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Equal protection for people, not corporations

By Ron Fein and Steven Levinson

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As court after court strikes down bans on same-sex marriage, people in Hawaii could be forgiven for thinking that this has nothing to do with genetically engineered soybeans. But in Honolulu, agribusiness corporations are arguing otherwise.

Multinational agribusinesses are using Hawaii as a test bed to experiment with new pesticides and genetically engineered organisms, like soybeans. Many Hawaii residents are concerned about the effects, and last year, the Kauai County Council passed a law making commercial agricultural companies tell the public what pesticides and genetically modified organisms they're using.

Now these companies' lawyers are claiming that the Kauai law requiring them to disclose what they're releasing into the environment violates their rights under the Constitution's Equal Protection Clause.

And, as precedent, they're citing a 1996 Supreme Court case that struck down an anti-gay law in Colorado.

Today, many state laws — including in Hawaii — protect gays and lesbians from workplace and housing discrimination. And this year has seen a groundswell of court decisions ruling that bans against gay and lesbian weddings violate these Americans' rights to equal protection of the law.

But it wasn't always so. In the early 1990s, as gays and lesbians began pressing their rights not to be discriminated against, the nation was divided. In 1992, Colorado amended its state constitution to prevent the state itself or any city from adopting any rules limiting discrimination against gays or lesbians.



Ron Fein, left, is the legal director for the organization Free Speech For People, which has filed a friend-of-the-court brief in the case discussed. Steven Levinson is a retired associate justice of the Hawaii Supreme Court.

Here in Hawaii, in 1993, the state Supreme Court made headlines by finding that Hawaii's then-applicable ban on same-sex marriage deserved "strict scrutiny" under the state's constitution. The court sent the case back to the trial court to get the facts and decide if the law met this standard.

The Hawaii Supreme Court's decision set off a national uproar. Dozens of states, and Congress, passed "defense of marriage" laws to ban same-sex marriage.

Meanwhile, the U.S. Supreme Court weighed in on Colorado's anti-gay amendment in a 1996 decision called *Romer v. Evans*. In a stirring opinion by Justice Anthony Kennedy, the court ruled that the Colorado law violated the Constitution's Equal Protection Clause, which says that

no state may "deny equal protection of the laws to any person." Justice Kennedy drew on past discrimination cases to explain that the Constitution doesn't allow laws that are motivated by "a bare ... desire to harm a politically unpopular group."

Back in Honolulu, after a trial featuring eight expert witnesses, the trial judge in the same-sex marriage case ruled that the state hadn't overcome its burden of showing that its ban was justified. Today, that conclusion is common, but in 1996 it was revolutionary. And soon after, Hawaii voters amended the state constitution to allow the Legislature to ban same-sex marriage. That prevented gays and lesbians from tying the knot until late last year, when Gov. Neil Abercrombie signed a law extending marriage to gays and lesbians.

People can disagree about how to manage genetically-engineered crops and pesticides. But it has nothing to do with discrimination, or gay and lesbian Americans' hard-won accomplishments of equality before the law. These companies aren't people; they're international business enterprises. They already enjoy too much influence over our political process, and they don't need special constitutional protections designed for "We the People."

The Equal Protection Clause is about treating each other with equality and dignity. It cheapens and dilutes the hard-won freedoms of every American when global corporations invoke their achievements in a case about genetically engineered soybeans.

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