1ST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAIʻI

DIANE CERVELLI and TAEKO BUFFORD, Plaintiffs, WILLIAM D. HOSHIJO, as Executive Director of the Hawaiʻi Civil Rights Commission,	)	CIVIL NO. 11-1-3103-12 ECN (Other Civil Action) **Defendant Aloha Bed & Breakfast's Reply Memorandum to Plaintiffs' and Plaintiff-Intervenor's Opposition to Defendant's Motion for Summary Judgment filed** **(Caption continued next page)**

Plaintiff-Intervenor,	)	**March 19, 2013; Certificate of Service**
	)	
v.	)	HEARING:
ALOHA BED & BREAKFAST, a Hawai'i sole proprietorship, Defendant	)	DATE: Thursday, March 28, 2013 TIME: 9:00 a.m. JUDGE: Edwin C. Nacino
	)	Trial Date: November 4, 2013

Defendant Aloha Bed & Breakfast's Reply Memorandum to Plaintiffs' and Plaintiff-Intervenor's Opposition to Defendant's Motion for Summary Judgment filed March 19, 2013

Table of Contents

Table of Authorities ii

Introduction 1

Statement of Facts 1

Argument 2

I. The Rental of Rooms in Mrs. Young's Home is Subject to the Discrimination in Real Property Transactions Law, Not the Public Accommodations Law 3

II. The Application of the Public Accommodation Law to Mrs. Young's Rental of Rooms Violates Constitutional Guarantees 7

III. Application of the Public Accommodations Law to Mrs. Young's Rentals Cannot Survive the Required Strict Scrutiny Review 8

Conclusion 10

Table of Authorities

Cases

Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U.S. 96 (1899) 6

Concordia Fire Ins. Co. v. Ill., 292 U.S. 535 (1934) 6

Cotting v. Kan. City Stock Yards Co., Etc., 183 U.S. 79 (1901) 6

Employment Div. v. Smith, 494 U.S. 872 (1990) 8

Fair Housing Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216 (9th Cir. 2012) 5

Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459 (1937) 6

IDK, Inc. v. County of Clark, 836 F.2d 1185 (9th Cir. 1988) 7

Korean Buddhist Dae Won Sa Temple of Haw. v. Sullivan, 87 Haw. 217, 953 P.2d 1315 (Haw. 1998) 8

Ky. Finance Corp. v. Paramount Auto Exchange Corp., 262 U.S. 544 (1923) 6

Minn. v. Carter, 525 U.S. 83 (1998) 7-8, 10

Nelson v. Miwa, 56 Haw. 601, 546 P.2d 1005 (1976) 6

Old Dearborn Distributing Co. v. Seagram-Distillers Corp., 299 U.S. 183 (1936) 6

Smith v. Texas, 233 U.S. 630 (1914) 6

Sproles v. Binford, 286 U.S. 374 (1932) 6

State v. Modica, 58 Haw. 249, 567 P.2d 420 (Haw. 1977) 5

Truax v. Corrigan, 257 U.S. 312 (1921) 6

Constitution, Statutes & Rules

U.S. Const. amend. I .... *passim*

Haw. Const. Art. 1, § 4 .... *passim*

Haw. Rev. Stat. Ch. 489 .... *passim*

Haw. Rev. Stat. § 489-2 4

Haw. Rev. Stat. Ch. 515 .... *passim*

Haw. Rev. Stat. § 515-2 3

Haw. Rev. Stat. § 515-4 3

Haw. Rev. Stat. § 515-4(2) 4

Haw. Rev. Stat. § 572-1 .... 9, 9 n.6

Honolulu Land Use Ord. § 21-10.1 5

Introduction

This case boils down to the answers to a few straightforward questions. First is the statutory question: *what law applies to the rental of rooms in a home where the owner actually lives?* Is it the Discrimination in Real Estate Transactions Law, codified at Hawaiʻi Revised Statutes Chapter 515, which actually discusses such rentals? Or, is it the Public Accommodations Law, codified at Hawaiʻi Revised Statutes Chapter 489, which does not?

If the Court finds that Chapter 515 controls, that ends the analysis: this Court must grant summary judgment to Mrs. Young, because the Plaintiffs only bring their complaint pursuant to Chapter 489. Besides, Chapter 515 contains an explicitly-stated Mrs. Murphy's exemption that protects Mrs. Young from being found to have committed discrimination pursuant to it.

If the Court finds that Chapter 489 controls, a second, constitutional question must be answered: *does the application of Chapter 489's nondiscrimination requirement to Mrs. Young's rental of rooms in her home, where she lives, violate constitutional guarantees?* The answer to this question is almost certainly "yes." Forcing one to rent rooms in her home to those to whom she would prefer not to rent implicates privacy and intimate association concerns. The fact that one advertises for renters, and that the renters stay for only a few nights, does not change the analsysis. Privacy rights and intimate association guarantees are implicated whenever the State does not allow us to determine who we will accept into our own homes as overnight housemates. Because Mrs. Young's sincerely held religious beliefs will be violated if she is forced to rent a single room with one bed to a same-sex couple, free exercise rights are also implicated. And because Mrs. Young cannot afford to pay her mortgage if she cannot rent rooms in her home, the Takings Clause is implicated as well.

This leads to the third question: *does Chapter 489, as applied to Mrs. Young's rental of rooms in her home, satisfy strict scrutiny review?* Because it cannot, *see* infra, this Court should grant summary judgment to Mrs. Young.

Statement of Facts[1]

Mrs. Young is a Christian with sincerely held religious beliefs. (Decl. of Shawn A. Luiz, filed Feb. 20, 2013, ("Luiz Decl."), Ex. 5, Depo. of Phyllis A. Young ("Ex. 5, Young Depo."), at

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[1] Mrs. Young incorporates by reference the statements of fact set forth in her summary judgment memorandum, filed Feb. 20, 2013 ("Aloha Mem"), at 2-4, and her memorandum in opposition to the plaintiffs' motion for summary judgment, filed Mar 19, 2013 ("Aloha Opp'n"), at 1-2.

65:5-8; 185:4-7.) These beliefs are shaped by both the Bible and her Church's teaching. (*Id.* at 185:23-25; 200:1-2; 208:14.) As part of her religious beliefs, Mrs. Young believes it is immoral for opposite-sex, unmarried couples to engage in sexual behavior. (*Id.* at 65:4-8; 98:20-23; 145:18-21.) She also believes that same-sex unions are immoral. (*Id.* at 143:19-21; 195:19-20.) Mrs. Young further believes that she should not allow such behavior to occur inside her home, and so she should not allow unmarried opposite-sex couples or same-sex couples to share a room. (*Id.* at 98:20-23.) Mrs. Young explained, "I would be violating my faith in allowing unmarried or same sex couples to stay in our room in our house because that's my faith. My faith—*I have to be obedient to God.*" (*Id.*) (emphasis added.)

As a result, Mrs. Young does not rent single rooms to unmarried heterosexual couples or same-sex couples. (*Id.* at 65:5-8; 145:5 – 146:7.) Mrs. Young feels so strongly about this that she will not even allow her daughter to share a room with her live-in boyfriend when they visit. (*Id.* at 103:18-22.) This might seem old-fashioned, or even harsh. But Mrs. Young believes what the Bible and the Catholic Church teach about sexual morality. (*Id.* at 185:23 – 186:2; 200:1-2; 201:13 – 206:17.) As Mrs. Young explains, "This is my religious belief." (*Id.* at 103:22.)

Mrs. Young doesn't have anything against the Plaintiffs, (*id.* at 103:21-22; 195:19-20), any more than she has anything against her daughter. But she objects on religious grounds to sexual activity outside of opposite-sex marriage, (*id.* at 143:19-22), and she does not want it occurring in her home, (*id.* at 65:5-8). Renting rooms to those who may engage in such activity violates her religious belief.

The Plaintiffs do not have to agree with Mrs. Young's beliefs. Neither does this Court. But they are her beliefs. The First Amendment protects her right to hold them. Mrs. Young has the right to have them respected in her own home. And she has the right to rent rooms in her own home, where she lives, consistent with her religious beliefs. It is, after all, her *home*.

Argument

The outcome of this case might be different if the facts were different. For instance, if Mrs. Young did not live in the building in which she rented rooms, the law might require this Court to find she engaged in unlawful discrimination.[2] The same is true if Mrs. Young were

[2] The Plaintiffs quote Mrs. Young's statement that she would not want to rent to a same-sex couple even if she did not live in the home. (Pl. Opp'n Mem. at 3.) That situation, however, is not this case. Mrs. Young's statement, therefore, is irrelevant to the disposition of this matter.

selling her house but refused to sell to the Plaintiffs because of their sexual preferences.[3]

But those examples are not this case. *This* case is about whether the State can force Mrs. Young to rent rooms in her home to those she would prefer not. Under those facts, the law requires that this Court find for Mrs. Young and grant summary judgment in her favor, for at least two reasons. First, the rental of rooms in homes is subject to the Real Property Transactions Law. Haw. Rev. Stat. § 515-2. This law allows homeowners renting four or fewer rooms in the house where they themselves live to refuse to rent to anyone, for any reason. *Id.* § 515-4. Second, numerous constitutional guarantees would be violated if the State of Hawaii could force someone to take into her own home those she would prefer not. The State cannot satisfy the required strict scrutiny review in order to force Mrs. Young to do so. This Court should therefore grant summary judgment to Mrs. Young.

I. The Rental of Rooms in Mrs. Young's Home is Subject to the Discrimination in Real Property Transactions Law, Not the Public Accommodations Law.

The Plaintiffs wrongly suggest that Mrs. Young wants this Court to "import" the Mrs. Murphy's exemption from the Discrimination in Real Property Transactions Law into the Public Accommodations Law. (*See, e.g.*, Pls. Opp'n Mem. at 5, 8.) But Mrs. Young never suggested the Court do this. Rather, Mrs. Young has always correctly contended that the rental of rooms in a home is not subject to the Public Accommodations Law at all. (Aloha S.J. Mem. at 5-10; Aloha Opp'n Mem. at 2-13.) It is subject, rather, to the Discrimination in Real Property Transactions Law, which is the only law to discuss the rental of rooms in homes. (*Id.*)

The Plaintiffs hope to avoid this conclusion by postulating that the Discrimination in Real Property Transactions Law applies to only long term rental of rooms, while the Public Accommodations Law applies to short term rental of rooms to transients. (Pls. Opp'n Mem. at 6.) But nowhere does the Discrimination in Real Property Transactions Law say that one must rent a room for a certain length of time before it governs. Rather, it says that it applies to "the sale, exchange, rental, or lease of real property." Haw. Rev. Stat. § 515-2. And it provides an exemption from its nondiscrimination requirements "[t]o the rental of a room or up to four rooms in a housing accommodation by an owner or lessor if the owner or lessor resides in the housing

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[3] Mrs. Young indicated at deposition that she would have no objection to selling a house to a same-sex couple. It is only facilitating what her faith holds is immoral sexual behavior, in her own home, that is objectionable to Mrs. Young. (Ex. 5, Young Depo., at 195:15-24.)

accommodation." *Id.* § 515-4(2). That exemption contemplates the situation before this Court.

Compare that to the Public Accommodations Law. Nowhere does it mention the rental of rooms in homes where the owner lives. In fact, it does not mention the rental of rooms in homes at all. Rather, it applies to the rental of rooms in nonresidential buildings that are designed to provide lodging to many transient guests at the same time. Haw. Rev. Stat. 489-2. It simply does not contemplate a homeowner renting three (and sometimes fewer) rooms in her home where she herself lives, as Mrs. Young does. (Aloha S.J. Mem. at 6-7; Aloha Opp'n Mem. at 4-7.) Only the Discrimination in Real Property Transactions Law contemplates that situation.

The Plaintiffs concede that if Mrs. Young rented a room to one who intended to make that room his residence, the rental transaction would be subject to the Discrimination in Real Property Transactions Law. (Pl. Opp'n Mem. at 6.) Because those who offer rooms in their homes for long term rentals advertise and charge rent, the Plaintiffs seem to postulate that the determining factor for whether a rental belongs under the Public Accommodations Law is whether it is short term, to transient guests. That, however, is not what the law says. Nor is it the line the legislature drew. Rather, it made the determining factor the type of property being rented. So rental transactions involving rooms in *homes* are subject to the Discrimination in Real Property Transactions Law, which is the only law to address homes. Rental transactions involving *nonresidential buildings* that take in many guests at a time are subject to the Public Accommodations Law, which is the only law to address those types of rentals.

Canons of statutory construction support Mrs. Young's position that the rental of rooms in homes should be understood as always falling within the Discrimination in Real Property Transactions Law. (Aloha S.J. Mem. at 7-8; Aloha Opp'n Mem. at 4-9.) So does Ninth Circuit case law construing similar provisions of federal law (Aloha S.J. Mem. at 9).[4]

Honolulu's zoning code likewise supports Mrs. Young's position. (Aloha S.J. Mem. at 8;

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[4] The Plaintiffs attempt to distinguish the case upon which Mrs. Young relies, *Jankey v. Twentieth Century Fox Film Corp.*, 212 F.3d 1159 (9th Cir. 2000), asserting that establishment in *Jankey* was "not in fact open to the public, because they were limited to only Fox employees and Fox employees' guests." (Pl. Opp'n Mem. at 5.) But that does not distinguish *Jankey*. Rather, that statement shows why *Jankey* is persuasive, because it perfectly describes Mrs. Young's home. No one can enter her home, except the Youngs, and those who they invite. Those wishing to rent rooms must first be interviewed by Mrs. Young, and only those she approves are offered admittance. The Plaintiffs' attempt to distinguish *Jankey* is thus unpersuasive. While *Jankey* does not control this Court, it is persuasive authority.

Aloha Opp'n Mem. at 9.) In fact, Honolulu's Land Use Ordinance explicitly excludes bed and breakfast homes from its definition of transient accommodations. It defines a "transient vacation unit" to be "a dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, ***other than a bed and breakfast home.***" LUO, § 21-10.1. (emphasis added). Honolulu zoning law thus excludes bed and breakfast homes from being classified as transient accommodations, even though they rent to transient guests. Instead, it classifies them as residential homes. This supports Mrs. Young's position that the rental of rooms in her home is not governed by the Public Accommodations Law, which does not contemplate the rental of rooms in homes, but rather by the Discrimination in Real Property Transactions Law, which explicitly does.

The doctrine of constitutional avoidance also counsels this Court to find Mrs. Young's rentals subject to the Discrimination in Real Property Transactions Law. (*See* Aloha S.J. Mem. at 10-14; Aloha Opp'n Mem. at 3-4) (explaining *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012).) Similarly, *State v. Modica*, 58 Haw. 249, 567 P.2d 420 (Haw. 1977), counsels this Court to find that Mrs. Young's rentals are subject to the Discrimination in Real Property Transactions Law. In *Modica*, the Hawaii Supreme Court said that if the same act can be punished as either a felony or misdemeanor under either of two statutory provisions, a conviction under the felony statute violates due process and equal protection. *Modica*, 58 Haw. at 251, 567 P.2d at 422. In such situations a court should find that the act is subject to the statute affording the lesser punishment to avoid constitutional concerns.

In Mrs. Young's case, the "offending" act was Mrs. Young's declining to rent a room in her home to a same-sex couple seeking to rent a room with one bed in it. It is clear that the Discrimination in Real Property Transactions Law, which applies to the rental of rooms in homes, applies. If the Court finds that the Public Accommodations Law also applies, then the same act would be subject to two different statutes, each with a different punishment. A "conviction" under the Public Accommodations Law would result in punishment. But Mrs. Young could not be "convicted" under the Discrimination in Real Property Transactions Law, because of its Mrs. Murphy's exemption. In that situation, a ruling subjecting Mrs. Young to liability pursuant to the Public Accommodations Law would violate the equal protection clauses of both the federal and Hawaii Constitution, which require that similarly situated individuals receive similar treatment under the law.

Equal protection provisions require similar treatment on those similarly situated. The equal protection of the laws means that no person or class of persons shall be denied the protection of the laws enjoyed by other persons or classes of persons under similar conditions and circumstances, in their lives, liberty, and property, and in the pursuit of happiness, both as respects privileges conferred and burdens imposed. *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison*, 301 U.S. 459 (1937); *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U.S. 183 (1936); *Concordia Fire Ins. Co. v. Ill.*, 292 U.S. 535 (1934); *Sproles v. Binford*, 286 U.S. 374 (1932); *Ky. Finance Corp. v. Paramount Auto Exchange Corp.*, 262 U.S. 544 (1923); *Truax v. Corrigan*, 257 U.S. 312 (1921); *Smith v. Texas*, 233 U.S. 630 (1914); *Atchison, Topeka & Santa Fe R. Co. v. Matthews*, 174 U.S. 96 (1899). Significantly, this includes equality of exemption from liabilities. *Cotting v. Kan. City Stock Yards Co., Etc.*, 183 U.S. 79 (1901).

Mrs. Young's private residence is not similarly situated to a hotel. Mrs. Young's private residence is similarly situated to a residentially zoned private home. A challenge to a legislative classification as violative of the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution and the State Constitution equivalent is ordinarily resolved by inquiring whether a rational basis exists for the classification. *Nelson v. Miwa*, 56 Haw. 601, 546 P.2d 1005 (1976). But there is no rational basis for treating Ms. Young's private residence as a hotel where (1) her home is zoned as a residential home under City and County of Honolulu Land Use Ordinances, and (2) it does not have any of the characteristics of a hotel under City and County of Honolulu Land Use Ordinances, such as a clerk's desk that is manned 24/7. Such a finding would be manifestly arbitrary, unreasonable, and inequitable. This Court should therefore apply the doctrine of constitutional avoidance and find that Mrs. Young's rentals are subject to the Discrimination in Real Property Transactions Law.

As explained *supra*, the rental of rooms in Mrs. Young's home, where she lives, cannot be subject to the Public Accommodations Law. It must rather be subject to the Discrimination in Real Property Transactions Law. But the Plaintiffs have, by deliberate choice, brought their complaint only pursuant to the Public Accommodations Law. Their complaint must fail as a matter of law. This Court should therefore grant summary judgment to Mrs. Young.

II. The Application of the Public Accommodation Law to Mrs. Young's Rental of Rooms Violates Constitutional Guarantees.

Plaintiffs assert that Mrs. Young's constitutional rights are not burdened by applying the Public Accommodations Law to her rentals. (Pl. Opp'n Mem. at 8-16.) Plaintiffs are wrong.

In making their wrong assertion, the Plaintiffs first wrongly rely upon the test formulated by *IDK, Inc. v. County of Clark*, 836 F.2d 1185 (9th Cir. 1988), for determining whether a relationship is an intimate one. (Pl. Opp'n Mem. at 8-9.) But that case, which considered whether a client has an intimate association right with a paid escort, does not articulate the right test. Rather, the proper test for rental situations was articulated in *Roommate.com*, which considered whether a homeowner's intimate association rights are implicated if the State forces her to take in a renter that she does not want. (*See* Aloha Opp'n Mem. at 15-16.) Under that test, Mrs. Young enjoys intimate association rights with respect to those she invites to stay in her home overnight. (*See id.*) Contrary to the Plaintiffs' assertion, applying the Public Accommodations Law to her rentals implicates intimate association concerns.

Next, the Plaintiffs assert that forcing a homeowner to rent to those she would prefer not does not implicate her privacy rights. (Pl. Opp'n Mem. at 11-12.) The Plaintiffs wrongly suggest that the right to exclude from one's home those who one does not want to come inside is not "fundamental or implicit in the concept of ordered liberty, as required for privacy protection." (Pl. Opp'n Mem. at 11.) Mrs. Young has already refuted this suggestion. (Aloha Opp'n Mem. at 13-16.) The Plaintiffs also suggest that the Plaintiffs were "endanger[ed]" because Mrs. Young declined to rent to them. (Pl. Opp'n Mem. at 11.) On the contrary, Mrs. Young respectfully went out of her way to help the Plaintiffs, even finding them alternate accommodations in a house that was better than her own. (Ex. 5, Young Depo., at 102:6-25.) Mrs. Young did not endanger them. Nor did she otherwise harm them. She simply declined to rent to them. In doing so, she may have spared them an awkward stay in her home, where everyone might have been uncomfortable because of their close proximity, coupled with the interplay between Mrs. Young's religious beliefs and the Plaintiffs' sexual preference.

The Plaintiffs also suggest that the State Constitution, which affords great protection to personal autonomy privacy rights, does not apply to laws that force someone to accept others into her home. (Pl. Opp'n Mem. at 12.) But as Justice Kennedy said, "it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people." *Minn. v.*

Carter, 525 U.S. 83, 99 (1998) (Kennedy, J., concurring). Contrary to the Plaintiffs' assertion, applying the Public Accommodations Law to Mrs. Young's rentals implicates privacy concerns.

Next, the Plaintiffs wrongly suggest that Mrs. Young's free exercise rights are not implicated by forcing her to accept a same-sex couple as renters of a room with one bed, when her religious belief tells her that she must not do so. (Pl. Opp'n Mem. at 13-15.) Both Mrs. Young and the Plaintiffs point to *Korean Buddhist Dae Won Sa Temple of Haw. v. Sullivan*, 87 Haw. 217, 953 P.2d 1315 (Haw. 1998), as offering support for their positions. (*See* Aloha S.J. Mem. at 17; Aloha Opp'n Mem. at 17; Pl. Opp'n Mem. at 13.) The Plaintiffs, however, have misstated both the reasoning of *Korean Buddhist* and also what it stands for. First, the Plaintiffs wrongly assert that *Korean Buddhist* indicated that its analysis of generally applicable laws burdening free exercise rights was ordinarily controlled by a case called *Employment Div. v. Smith*, which applied a lower level of scrutiny for violations of the federal free exercise clause.[5] (Pl. Opp'n Mem. at 13.) Actually, though, the court said that because *Smith*'s general applicability rule did not apply in the *Korean Buddhist* case, "we need not and do not reach the question whether there is such a rule under the Hawai'i Constitution." 87 Haw. at 247 n.31.

As previously explained, the state Supreme Court has not decided whether it will follow *Smith*'s lower scrutiny for free exercise claims, or whether instead it will join the 29 states that have given greater protection for free exercise claims arising under their state constitutions. (Aloha S.J. Mem. at 17.) But it has indicated, albeit in dicta, that it would apply the higher, strict scrutiny. *Korean Buddhist*, 87 Haw. at 247, 953 P.2d at 1345. While this is not binding, it is clear guidance for this Court as to the level of scrutiny that the Supreme Court thinks appropriate for laws burdening free exercise rights.

Plaintiffs correctly note that Mrs. Young's religious belief does not require her to rent rooms in her home. (Pl. Opp'n Mem. at 15.) What the Plaintiffs fail to address, however, is that her beliefs *do* require that she not rent single rooms to same-sex couples. Applying the Public Accommodations Law to Mrs. Young will force her to do so, in violation of her sincerely held religious beliefs. Contrary to the Plaintiffs' assertions, the free exercise clause is implicated.

The Plaintiffs also assert that the Takings Clause is not implicated, (Pl. Mem. Opp'n at

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[5] Mrs. Young asserts that *Smith* should be reconsidered and overruled by the United States Supreme Court, which should hold that strict scrutiny review is required for any law burdening free exercise rights under the federal Constitution, even when the free exercise claim is not part of a "hybrid claim" but stands by itself. This Court, however, is bound by *Smith*'s lower level of scrutiny for federal, stand-alone free exercise claims. Mrs. Young preserves this argument for appeal.

15-16), and that the "Hybrid Rights" Theory is not valid, (*Id.* at 16-17.) Mrs. Young has already demonstrated that these assertions are wrong. (Aloha S.J. Mem. at 18; Aloha Mem. Opp'n at 19.)

III. Application of the Public Accommodations Law to Mrs. Young's Rentals Cannot Survive the Required Strict Scrutiny Review.

The Plaintiffs argue that applying the Public Accommodations Law to Mrs. Young, and so forcing her to accept into her home renters to whom she would prefer not to rent, is justified by a compelling interest. (Pl. Opp'n Mem. at 17-20.) But that is simply not so. Mrs. Young has explained that not only is there no compelling interest in forcing her to rent rooms in her home to those she would rather not, the Public Accommodations Law is not narrowly tailored as applied to her situation. (*See* Aloha S.J. Mem. at 18-20.) Regardless of whether there is a compelling interest in requiring large places of public accommodation, like hotels, to take all comers as guests, there cannot be a compelling interest in requiring Mrs. Young to do so in her own home. It is too remote a possibility that the ability of same-sex couples to find lodging will be frustrated because the three rooms in Mrs. Young's home, among the thousands of rooms for rent in Honolulu hotels, are not available to them.

The Plaintiffs assert, however, that the State's interest is not about securing for all people places to stay, but rather about "ensuring that all people may participate in public life without the harm of being shunned by a business simply because of who they are—what the Hawaii Supreme Court described as the evil of unequal treatment." (Pl. Opp'n Mem. at 18.) Even if the Plaintiffs are correct, the State cannot rely on this interest to justify its law. The *State* treats same-sex couples differently than opposite-sex couples, at least for purposes of marriage. Specifically, the State allows opposite-sex couples to marry but does not allow same-sex couples to do so. Haw. Rev. Stat. § 572-1.[6] The State cannot therefore claim that it has a compelling interest in forcing Mrs. Young to treat same-sex couples the same as opposite-sex couples in her own home, when the State does not do so itself.[7]

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[6] The State places other restrictions on who can marry. For instance, it does not allow opposite-sex couples to marry when they are certain relatives of one another. It also does not allow opposite-sex couples to marry if one of the persons is younger than fifteen years old. Haw. Rev. Stat. § 572-1.

[7] The State may have valid policy reasons for allowing only opposite-sex couples to marry. For instance, the State's policy might be to allow only opposite-sex marriage in order to channel human sexual activity into the only type of marital union that can procreate children. Or the State might restrict marriage to only opposite-sex couples because the best available social science

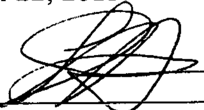
The Plaintiffs suggest that the State's marriage policy is immaterial to the analysis. (Pl. Opp'n Mem. at 20.) Not so fast. Are we really to suppose that the State has an interest in forcing a private citizen to treat everyone the same when the state itself refuses to do so? The fact that the State does not treat same-sex couples the same as opposite-sex ones casts great doubt on both the sincerity of its proffered interest and also whether, if it actually exists, it is compelling.

Conclusion

This Court should grant summary judgment for Mrs. Young. Her home is not a place of public accommodation subject to the Public Accommodations Law. It is, rather, her *home.* It is the place where she is most protected from government intrusion. It is "the center of [our] private lives." *Minn.*, 525 U.S. at 99 (1998) (Kennedy, J., concurring).

Mrs. Young's choice to rent rooms in her home does not change that fact. Her home is still her *home.* As such, it is subject to the Discrimination in Real Property Transactions Law, which exempts it from antidiscrimination prohibitions. But even if the Public Accommodations Law did apply to Aloha, this application of the law cannot survive strict scrutiny review, and therefore cannot undergird the Plaintiffs' claims. Mrs. Young therefore respectfully asks this Court to grant her motion for summary judgment.

Dated: Honolulu, Hawai'i, March 22, 2013.



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indicates that, on average, children do best when raised by a mother and father. Or the State might have other policy reasons for its choice to only allow opposite-sex couples to marry. Regardless of the reason, though, it is obvious that the State does not treat opposite-sex and same-sex couples the same.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Defendant Aloha Bed & Breakfast's Reply Memorandum to Plaintiffs and Plaintiff-Intervenor's Opposition to Defendant's Motion for Summary Judgment filed March 19, 2013; Certificate of Service was served on the following parties at their respective addresses in the manner indicated below:

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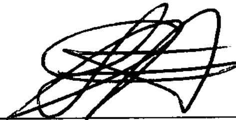
Attorney for Plaintiff-Intervenor
WILLIAM D. HOSHIJO, as Executive Director
of the Hawaii Civil Rights Commission

DATED: Honolulu, Hawai'i, March 22, 2013.



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