WHEREAS, as of June 2009, in the Hawaii State Bar Association, the pool from which judicial nominees are selected, female attorneys who are active members make up 40.6 per cent of membership; and

WHEREAS, as of June 2009, the percentage of female judges in the Judiciary was thirty-five per cent, or twenty-eight judges and justices at all levels of the court system; and

WHEREAS, by comparison, nationwide, the percentage of female judges (30 per cent) is roughly proportional to the percentage of women lawyers (31.6 per cent); and

WHEREAS, in 2009, seven female judges announced their early retirement from the Judiciary, which constitutes twenty-five per cent of Hawaii's female judges, and Governor Lingle is in the position to appoint replacements for these female judges prior to the end of her term of office; and

WHEREAS, of the nineteen judicial appointments made by Governor Lingle, only five have been women; and

WHEREAS, the Legislature finds that the appointment of women judges is important, because of the benefit of their life experiences. Judges, and especially appellate judges, often have discretion in deciding cases. How this discretion is exercised is often a product of the judges' life experiences and values; this is undeniably so for many decisions, and especially at the appellate level; and

WHEREAS, the Legislature finds that the appointment of women to the bench reduces bias, and the appearance of bias, in the judicial system. Studies of federal and state courts have shown bias in a broad range of substantive areas, such as family law, domestic violence, and criminal law, not only in outcome, but particularly in how cases are treated in court; and
WHEREAS, bias, or even the appearance of bias, against women undermines the integrity of the judicial system. As stated by Justice Sandra Day O'Connor: "When people perceive bias in a legal system whether they suffer from it or not, they lose respect for that system, as well as for the law." By appointing women to the bench, the potential for gender bias is reduced and the ultimate objective of equal justice under the law is better served; and

WHEREAS, with more women as judges, the public at large would see the justice system as more representative of diversity and, presumably, more fair; and

WHEREAS, the Legislature additionally finds that it is important for the Judiciary, as a decision-making body, to be representative of those for whom decisions are made. It is not enough to say male judges can adequately represent women in this decision-making capacity; and

WHEREAS, for example, a balanced and representative jury is fundamental to our judicial system. More cases are decided by judges than by juries, however. How then can we reconcile our acceptance of the importance of a representative jury and not accept the equally critical need for a representative judiciary?; and

WHEREAS, our democratic system of government mandates that adult citizens from all walks of life should have equal access to participation in decision-making and leadership. It is untenable that any specific interest group, say a particular ethnic or religious group, could be systematically excluded from direct participation in decision-making on the grounds that others can "speak" for them. Since women and men play different roles in society and therefore have different needs, interests, and priorities, it follows that women also cannot be adequately represented in decision-making by men; and

WHEREAS, the Legislature further finds that appointing women to the bench serves to provide male judges and attorneys with a different perspective, in the course of collegial discourse within community and bar interactions. A different perspective may allow male judges and attorneys to become aware of the ways in which their assumptions, attitudes, and behavior
are gendered to reflect their own situation, exclude a woman's perspective, and thus obstruct women's equal participation; and

WHEREAS, the Legislature additionally finds that, because a judgesship is often seen as the pinnacle of a legal career, appointing female judges provides young female attorneys with role models and reassurance that they can get past the glass ceiling. Recent studies tend to indicate there is an undercurrent of gender bias in the legal profession. For example, findings of the survey conducted by The Women in Law Committee of the State Bar of California in cooperation with The Employment Law Center, Legal Aid Society of San Francisco indicated that eighty-five per cent of the women lawyers surveyed perceive a subtle but pervasive gender bias within the legal profession. Almost two-thirds agree that women lawyers are not accepted as equals by their male peers. Sixty-two per cent of the female respondents believe that they do not have as much opportunity for advancement as male lawyers; and

WHEREAS, the circuit court judges of today are the intermediate court of appeals judges and supreme court justices of tomorrow, it is important that the State promote women into the Judiciary at the "entry" levels, or women will be entirely absent from this "class" of judges in the future; and

WHEREAS, the Legislature finds that appointing women to the Judiciary is crucial for the reasons stated herein; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, that Governor Lingle is strongly urged to use and consider gender equality when appointing judges and justices in the future; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor and the Chief Justice of the Hawaii Supreme Court.
H.R. NO. 94

[Signatures]

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