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The Honorable Andrew Levin  
Hawaii State Senate  
Honolulu, Hawaii, 96813

Dear Senator Levin:

You may possibly remember our correspondence early last year regarding same-sex marriage and domestic partnership. My writing you now is with deep appreciation for the time and attention you so generously gave me then. I should mention, too, that, during the interval, I completed an article on "Matrimony, Domestic Partnership and Religion: The Compelling Need to Secularize Marriage", which is being submitted for publication.

As you may know, I am a friend of Mr. Thomas Coleman of Los Angeles, with whom I have enjoyed a close professional association for many years. Shortly after I sent him a copy of my article, your trial court issued its ruling in Baehr v. Lewin. I consequently asked Mr. Coleman to give me an assessment of the legislative situation in Hawaii. Mr. Coleman responded in the form of a lengthy letter, which struck me as an extraordinary in-depth analysis of a very complex situation. Because of his reference to you in his letter to me, I am writing you now and am enclosing a copy of Mr. Coleman's communication herewith, which I understand may also have been forwarded to Senator McCartney.

Here I need to mention that the central core of my article is the contention that the institution of civil marriage, as currently found in every state, is essentially a religious institution which has never been desacralized. Though the laws pertaining to matrimony are administered and enforced by the state, they are themselves essentially religious constructs. The public -- and the bar as well -- labor under the illusion that civil marriage is a secular institution, not only because of the term "civil", but because matrimony is regulated, and its rules are enforced, by the state. Here a distinction must be drawn between statutes, such as those proscribing murder and larceny, which are religious in origin, but the rationale for which rests on independent secular grounds of their own.

The failure to secularize matrimony has led directly to the current impasse, both nationally and in Hawaii. On the one hand, it has given religious groups what may be considered a proprietary interest in preserving the religious character of wedlock -- an interest which is not entirely misplaced. On the other hand, in terms of current social realities, civil marriage fails to meet the equitable needs of couples who do not fit into the traditional matrimonial paradigm.

The answer has already been suggested by your own

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Governor Cayetano, who, in a very prescient statement early this year, stated that government should get out of the marriage business and leave it to the ecclesiastical groups where it belongs. What the state needs to do is to create a separate and distinct secular institution open to all couples who would qualify under rules and regulations to be determined, regardless of gender or sexual orientation. There is strong evidence that this would pass constitutional muster were it ever brought before your courts in the form of specific legislation. This could serve to defuse much of the religious character of the debate, for the government could no longer be accused of meddling with a religious institution, which indeed it does whenever it changes the rules of matrimony. At the present juncture, the only viable legislative proposal of which I am aware that would effectuate desacralization and also meet the court's constitutional requirements, appears to be some form of domestic partnership.

This does not mean that the present system needs to be jettisoned in any way. The intention would be to add to the current system of civil and religious marriage a third one, thoroughly secular in character, which could go by any name except "marriage" or "matrimony". It is the use of these terms which raises many of the religious hackles. This new institution would provide an equitable alternative for couples in committed interpersonal relationships who are currently ineligible for legal wedlock. Rules of eligibility and other requirements would be set forth in the legislation establishing it.

It is no accident that this issue has come to a head in Hawaii, whose ethnic and religious roots extend far beyond the three Abrahamic religions of Christianity, Judaism, and Islam. And it is no accident that the primary religious group which testified before your Commission on Sexual Orientation in favor of same-gender unions was Buddhist. Unlike all the other states, Hawaii has never been a society composed only of the traditional triad of Protestants, Catholics, and Jews. Of all American jurisdictions, Hawaii needs a separate matrimonial-type institution which can provide a purely secular alternative to civil marriage.

My hope is that you will find Mr. Coleman's analysis of value during the forthcoming legislative session. Allow me, too, to express my appreciation for your kind attention in the past.

Very truly yours,

*Arthur C. Warner*

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Executive Director