



## **ACLU OF HAWAII LEGISLATIVE PROGRAM – 2013 Session Highlights** **August Update**

The local ACLU affiliate protects and advances fundamental rights in various fora statewide (State Legislature, county councils, and other administrative agencies). While our efforts are year-round, we are most active during the State legislative session (January –May).

Our advocacy is implemented through a statewide network of staff and volunteers, community groups, ACLU supporters and the public-at-large. We thank this year’s working group members of **Nancy Davlantes, Roger Fonseca, Steven Levinson, Pamela Lichty and Jory Watland.**

**Top affiliate** priorities this year were: (A) marriage equality; (B) drug policy reform; (C) universal emergency contraception availability to survivors of sexual assault at Hawaii’s emergency rooms (“EC in the ER”); and (D) proposed amendments to the Hawaii Constitution to enact early childhood education programs by utilizing private and sectarian institutions (and the corresponding proposed legislation).

### **A. MARRIAGE EQUALITY**

The affiliate was a founding member of Hawaii United for Marriage, a coalition of local and national groups, which seeks to join forces with other advocates seeking marriage equality in Hawaii ([www.hawaiiunitedformarriage.org](http://www.hawaiiunitedformarriage.org)).

Unfortunately, efforts to pass marriage equality legislation in Hawaii stalled on February 12, 2013, when both the Senate Committee on Judiciary and Labor and the House Committee on Judiciary failed to schedule initial hearings on the bills (SB1369 and HB1109). Since 2013 was the first year of a two-year session, both bills are "alive" for 2014. After this procedural hurdle, the affiliate sought to keep the legislators and the public involved in a robust discussion of marriage equality in the hopes of passing marriage equality as soon as possible. Thus, we lobbied for the passage of a concurrent resolution, convened through the Dean of the William S. Richardson School of Law, calling for a task force charged with studying the “social, economic, and religious impacts of enacting marriage equality in Hawaii.”

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- PASSED: SCR 166, Convening a Task Force to Study the Social, Economic, and Religious Impacts of Enacting Marriage Equality in Hawaii. We are working with Dean Avi Soifer to assist him in convening the task force. We also hope to provide expertise on some of the areas contemplated by the resolution.

## **B. DRUG POLICY REFORM**

The affiliate is partnering with the Drug Policy Action Group (DPAG) to advocate for reforms to Hawaii's marijuana laws. The collaboration, funded by a grant, embarked on multi-pronged approach which included hired a community organizer, an economist to study the costs of marijuana arrests, and a research firm to conduct polling. ACLU/DPAG organized a new support and advocacy group for medical cannabis patients, caregivers, and doctors, The Medical Cannabis Coalition of Hawaii - [www.mcchi.org](http://www.mcchi.org). A coalition for marijuana law reform advocacy, including decriminalization and legalize-tax-regulate models, was also formed, called Fresh Approach Hawaii [www.freshapproachhawaii.org](http://www.freshapproachhawaii.org).

- PASSED: HB 668, transfers oversight of the medical marijuana program from the Department of Public Safety to the Department of Health.
- PASSED: SB 642, increases amount of medical marijuana a patient can possess to seven plants and to four ounces of marijuana, and eliminates the distinction between mature and immature plants, changes asked for by patients and caregivers. SB 642 was passed with a concerning limitation on *which* physicians may recommend medical marijuana to patients - by requiring that the recommendation come from the patient's primary care physician.
- SIGNED INTO LAW: Governor Abercrombie signed HB 668 and SB 642 into law on June 25, 2013 as Acts 177 and Act 178, respectively.

There are several concerns about the new laws and ACLU/DPAG are continuing to work in public education materials about its impact, as well as to draft appropriate administrative rules. **The laws do not go into effect until Jan. 2015.** A listening tour statewide is planned to assist the community's understanding of the bills and their potential impact.

## **(C) Emergency Contraception in the Emergency Room ("EC in the ER")**

After over 15 years of advocacy by diverse allies including the ACLU, Planned Parenthood, and other advocates, EC in the ER has passed in Hawaii!

- PASSED: HB 411, requires emergency rooms to provide sex assault victims with access to emergency contraception.

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- SIGNED INTO LAW: Governor Abercrombie signed HB411 into law on April 23, 2013 as Act 27.

### **Other notable issues in 2013:**

#### **(D) EARLY CHILDHOOD EDUCATION/READINESS PROGRAMS**

One of Governor Abercrombie's main legislative priorities during 2013 was to pass bills that allow for the public funding of private early education programs (which is currently prohibited by Article X, Section 1 of the Hawaii Constitution). This Administration initiative resulted in three bills: (1) SB1084, which proposed an amendment to Article X, Section 1 of the Constitution; (2) SB1093, which proposes the creation of a statewide school readiness program as a placeholder for publicly funded programs prior to the adoption of the constitutional amendment; and (3) SB1095, which sets forth the implementing legislation for public funding of early childhood education programs in the event that the proposed constitutional amendment is approved by the voters in November of 2014 (to take effect for the 2015-2016 school year).

The affiliate monitored closely the development, supporters, opponents and testimony as to all three bills. The affiliate engaged in active lobbying, community outreach, meetings with the Administration and meetings with key supporters to educate the legislators and the public about the ACLU's concerns that the bills do not contain the requisite protections to ensure that the contemplated program and providers: (1) comply with the Establishment Clause of the First Amendment to the U.S. Constitution, which, *inter alia*, prohibits state funding of religious indoctrination; and (2) adequately safeguard against unlawful discrimination.

Although the majority of the affiliate's comments were not adopted into the final bill versions, the affiliate is working with the Administration to ensure that the governing administrative rules contain constitutional safeguards.

- PASSED: SB1084, Proposed Constitutional Amendment to allow the State to spend public funds on private early childhood education programs, as follows (new material underlined):

**Section 1.** The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or

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nonsectarian private educational institution, except that public funds may be appropriated for the support or benefit of private early childhood education programs, subject to the non-discrimination provision above, as provided by law, and that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist:

1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and
2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities."

The proposed amendment passed with a two-thirds majority, meaning it will be on the 2014 ballot.

- PASSED: SB1093, establishing a pilot "school readiness program" in 2014-2015 (and providing \$6 million for the program for the 2014-15 school year, along with a total of \$1.1 million in funding for personnel in the Department of Human Services for 2013-1014 and 2014-2015 to run the program).
  - The bill allows (but does not require) the Department of Human Services to pass interim administrative rules.
  - **The bill does not contain any language restricting the expenditure of funds to non-sectarian education.** The affiliate is working to ensure that the administrative rules contain appropriate safeguards.
- DEFERRED: SB1095, implementing legislation for early childhood education after the constitutional amendment.

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