JDL on 2/21, passed unamended; crossed 3/3; ref. to EDB, FIN; hrg. before EDB on 3/17, deferred.

HCRC position: Support. The HCRC supported Act 39, which created these requirements. We are the first state to require this for the hearing and sight impaired community. Act 39 sunset provision repeals the act effective January 1, 2018.

OTHER CIVIL RIGHTS ISSUES

~~SB 403 SD2~~

Relating to Health Insurance

HB 552 HD 1 SD1

Ensures that certain benefits (including contraception and breastfeeding coverage) under the federal ACA are preserved under Hawaii law. Prohibits health insurance entities from using an individual's gender to determine premiums or contributions.

Status: SB 403 ref. to CPH, WAM; hrg. before CPH on 1/31, passed with amendments updating minimal essential coverage mandate, clarifying that contraceptive coverage is gender neutral and that breastfeeding coverage includes support, counseling and equipment for the duration of breastfeeding, effective date of 2050; hrg. before WAM on 2/23, passed w/ technical amendments; crossed 3/7; ref. to HLT/CPC, FIN; no hearings held.

HB 552 ref. to HLT/CPC, FIN; hrg before HLT/CPC on 2/8, passed with same amendments as SB 403 SD1; hrg. before FIN on 2/23, passed unamended; crossed 3/7; ref. to CPH, WAM; hrg. before CPH on 3/14, 3/22, passed w/ amendments.

HCRC position: Support.

HB 942 HD1 SD1

Relating to Filipino Veterans

Appropriates funds for the Hawaii State Foundation on Culture and the Arts to commission an artist to design and build a monument at the Filipino community Center in Waipahu that honors Filipino WWII veterans.

Status: ref. to VMI, FIN; hrg. before VMI on 2/9, passed w/ amendments to direct state foundation on culture and arts to select location and change source of funding; hrg. before

FIN on 2/23, passed unamended; crossed 3/3; ref. to IAA/PSM, WAM; hrg. before IAA/PSM on 3/23, passed w/ amendments.

HCRC position: Strongly support.

HB 1420 HD1 Relating to Filipino Veterans Burial Assistance
Appropriates funds for burial grants for qualifying Filipino American vets living in Hawaii to transport their remains to the Philippines if federal funds are unavailable

Status: VMI, FIN; hrg. before VMI on 2/9, passed w/ amendments making appropriation unspecified; hrg. before FIN on 2/28, passed unamended; crossed 3/7; ref. to PSM, WAM; hrg. before PSM on 3/14, passed unamended.

HCRC position: Strongly support.

**HCR 52 Asserting the State of Hawaii's commitment to diversity,
SCR 65 inclusiveness, justice, equality, compassion and democratic values in
 response to the 2016 presidential election through the spirit of aloha.**

Also denounces hate crimes, hate speech, threats to immigrants, proclaims Hawaii as a sanctuary state, protects women and LGBT rights, religious freedom, the environment against climate change, health care guaranteed by the state and ACA.

Status: HCR 52 ref. to VMI, JUD
SCR 65 ref. to IAA, JDL

HCRC position: Support.

**SCR 54 Requesting the U.S. Dept. of Veteran Affairs to provide COFA
SR 16 veterans equal quality and access to health care**

The U.S. military vigorously recruits from the pacific islands. Veterans from Guam and the Northern Marianas Islands receive full health benefits but the veterans from COFA nations do not.

Status: ref. to PSM, CPH/WAM.

HCRC position: Strongly support.

**SCR 55
SR 17**

Urging the City and County of Honolulu to name a street after Martin Luther King, Jr.

There are more than 900 streets in 42 states and Puerto Rico named after Dr. King; Hawaii is one of the few states that does not.

Status: ref. to PSM, CPH/WAM.

HCRC position: Support.

BILLS THAT DIED

HCRC

HB 77 HD1

Relating to an Office of Administrative Hearings

Creates a central hearing agency to hear all state agency contested cases.

Status: ref. to JUD, FIN; hrg. before JUD on 2/1, passed w/ amendments to delete establishment of office of administrative hearings and direct the LRB to conduct study on implementing an OAH based on ABA model with effective date of 2050; hrg. before FIN on 2/23, passed unamended; crossed 3/3; ref. to GVO, JDL/WAM; no hearings held.

HCRC position: Oppose. This bill would eliminate the HCRC's adjudication functions. Hearings, proposed decisions and final decisions on HCRC cases would be made by the Office of Administrative Hearings instead of HCRC hearings examiners and the Commission. The laws that the HCRC enforces are very complex and would be difficult for hearings officers on a central panel to grasp and correctly apply.

**HB 1489 HD1
SB 1265**

Civil Rights - state Title IX Act

Amends HRS § 368-1.5 to add Sex, including gender identity and expression and sexual orientation as protected bases

Status: ref. to: HB 1489 ref. to LAB, JUD; hrg. before LAB on 2/14, passed w/ amendments extending effective date to 2050; hrg. before JUD on 2/28, passed unamended; crossed on 3/9; ref. to JDL, WAM' hrg. before JDL on 3/22, deferred.

SB 1265 ref. to JDL; no hearing held.

HCRC position: Support, with suggestion for amended preamble, acknowledging and clarifying that the bill expands coverage beyond Title IX, covering education, but going beyond coverage of education to cover all state and state-funded services.

**HB 1116 HD1
SB 982**

Relating to Retaliation in State and State-funded Services

Prohibits retaliation against people who assert rights under HRS § 368-1.5 or again people who oppose disability discrimination in state and state-funded services.

Status: HB 1116 ref. to LAB, JUD; hrg. before LAB on 2/9, passed w/ amendments extending effective date to 2050; no hrg. held before JUD
SB 982 ref. to JDL; no hrg. held.

HCRC position: Support. HCRC requested inclusion and introduction as part of Administration Package.

**HB 1113
SB 979**

Relating to Retaliation and other discriminatory practices in public accommodations.

Removes requirement of a conspiracy of two or more persons as an element of retaliation and other prohibited practices in places of public accommodation.

Status: HB 1113 ref. to LAB, JUD; hrg. before LAB on 2/9, passed w/ amendments changing effective date to 2050; no hearing held before JUD
SB 979 ref. to CPH, JDL; hrg. before CPH on 2/7, passed unamended; decision making before JDL on 2/23, deferred.

HCRC position: Support. HCRC requested inclusion and introduction as part of Administration Package.

**HB 682
SB 520**

Relating to Police Commissions

Amends composition of county police commissions to include the EDs and/or members of the state Commission on the Status of Women and HCRC to be members of the county police commissions to advocate for women and civil rights.

Status: HB 682 ref. to JUD; no hearings held
SB 520 ref. to PSM, JDL/WAM; hrg. before PSM on 2/2, passed unamended; no hrg. before JDL/WAM

Discussion: Staff recommendation was to support intent but clarify that the HCRC ED/commissioners would not realistically be able to sit on every county police commission and may have conflicts, since complaints are filed with the HCRC against police departments. Suggest amendments to require that at least one police commission member be selected on the basis of their knowledge and experience in civil rights matters and on their demonstrated commitment to the preservation of the civil rights of all individuals).

HCRC position: Support intent but clarify, per staff recommendation. (m/s/p Ebesugawa/Baxa; all in favor).

EMPLOYMENT

**HB 671
SB 509**

Relating to Equal Pay

Encourages equal pay between men and women by amending HRS 378-2.3 by adding a provision to prohibit enforced wage secrecy and prohibit retaliation or other discrimination against employees who disclose, discuss or inquire about their own or their co-workers' wages in order to exercise equal pay rights.

Status: SB 509 ref. to JDL; no hearing held
HB 671 ref. to LAB, JUD; no hearings held

HCRC position: Support. Disclosure protection similar to provision in HB 1909 and SB 2313 which the HCRC supported in 2016 session. Oftentimes women are not aware of pay differentials because employees are prohibited from disclosing their wages or inquiring about the wages of their co-workers, and/or are retaliated against if they do.

HOUSING

SB 127 SD1

Housing discrimination based on source of income

Amends the Landlord Tenant Code (HRS Chapter 521) to prohibit discrimination based on lawful source of income in rental transactions

Status: ref. to CPH, JDL; hrg. before CPH on 2/7, passed w/ amendments putting protections in new HRS chapter but stating that HCRC or Office of Consumer Protection are to receive and investigate complaints; no hrg. before JDL.

HCRC position: Strongly support. In the past, HCRC supported prior versions of this bill (HB 25 L. 2015), noting that protection against source of income discrimination was different in kind from the protections under state fair housing law, and urging that the new protection be placed in a chapter other than HRS chapter 515. Lawful public sources of income include Section 8 vouchers, social security disability insurance, unemployment compensation, food stamps, temporary assistance to needy families; lawful private sources of income can include special needs trusts and income from legal settlements. The majority of people who receive rental assistance are people with disabilities, single female heads of households, families with children, and members of certain minority groups. Therefore, there is a correlation between those that are protected under our fair housing law and those who receive rental assistance. At least 13 other states have source of income protection statutes.

OTHER CIVIL RIGHTS ISSUES

SB 332 SD1 **Relating to Notaries Public**
HB 717 HD1 Prohibits a notary public from accepting a limited purpose driver's license
for verification of identification

Status: HB 717 ref. to JUD, hrg. before JUD on 2/3, passed w/ amendments changing effective date to 2050; crossed to Senate on 2/14, ref. to CPH, JDL; hrg. before CPH on 3/17, deferred.

SB 332 ref. to CPH, JDL, hrg. before CPH on 2/2, passed unamended; hrg. before JDL on 2/23, passed w/ amendments; crossed on 3/7; ref. to JUD, CPC; no hearings held.

HCRC position: Oppose.

HB 422 HD1 **Relating to Selective Service**
SB 491 SD2 Requires compliance with the Military Selective Service Act to be eligible
for enrollment in a state support college, to qualify for state financial
assistance for college, or to be eligible for state or county employment.

Status: HB 422 ref. to VMI, CPC, JUD; hrg. before VMI on 2/2, passed w/ amendments to delete reference to sex of the person who must comply; no hrg. before CPC

SB 419 ref. to PSM/HRE/TRE, JDL; hrg. before HRE/PAM on 2/14, passed w/ amendments to delete sex of person who much comply; decision making before JDL on 2/24, passed w/ technical amendments; crossed 3/9; ref. to VMI, HED, FIN; hrg. before VMI on 3/16, passed w/ technical amendments; hrg. before HED on 3/21, deferred.

HCRC position: Strongly oppose.

SB 954 SD1 **Relating to Health Insurance**
HB 1088 Section 4 of this bill corrects a technical non-substantive drafting error in
Act 135, L. 2016 - HRS § 431:10A-118.3's definition of "perceived
gender identity".

Status: HB 1088 ref. to HLT, CPC, FIN; no hearings held.

SB 954 ref. to CPH; hrg. before CPH on 2/27, decision making on 3/1, passed 2/
amendments changing other definitions; crossed 3/7; ref. to HLT,
CPC, FIN; hrg. before HLT on 3/14, deferred

HCRC position: Carefully monitor.

HB 1371 HD1**Workplace Violence**

Creates a new part in HRS Chapter 378 that directs DLIR to provide procedures for state employees to report incidents of workplace violence, conduct investigations on such reports, take action to ensure safety of the employee, provide support services and prohibit retaliation. Also amends HRS Chapter 378 part VI (DV victims protection act) to add definitions for "violence" and "workplace".

Status: LAB, JUD; hrg. before LAD on 2/14, passed w/ amendments deleting requirement that DLIR protect state employees and requires DHRD to collect policies and data on workplace violence and establish policy for reporting workplace violence.; no hrg. before JUD.

HCRC position: Monitor, and express concern about ambiguity.

HB 823**Relating to Religious Rights (state Religious Freedom Restoration Act)**

Amends HRS Chapter 7 to prohibit the state or any county from burdening any person's right to exercise religion absent that burden being the least restrictive means of furthering a compelling governmental interest.

Status: ref. to JUD; no hrg. held.

HCRC position: Strongly oppose.

SB 673 SD1**Proposing Amendments to the Constitution of the State of Hawaii to Amend the Manner in Which Justices and Judges are Appointed, Consented to, and Retained.**

Changes time frame from 30 to 90 days for certain processes to appoint and consent to a judge's appointment and authorizes the senate to approve or reject retention of a judge.

Status: ref. to JDL, WAM; hrg. before JDL on 2/8, passed w/ amendments; no hrg. before WAM.

HCRC position: Oppose, expressing concern over politicization of the judicial reappointment process. Cite historical importance of an independent judiciary on groundbreaking civil rights cases. In the south, southern federal District Court judges issued key civil rights decisions that were condemned by politicians and subjected the judges to death threats and cross burnings. These courageous decisions would not have been possible, but for judicial independence and lifetime appointments. In Hawai'i, the Court decision in Baehr v. Lewin set off a firestorm of political opposition that put courageous legislators at political risk. That kind of political

pressure brought to bear on legislators would increase if the Senate has to confirm judicial reappointments, adversely affecting judicial independence.

SB 311
HB 1405

Relating to Law Enforcement Racial Profiling

Requires state and county law enforcement officers (AGs, police, conservation officers, DOT, public safety) to develop policies to prohibit officers from using a person's race or ethnicity to form probable cause or reasonable suspicion to stop a vehicle, but can use race or ethnicity to confirm a previously obtained description of a suspect. Appropriates funds to annual racial profiling prevention training.

Status: SB 311 ref. to PSM/JDL, WAM; no hearings held.
HB 1405 ref. to LAB, JUD, FIN; no hearings held.

HCRC position: Support intent, but strongly oppose continuing used of race and ethnicity in law enforcement descriptions, and propose a draft to effect that position, based on Commission discussion.

Old Business

ED Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

ED Hoshijo reported that there was nothing new to report on the implementation of Act 135.

New Business

There was no new business.

Announcements

There were no announcements.

Next Meeting

The next meeting of the Commission was scheduled, for May 5, 2017, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

CLOSED EXECUTIVE SESSION

The Commissioners voted to go into closed executive session to discuss a personnel matter. (m/s/p Lewis/Peter; all).

The Commissioners went into closed executive session.

The Commissioners came out of closed executive session.

Adjournment