

## Column: Honoring America's rule of law

By Mark E. Recktenwald

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Every May 1 across the country, we celebrate Law Day and the importance of the rule of law as the cornerstone of our democratic society. This year's theme, "The Constitution's Promise: Out of Many, One," is a call to action to reaffirm the fundamental values of our Constitution that unite us all.

The rule of law is more than just an abstract concept — it is the bedrock upon which our justice system was built. It protects our rights and liberty, and guarantees that the law is applied evenly to everyone, whether you have privilege and power, or are on the outside looking in.

To fulfill this promise of equal justice under the law, our legal system requires an impartial and independent judiciary to resolve disputes, and relies upon the advocacy of attorneys on both sides to ensure fairness and access to justice. In fact, the tenet of the legal profession that everyone — no matter their actions, backgrounds, or beliefs — is entitled to representation dates all the way back to the founding of our country.

The Preamble to the Hawaii Rules of Professional Conduct further reinforces that lawyers are "public citizen[s] having special responsibility for the quality of justice," and urges them to "seek improvement of ... access to the legal system." These are not mere empty words, but rather are foundational to what it means to be a lawyer in our society. On this Law Day, I am reminded of this duty, and how honoring it can sometimes require great courage, especially in unprecedented cases, or when representing those who may not otherwise have a voice.

Judge Daniel Foley's advocacy in *Baehr v. Lewin* exemplifies this type of courage. In 1991, Judge Foley, then a solo practitioner, took on a pro bono case for three same-sex couples who were denied marriage licenses. No one else would take their case. At the time, same-sex marriage was deeply unpopular: same-sex relations could be deemed criminal and no court in the nation had ever recognized same-sex couples' right to marry. That all changed in 1993, when the Hawaii Supreme court held that denying same-sex couples a marriage license was discrimination under the Hawaii Constitution.

Even though the *Baehr* plaintiffs prevailed in court, a subsequent state constitutional amendment allowed same-sex marriage to be prohibited in Hawaii until 2013.

Nevertheless, *Baehr* changed the tide of history by setting important precedent for future

cases in other states and the federal courts. In *Obergefell v. Hodges*, the U.S. Supreme Court finally recognized in 2015 that marriage is a fundamental right for all couples.

This is just one example that underscores the importance of having zealous advocates on both sides of a controversy. The Hawaii Legislature has also acknowledged the vital role of lawyers in our justice system. Just this week, lawmakers passed a bill that increases the rate of compensation for court-appointed counsel in criminal cases, which has not been raised in 20 years. Under the leadership of Sens. Karl Rhoads and Donovan Dela Cruz, and Reps. David Tarnas and Kyle Yamashita, this measure marks a significant step towards preserving the integrity of the judicial process for defendants who cannot afford an attorney.

Above all else, upholding the rule of law is about protecting our constitutional rights and helping people find justice. Law Day is a reminder of the shared values and rights embodied in the United States and Hawaii Constitutions, and an opportunity to reflect upon our own role and responsibility in ensuring equal justice for all.

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