

ACLU: Fighting for LGBTIQ Equality & Justice in Hawai'i since 1965 (REV. 11/2015)

AMERICAN CIVIL LIBERTIES UNION (ACLU) MISSION

Founded nationally in 1920, the ACLU is a private non-profit and non-partisan organization of more than 500,000 members that works daily in the courts, legislature, and public forum to protect the fundamental freedoms guaranteed by the Bill of Rights. The ACLU provides services at no cost to the public. The ACLU does not accept government funds; financial support comes primarily from individual donations. The Hawai'i affiliate, with an office in Honolulu, is led by a Board of Directors and supported by a professional staff working with nearly 100 volunteers statewide.

Since 1965, the ACLU of Hawai'i has been in the forefront of the fight for equal rights on many fronts. Justice for the LGBTIQ community remains one of the key frontiers in the struggle for equal rights. Some of the ACLU's notable work in this area is detailed here.

LEGISLATIVE ADVOCACY

The ACLU frequently advocates before government & administrative agencies for recognition of same-sex relationships, and works on grassroots organizing alongside Hawai'i's LGBTIQ community.

Issues We Fight For. ACLU concerns include equal access to housing and other public accommodations; securing legal rights through domestic partnership, civil unions, and marriage; and measures to prohibit insurance companies from discrimination. The ACLU is responsible for ensuring that state laws provide procedural safeguards for information about patient HIV-AIDS status; and instrumental in obtaining a mayoral directive banning discrimination in Honolulu County hiring practices based on sexual orientation.

SB232, establishing civil unions, was a legislative priority for the ACLU in the 2010-2011 session. In 1997 and 1998, the ACLU spearheaded the Coalition for Equality and Justice and the Clergy Coalition in a statewide grassroots efforts by the "Protect Our Constitution" campaign to oppose a constitutional amendment allowing the

legislature to define marriage and filed a friend-of-the-court brief in the landmark Hawai'i Supreme Court case, *Baehr v. Lewin* regarding same-sex marriage.

HB546, prohibiting employment discrimination on the basis of gender identity or expression, was passed into law in 2011, with the ACLU testifying in favor of stronger, more equal employment protections for LGBT persons.

SB 1, Marriage Equality. In 2013, in a special legislative session, the State of Hawaii legalized marriage equality. The ACLU of Hawaii was instrumental in this victory, over 20 years of advocacy, and as one of the founders of a massive local coalition, Hawaii United for Marriage.

LEGAL ACTIONS

ACLU files lawsuits as a last resort after negotiations with government entities fail to resolve constitutional violations.

Civil Unions. With Lambda Legal and Alston Hunt Floyd & Ing, filed the lawsuit *Young v. Lingle* (July 2010) in response to the veto of HB444 and the denial of rights to LGBT persons in Hawai'i. Case dismissed (March, 2011) after the Hawaii State Legislature passed, and Governor Abercrombie signed SB232, establishing Civil Unions in Hawaii effective January, 2012.

Reform Correctional Facilities. On behalf of three former wards, ACLU challenged horrific and relentless abuse and harassment at Hawai'i Youth Correctional Facility. To bring *R.G. v. Koller*, a case too large for us to handle alone, affiliate legal staff secured generous assistance from the Morrison and Foerster law firm and the national ACLU LGBT and Aids Project. These partnerships resulted in the first published decision in the nation addressing treatment and safety of LGBTIQ youth in detention facilities – requiring government to retain experts to develop new policies and procedures that protect lesbian, gay, bisexual and transgender youth from physical and psychological harm; train staff; ensure adequate staffing and supervision of wards and create a functioning grievance system.

Secure First Amendment Rights. ACLU sued the City and County of Honolulu (City) three times – on behalf of individuals and groups including Parents Family Friends of Lesbians and Gays (PFLAG) of O'ahu, The Center, and the Gay Lesbian Bisexual and Transgender Family Network – and won each time over the City's co-sponsorship of several public events with the Hawai'i Christian Coalition which excluded LGBTIQ individuals in addition to wrongfully promoting a particular religious viewpoint. The case resulted in the City's agreement to implement new rules to avoid future violations of equality.

ACLU intervened when the City announced it would charge organizers of annual Gay Pride Parade over \$3,000 for police protection and signage. Since other groups who had held parades were not charged for such costs, this was a direct violation of the City's agreement in another ACLU case which provided for fair and equal treatment of marchers and protestors. The City claimed that the charges were necessary because of a lack of funds in its budget. However, after ACLU intervention, the City backed down within days and provided police protection and signage for the Gay Pride Parade free of charge.

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LGBTIQ Students. ACLU came to the defense of the Gay Straight Alliance (GSA) at Kalaheo High School which had fought unsuccessfully for equal recognition with other clubs on campus. The Equal Access Act prohibits schools that receive federal funding from denying equal access to school premises and resources to certain disfavored student clubs. The ACLU sent a letter to the school's principal demanding that the GSA be granted all of the same rights and privileges as other student groups – including status as a “school chartered club”, right to a faculty adviser, school bank account, permission to fundraise on campus, use of the school's name, logo, and mascot, and representative on the Kalaheo Interclub Council. As a result, the GSA was granted full charter club status with equal rights and privileges as other student clubs.

Transgender Rights. McKinley High School student Keala Chow was told by her school principal that she would be required to dress as a male and walk with the boys in order to participate in the graduation ceremony. After the ACLU intervened and contacted the State Attorney General's office on her behalf, the principal retracted his position and Chow was permitted to wear a dress and walk with the girls at her graduation ceremony.

Tammy Wronski had competed for several years as a member of the Manu O Ke Kai paddling club. The Hawai'i Canoe Racing Association (HCRA) instituted a new rule requiring her to undergo DNA testing to compete as a woman in the Moloka'i-to-O'ahu

canoe race. Genetic testing to determine gender in sports competition has been opposed for many years by the American Medical Association and no longer required by the International Olympic Committee. ACLU represented Wronski in a complaint before the Hawai'i Civil Rights Commission. HCRA responded by eliminating the DNA testing requirement and changing the rules to require only a birth certificate or other official documentation showing “female” as a person's sex to compete as a woman in HCRA races.

Workplace Discrimination. Irvin Villacorte was a former employee at the Royal Waikoloan hotel who was subjected to blatant, unwelcome sexual harassment by supervisors and co-workers for over eight years because they thought he was gay. Villacorte was subjected to repeated daily incidents which created a hostile, offensive, and intimidating work environment. He complained to his superiors and co-workers to no avail and was fired after the hotel learned that he was about to file a complaint against them. With ACLU help, Villacorte obtained a successful settlement from the Royal Waikoloan.

Civil Unions. In 2010, following Governor Lingle's veto of Hawaii's civil unions legislation, we filed the lawsuit *Young v. Lingle*. Alongside Lambda Legal, we represented six local couples seeking to protect their families through a civil union. The case was later rendered moot by Hawaii's passage of full marriage equality in 2013.

PUBLIC EDUCATION

The ACLU brings educational events to the public statewide, including “talk story” sessions, issue-specific workshops and an active speakers bureau.

Recognizing Young Activists. The Guardians of Liberty and Justice Youth Award was started by ACLU in 2003 to acknowledge the deeds of unsung high school or college age heroes across the State who work to protect and promote the Bill of Rights. These youth take action against an injustice or raise awareness about personal freedoms. Award recipients receive cash scholarships made possible by award founder Dr. Leslie Wilbur. Recipients

include co-winners Maile Shay-Mountain and Shealea Tindall who led efforts to establish a

Gay Straight Alliance at Kalaheo High School; Maxine Anderson and Lehua Farrar-Ivey from Kamehameha Schools who initiated a GSA at the Christian-based private school; and Micah Inoue, an advocate for LGBT equality in the University of Hawai'i system.

Youth Rights Guide Online: Routinely updated, the Guide includes detailed sections on the rights of LGBT students in Hawaii's public schools. <http://acluhi.org/youthrights/>

YOU CAN HELP!

Take One Action for Fairness. The goal of equality and justice has been a long and painful struggle and there is much work still to be done. Many in the LGBTIQ community continue to suffer from pervasive discrimination in employment, housing, and other areas and are still denied a wide variety of social benefits. The good news is that, with developments across the nation and the world, the tide is slowly shifting to treat everyone equally and fairly. The ACLU of Hawai'i will continue to fight for equality and justice. However, the ACLU cannot do it alone.

It is never too late to get involved!

- **Join our email alert** list to find out where actions are most urgently needed.
- **Talk about it!** Discuss civil liberties issues with your friends.
- **Contact the speakers bureau** - Get an ACLU speaker for your group's meeting.
- **Join the ACLU** and the over 2,000 other guardians of liberty in Hawai'i.

Make a difference starting today because the Bill of Rights cannot defend itself. Go to <http://www.acluhawaii.org> or call us at 522-5900.

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