

COLLEEN HANABUSA 2105
3660 Waokanaka Street
Honolulu, Hawai'i 96817
Telephone: (808) 595-3388
Email: hanac841@yahoo.com

Attorney for HAWAII STATE LEGISLATURE

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2018 NOV 27 PM 3:10

J. KURO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

**MOTION FOR LEAVE TO FILE A
MEMORANDUM OF BEHALF OF THE
HAWAII STATE LEGISLATURE AS
AMICUS CURIAE IN SUPPORT OF
DEFENDANT STATE OF HAWAII'S
MOTION FOR SUMMARY JUDGMENT
FILED ON OCTOBER 9, 2018 AND IN
OPPOSITION TO PLAINTIFFS' CROSS-
MOTION FOR SUMMARY JUDGMENT
FILED ON OCTOBER 25, 2018;
MEMORANDUM IN SUPPORT OF
MOTION; EXHIBIT "A"; NOTICE OF
HEARING OF MOTION; CERTIFICATE
OF SERVICE**

HEARING:

Date: December 19, 2018

Time: 3:00 PM

Judge: The Honorable Gary W. B. Chang

Trial Date: None

**MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE
HAWAII STATE LEGISLATURE AS AMICUS CURIAE IN SUPPORT OF
DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT
FILED ON OCTOBER 9, 2018 AND IN OPPOSITION TO PLAINTIFFS' CROSS-
MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018**

COMES NOW The Hawai'i State Legislature ("the Legislature"), by and through its undersigned counsel and hereby respectfully moves this Court for leave to file the proposed MEMORANDUM ON BEHALF OF THE HAWAII STATE LEGISLARUE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 9, 2018 AND IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018 (the "Amicus Brief"), attached hereto as Exhibit "A."

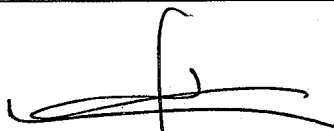
On its face, Plaintiffs' Complaint raises a challenge to what is called "gut and replace" of legislation. However, what is at stake is the separation of powers between the judicial and the legislative branches of government. That is to say, for this Court to even address the issue raised, it must first find it to be justiciable. The separation of powers has long stood for the proposition that the judiciary will not interfere with the affairs of the Legislature absent a constitutional mandate or a deprivation of a constitutionally protected right. The essence of Plaintiffs' Complaint is a challenge to the rules of the Legislature. Rules which the Constitution grants to each house the right to determine and enforce.

The interest of the Hawai'i State Legislature is in protecting its Constitutional role as one of the co-equal branches of government. The Attorney General is speaking for the State of Hawai'i. However, the Legislature believes only it can present to this Court, its position as the Constitution mandated co-equal branch of government. Granting this Motion will assist this Court in its decision making on this matter.

Thus, the Legislature respectfully requests leave of this Court to file the Amicus Brief as attached as Exhibit "A," hereto.

This Motion is brought for good cause and pursuant to Rule 7 of the *Hawai'i Rules of Civil Procedure* and Rule 7.2 of the *Rules of the Circuit Courts*, and based on the memorandum in support, the exhibit attached, the records and files herein and further arguments which may be made at the hearing.

DATED: Honolulu, Hawai'i, NOV 27 2018



COLLEEN HANABUSA

Attorney for HAWAII STATE LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

**MEMORANDUM IN SUPPORT OF
MOTION**

Judge: The Honorable Gary W. B. Chang

Trial Date: None

MEMORANDUM IN SUPPORT OF MOTION

This Memorandum is in support of the Hawai'i State Legislature's motion for leave to file a memorandum on its behalf as *Amicus Curiae* in support of Defendant State of Hawai'i's motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment. The purpose of this memorandum is to ask this Court to recognize that leave has been granted when the Hawai'i State Legislature have sought to file memoranda as *amicus curiae*.

The most recent example is in the case of *Nelson v. Hawaiian Homes Commission*, (Civil No. 07-1-1663-08 JHC) first granted on March 17, 2016.¹

¹ The Legislature sought leave twice before the Circuit Court upon remand and was granted leave. The first was in Support of State Defendants' Motion for Reconsideration of, or to Alter or Amend, the

Prior to this time, the State Legislature was granted leave to file amicus briefs before the Hawai'i Supreme Court. One case is *Taomae v. Lingle*, 108 Hawai'i 245, 118 P.3d 1188 (2005). The Hawai'i Supreme Court also granted the Legislature leave to file after the Court had issued its decision and in support of the State's requested reconsideration of the Supreme Court's decision in *Sierra Club v. Dep't of Transportation*, No. 29035, 2009 WL 1567327 (May 13, 2009).²

In addition, when State Senators filed a Writ of Mandamus based upon their belief that their rights to advise and consent to the appointment of members of the Board of Regents was being violated by the executive branch of the State, the Hawai'i Supreme Court not only granted standing but also found in favor of the Senators. *Hanabusa v. Lingle*, 119 Hawai'i 341, 348, 198 P.3d 604, 611 (2008).

Based upon the fact that the Supreme Court and the Circuit Court have granted leave to the Legislature to file amicus briefs, the Legislature respectfully request that this Court also grants this motion for leave.

DATED: Honolulu, Hawai'i, _____

NOV 27 2018

COLLEEN HANABUSA

Attorney for the HAWAII STATE LEGISLATURE

Judgment and Order Filed on December 21, 2015, which was filed on January 7, 2016. The second was in Opposition to Plaintiffs' Motion for Reconsideration which was filed on March 22, 2016. Leave was granted by Judge Castangetti in both circumstances.

² This case is better known as the Superferry decision.

COLLEEN HANABUSA 2105
3660 Waokanaka Street
Honolulu, Hawai'i 96817
Telephone: (808) 595-3388
Email: hanac841@yahoo.com

Attorney for HAWAII STATE LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

**MEMORANDUM OF BEHALF OF THE
HAWAII STATE LEGISLATURE AS
AMICUS CURIAE IN SUPPORT OF
DEFENDANT STATE OF HAWAII'S
MOTION FOR SUMMARY JUDGMENT
FILED ON OCTOBER 9, 2018 AND IN
OPPOSITION TO PLAINTIFFS' CROSS-
MOTION FOR SUMMARY JUDGMENT
FILED ON OCTOBER 25, 2018**

HEARING:

Date: _____

Time: _____

Judge: The Honorable Gary W. B. Chang

Trial Date: None

**MEMORANDUM ON BEHALF OF THE
HAWAII STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF
DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT
FILED ON OCTOBER 9, 2018 AND IN OPPOSITION TO PLAINTIFFS' CROSS-
MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018**

EXHIBIT "A"

I. INTEREST OF *AMICUS CURIAE*

Article III of the Constitution of the State of Hawai'i (hereinafter "*Constitution*") vests the legislative powers of the State in the two houses of the legislature; in other words, the power to enact laws is with the Legislature. To exercise this responsibility, the *Constitution* empowers each house with rights of self-governance and the determination of its process to adopt legislation.¹ Each house enacts its own rules and procedures and need only agree on deadlines where the *Constitution* requires them to do so.² Thus the Legislature has a strong interest in protecting its governance and rules and procedures as they adopted in compliance with the *Constitution*.

The Legislature's interest as *Amicus Curiae* is that it cannot stand by silently as the Plaintiffs call upon a co-equal branch of government, the Judiciary, to interfere with the Legislature's constitutionally empowered self-governance. Plaintiffs' Complaint filed on September 5, 2018, seeks to have this Court declare void Act 84 of the 2018 Session Laws; because they contend the process by which it was adopted was unconstitutional. Specifically

¹ It is important to note that the Constitution empowers **each house** to "determine the rules of its proceedings." Section 12 article III of the *Constitution*. This means and is in fact the case that the House and the Senate have different rules as to how bills are heard and whether actual testimony must be taken at various steps. The houses did adopt their respective rules as relevant parts are attached as Exhibits "A" and "B" to Defendant State of Hawaii's Motion for Summary Judgment. In addition, both houses adopted *Mason's Manual of Legislative Procedure, 2010* for the 2017-2018 Legislative Sessions. It is Rule 88 of the Rules of the Senate and Rule 59 of the Rules of the House of Representatives.

² The Constitution requires that the houses provide for dates "by which all bills to be considered in a regular session shall be introduced;" but does not mandate said dates. Therefore, the houses are at liberty to modify or amend whatever dates they may have agreed to. *Id.* It is also of importance the Section 12 article III of the *Constitution* requires that what is "open to the public" is the meeting for decision making purposes of a committee. *Id.*

Plaintiffs' claim Sections 14 and 15 of article III of the *Constitution* were violated in Act 84's enactment.

It is the position of the Legislature that it acted within their authority under the *Constitution*. This issue is one that has been debated in prior Constitutional Conventions and the Delegates to the respective Constitutional Conventions were clear in their belief that the provisions debated ensured flexibility to the Legislature.

The strong interest of the Legislature is to protect its constitutional prerogative of determining its own rules of proceeding to enact laws of the State. It is the Legislature's role in the separation of powers of Hawai'i's governmental structure. The *Constitution* also protects the Legislature's rules, authorities, along with its custom and practices.

II. MAIN ISSUE IS WHETHER THIS COURT BY REVIEWING THE LEGISLATURE'S PROCEDURE IS VIOLATING THE SEPARATION OF POWERS DOCTRINE.

The essence of Plaintiffs' Complaint is that when the Legislature engages in what is referred to as a "gut and replace" it violates the Constitution of the State of Hawai'i. Plaintiffs rely specifically on Section 14 article III of the *Constitution* for the proposition that "[e]ach law shall embrace but one subject, which shall be expressed in its title." Plaintiffs' Complaint ¶12. And, Section 15 article III of the *Constitution* for the proposition that "[n]o bill shall become law unless it shall pass three readings in each house on separate days." Plaintiffs' Complaint ¶13.

It is established law in this jurisdiction that the courts will not interfere with the actions of the Legislature which are presumed constitutional, absent a clear violation of a constitutional provision. The Legislature respectfully asks that this Court recognizes that to find

for Plaintiffs will be to violate the clear and distinct separation of powers set forth in the *Constitution*.

III. ANALYSIS

A. The Legislature's Enactments Are Presumptively Constitutional.

The Hawai'i Supreme Court has set a very high standard to successfully challenge any law enacted by the Legislature. The Court has consistently held that "every enactment of the legislature is presumptively constitutional and a party challenging the statute has the burden of showing unconstitutionality beyond a reasonable doubt." *Schwab v. Ariyoshi*, 58 Hawai'i 25, 31 564 P.2d 135, 139 (1977). Other authorities cited are *State v. Kahalewai*, 56 Hawai'i 481, 541 P.2d 1020 (1975) and *Bishop v. Mahiko*, 35 Hawai'i 608 (1940). The *Schwab* court went on to say that the violation alleged there of the "subject-title requirements of the State Constitution" must be "plain, clear, manifest, and unmistakable." *Id.*

Plaintiffs' heavy reliance upon *Taomae v. Lingle*, 108 Hawai'i 245, 118 P.3d 1188 (2005) is misplaced. The Hawai'i Supreme Court made very clear that *Schwab* was distinguishable from the facts of *Taomae* because "[i]n *Schwab*, this court considered the requirements embodied in article III alone . . . in this case, we construe the requirements of article III as incorporated in the specific and separate provisions of article XVII." *Taomae*, 108 Hawai'i at 254, 118 P.3d at 1197.³

³ The Hawai'i Supreme Court stated two reasons for why they found a violation of the *Constitution*:

First, the proposed amendment was not titled as a constitutional amendment pursuant to article XVII. Second, the proposal to amend the constitution was not subjected to three readings in each house as article XVII, section 3 requires.

Plaintiffs allege violations of Sections 14 and 15 of article III of the *Constitution*.

Schwab is clearly the dispositive authority; and the Plaintiffs have failed to meet their burden.

B. In Analyzing Section 14, article III of the Constitution, The Governing Word is “law” And Requires That The Law Contain One Subject And It Be Expressed In The Title.

Many of the authorities relied upon by Plaintiffs were decided prior to Statehood and the adoption of the 1950 Constitution. *Schwab* is the dispositive precedent for this Complaint. The 1950 Constitutional Convention proposed the language of Section 14 article III which states, “[n]o law shall be passed except by bill. Each law shall embrace but one subject, which shall be **expressed in its title.**” (emphasis added). In *Schwab*, the Court was faced with the title, “A Bill for an Act Making Appropriations for Salaries and Other Adjustments, Including Cost Items of Collective Bargaining Agreements Covering Public Employees and Officers.” The original intent was that it ratify the salary increases negotiated through collective bargaining. *Schwab*, 58 Hawai‘i at 27, 564 P.2d at 137. When it was enacted, the law contained four parts and covered all employees’ and officers’ salaries, not merely those that were collectively bargained. *Id.* 58 Hawai‘i at 27-28, 564 P.2d at 137-138. The Hawai‘i Supreme Court in finding no constitutional violation stated:

We hold that a liberal construction of this constitutional requirement, . . . leads to no other conclusion but that the title to Act 58 fairly indicates to the ordinary mind the general subject of the act. . . . It is true that the provision of the Organic Act ‘that each law shall embrace but one subject, which shall be expressed in its title’ should be liberally construed, and that an act of the legislature should not be held void on the ground that it conflicts with this provision, except in a clear case.

Id., 108 Hawai‘i at 251, 118 P.2d at 1194. The Hawai‘i Supreme Court went on to distinguish Section 14 article III from its holding as follows, “[w]hile the interpretation of article III, section 14 is appropriate when applied to ordinary legislation, it must be remembered that article XVII specifically governs constitutional amendments.” *Id.*, 108 Hawai‘i at 254, 118 P.2d at 1197. This was in response to the defendants’ argument that all is required is a single subject in the title under Section 14 article III. For *Taomae* to apply this must involve a constitutional amendment.

Id., 58 Hawai'i at 34, 564 P.2d at 141 (emphasis added).⁴

The *Constitution* requires that a law be passed by bill. This is not a point of contention. The issue is whether the **law** embraces but one subject which is expressed in its title. Thus, the point of contention is whether the title "Relating to Public Safety" covers the subject of this law. The general rule of statutory construction applies here as well. That is to say if the words are clear and unambiguous, they are construed as written. *Watland v. Lingle*, 104 Hawai'i 128, 140, 85 P.3d 1079, 1091 (2004). Thus, Section 14 article III is saying that the **law** shall embrace one subject that is expressed in the law's title. It does not say that the bill as originally proposed or amended; but as it is enacted into law. There can be no doubt that the subject of SB 2858 SD2 HD1 CD1 as Act 84 (2018) is covered under Public Safety.

An indication as to the liberal interpretation of the requirements even under Section 45 of the Organic Act is the case of *Gallas v. Sanchez*, 48 Hawai'i 370, 376, 405 P.2d 772, 776 (1965). The challenge was to whether the one subject in the title was violated. The Supreme Court adopted the lower court's decision and stated, "[a]lthough the title of Act 207 [relating to public service] does not refer with particularity to the amendments therein, it clearly refers to the general subject." *Id.* The Supreme Court found no violation.

Moreover, there is no prohibition in the *Constitution* that titles cannot be broad. In fact, the Legislature has used broad titles in order to ensure that the subject of the law is found expressed in said title.⁵

⁴ The emphasis was placed in this citation because the *Schwab's* Court analysis was as to when the bill became law as Act 58. The Constitutional provision is speaking to the final law and that what is contained therein fits the one subject and expressed in its title. There is no doubt that this is satisfied in Act 84 (2018).

⁵ The Court is asked to take judicial notice of the fact that all Bills which became law (Acts) are in the public domain and listed as "2018 List of Acts" on the Legislature's Website,

C. The Constitutional Convention Committee Reports and Debates Clarify That Amendments To A Bill, Including A Substitution Does Not Trigger Three Reading Process To Commence Again.

The Hawai'i Supreme Court has stated that the Constitution must be construed "with due regard to the intent of the framers and the people adopting it." *Hanabusa v. Lingle*, 105 Hawai'i 28, 31, 93 P.3d 670, 673 (2004). The intent is found in the "instrument itself." *Id.* citing *Blair v. Harris*, 98 Hawai'i 176, 178-179, 45 P.3d 800, 800-801 (2002).

The Constitutional Convention of 1968 addressed Section 16 article III of the *Constitution*. Committee of the Whole Report No. 12 stated that it had fully debated the Standing Committee Report No. 46 and reports and recommends that Section 16⁶ be adopted. The rationale was:

1. Requiring that a bill shall have been printed in the form to be passed on final reading and made available to the members of a house for at least twenty-four hours before it shall pass final reading in that house; the phrase "form to be passed" means the form in which a bill is either (a) passed on third reading in each house, (b) concurred to by one house after

www.capitol.hawaii.gov/. A review of the bill titles that have become law, clearly supports the proposition that most titles are general or broad and would probably be considered unconstitutional by Plaintiffs. For example, there are: 7 Bills entitled "Relating to Health;" 4 Bills are "Relating to Environmental Protection;" 4 Bills are "Relating to Agriculture;" 4 Bills are "Relating to Taxation;" 3 Bills are Relating to the Environment;" 3 Bills are "Relating to Education;" 3 Bills are Relating to "Medical Cannabis," 3 Bills "Relating to Non General Funds," 3 Bills "Relating to Public Safety," 2 Bills "Relating the State Budget." There are other duplicative titles of Bills or general titles which are now laws in this State.

⁶ Section 16, in relevant part, read as follows:

No bill shall become law unless it shall pass three readings in each house on separate days. No bill shall pass final reading in each house unless in the form to be passed it shall have been printed and made available to the members of that house for at least twenty-four hours . . .

This provision is now Section 15, article III of the *Constitution*.

amendments have been made by the other, or (c) passed by both houses after a conference committee has agreed upon it; . . .

I *Proceedings of the Constitutional Convention of Hawaii of 1968* at 347 (1973).

The Standing Committee on Legislative Powers and Functions Report No. 46 referenced in Committee of the Whole Report No. 12, makes clear that it believed the twenty-four hour rule before the final reading is what assures the members of the Legislature and the public the opportunity for informed action. *Id.* at 216. The examples listed as to how the Legislature gets to the “form to be passed” anticipates amendments and changes in the bill’s contents and can be made by “one house,” or after a conference committee. Act 84 in its final form is a result of a Conference Committee Draft.

The debates among the delegates to the 1968 Constitutional Convention clarified that it was anticipated amendments and actual substitutions could occur without triggering the need to begin the three reading process. Relevant portions of the debates are:

DELEGATE HUNG WO CHING⁷: . . . The original intent of a bill having passed one house can be substantially changed in legislative conferences. A bill in final form can then pass third reading in both houses without a reasonable opportunity for members of the legislature and the public for review in its final form. To correct this situation, our proposal will require that a bill be printed in its final form and be made available to the legislators and to the public for at least 24 hours before final passage. It is the committee’s considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of the proposed legislation decisively overrides the possible problems in its adoption might create.

. . .

DELEGATE KAUHANE: . . . I understand that the bill must pass three readings before the bill can actually become law, or have the semblance of becoming law with the signature of the governor. My concern here on the

⁷ Mr. Hung Wo Ching was the Chair of the Committee on Legislative Powers and Functions.

passage of the bill on three readings—one, is this, Mr. Chairman, does the reading of the bill by title on the third day constitute the bill have been read completely throughout?

...

DELEGATE DONALD CHING: . . . [T]he bulk of the amendments would come at the time of the second reading. In fact, all of the amendments should come at the time of the second reading on the bill. Then after the bill has been fully discussed on second reading by either house it shall then be printed up in the final amended form; be printed, be distributed to the members of that house and to the public, and then 24 hours shall elapse before final reading shall be taken. . . . Now, if it comes back from conference we have no problem there. This is only on third reading in either house.

...

DELEGATE KAUHANE: I just heard the statement when we go to conference, well, we'll have no problem there. This is where the problem exists, when we go to conference.

My next questions, Mr. Chairman, where a bill has been substituted for the original bill, the original bill having been read once, have passed first and second reading, and possibly third reading, and the bill is referred to conference because of a disagreement, it becomes a conference-substituted bill for the original bill in some instances; will the substituted bill be required to pass three readings because of a complete change of the substance of the bill?

...

DELEGATE DONALD CHING: . . . The proposed amendment will not change the manner in which a bill is handled as under the present Constitution and the present legislative procedures as far as the conference committee draft is concerned. What it will mean is that the only change that will be brought about is that after the conference committee has deliberated and come up with its conference draft, that draft will have to be printed and lay on the table for 24 hours or made available to the public for 24 hours before either house can act on it. That's the only change.

II Proceedings of the Constitutional Convention of Hawaii of 1968, Committee of the Whole

Debates (1973) at 145-146 (emphasis added).

The debates made clear that the intent of the framers of the Constitution was to reaffirm that the practice of the Legislature that if a new bill is substituted, it will not trigger a requirement that the three readings commence again.

D. The Mandate That Bills In Its Final Form Be Printed and Lay For 48 Hours Is To Ensure The Legislators and the Public Know What Is Being Voted On.

The then 24 (now 48) hour rule is what provides the Legislators and the public the opportunity to know what the bill contains.⁸ Plaintiffs do not allege the houses failed to comply with the “printed copies” of the bill in its final form for at least “forty-eight hours”⁹ prior to the final reading.

From the above referenced Constitutional Convention Debates, it is clear that the intent was not to change the practice of amending bills which could include its total substitution and three readings will not be required. Thus, the notification requirement was enacted for purposes of providing Legislators and the Public the opportunity to know what the final form of the bill contains.¹⁰

⁸ Plaintiffs allege that the changes to SB 2858 SD2 HD1 CD1 did not afford the public adequate time to testify against the bill. They state that the entities who testified opposed the amendments and requested “that the bill revert to its original subject matter.” Plaintiffs’ Memorandum in Support of its Motion at 11-12. The Legislature respectfully request that this Court take notice of SB 2861 SD2 HD1 CD1 which subsequently became law as Act 212 (2018). This bill was so similar to SB 2858 that a recommendation was the bills be consolidated into one. Act 212 was also a Bill entitled, “Relating to Public Safety.”

⁹ It was the 1978 Constitutional Convention which increased the period before the final vote can be taken to 48 hours. Though Plaintiffs do not concede that technological changes and the ability to track bills on the internet has changed the ability of both Legislators and the general public to be aware what is transpiring, the fact is, it does. The description of the bills’ contents changes as amendments are made. It is a better informed constituency due to the changes made by the Legislature on the use of the internet.

¹⁰ Also, Plaintiffs’ authorities in support of their arguments that Section 14, article III was violated, predated the 1968 Constitutional Convention which required the printing of the bill in

E. Section 12 of Article III of the Constitution Empowers Each House To Enact Its Own Rules of Proceedings And Its Operations Is A Non Justiciable Issue.

Section 12 article III of the *Constitution* provides in relevant part “[e]ach house shall choose its own officers, **determine the rules of the proceedings** and keep a journal.” (emphasis added). The recent case of *Hussey v. Say*, 139 Hawai‘i 181, 384 P.3d 1282 (2016) addressed the first sentence of Section 12 article III of the *Constitution*. The Hawai‘i Supreme Court sustained the dismissal of the *Quo Warranto* complaint against Representative Say on the basis that it was a “non justiciable issue.” The Court stated that “justiciability” was to ensure that the co-equal branches of government do “not intrude into areas committed to the other branches of government.” It looks to whether the Constitution committed the issue to another political department. *Id.*, 139 Hawai‘i at 188, 384 P.3d at 1289. The Court stated in *OHA v. Yamasaki*, 69 Hawai‘i 154, 169, 737 P.2d 446, 455 (1987), “a textually demonstrable constitutional commitment of the issue to a coordinate political department.” In *Hussey*, the issue was whether Representative Calvin Say was qualified to be seated as a member of the House of Representatives. The Court ruled that due to the language of Section 12 of article III, it was a non justiciable issue because the *Constitution* had committed the issue to the Legislative branch of government.¹¹

its final form and laying it over for 24 hours. In that Section 14 addresses the subject matter and the expressed title of the law, the concerns of the Plaintiffs should be alleviated because the 1968 amendment requires the provision of the bill in final form and laying it over. *Schwab* was decided in 1977 and it stands for the proposition that to sustain the violation of a subject-title requirements of the State Constitution” it must be “plain, clear, manifest, and unmistakable.” *Id.*, 58 Hawai‘i at 31 564 P.2d at 139. Plaintiffs fail to meet their burden.

¹¹ Section 12 article III of the *Constitution* provides:

Each house shall be the judge of the elections, returns and qualifications of its own members and shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure, or upon a two-

This should also be the decision of the Court as to the “rules of proceedings” which has been committed to the co-equal branch of government.

The Legislature has complied with the *Constitution* and determined and passed its respective rules of proceedings.

The Rules of both houses provide for three readings of the bill. The First readings in both houses are by title only.¹² Likewise, the respective Rules provide that the Second and Third or Final readings of the bill can be by title only.¹³

Both houses, in accordance with Section 12, article III of the *Constitution* have adopted their respective Rules of their houses and in addition, as identified in footnote 1 above, *Mason’s Manual of Legislative Procedure, 2010* for the 2017-2018 Legislative Session, hereinafter “*Mason’s*.”

Under the provisions of *Mason’s*, specifically Sec. 722 entitled **Three Readings of Amended Bills**, it provides in relevant parts as follows:

1. **The constitutional requirement that bills be read three times is not generally interpreted to apply to amendments**, so that bills are required to be read the specified number of times after amendment, . . .
2. When a bill that has been passed by one house has **been materially amended** in the other, and there passed as amended, it has been held that the constitutional provisions with reference to reading three times **does not require the bill as**

thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member.

¹² Rule 48 of the Senate and Rule 34 of the House of Representative. State Ex. “A” at 21 and State Ex. “B” at 33.

¹³ Rules 49 and 50 of the Senate and Rules 35 and 36 of the House of Representatives. State Ex. “A” at 22 and State Ex. “B” at 33-34. Note that for Third or final readings, both houses require the final form to layover for 48 hours.

amended to be read three times in the house of origin before concurring in the amendments of the other house. . . .

3. Where a substituted bill may be considered as an amendment, the rules with reference to reading a bill on three separate days does not require the bill to be read three times after substitution. One house may substitute an identical bill of its own for the bill of the other house without rereading of the substitute bill being required. . . .

5. A bill that is amended or redrafted by a conference committee is not a new bill in the sense that it requires three readings thereafter.

Mason's at 494-495 (emphasis added).

As with *Hussey*, the decision here should be that how the co-equal branch of government has complied with its own rules should be determined by the houses.

Schwab is also instructive as to the Legislature's Rules. It concedes that the threshold issue is whether it is "justiciable." *Id.*, 58 Hawai'i at 37, 564 P.2d at 142-143. The Court reminds itself that:

As a general rule, the role of the court in supervising the activity of the legislature is confined to seeing that the actions of the legislature do not violate any constitutional provision. We will not interfere with the conduct of legislative affairs in absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutionally guaranteed rights.

Id.

Plaintiffs here do allege that they are not challenging the Rules of the Legislature but given the intent of the framers of the *Constitution* and the flexibility given to the Legislature, it is the Legislature's Rules which is the subject of Plaintiffs' challenge. Without any doubt, the issue is non justiciable.¹⁴

¹⁴ At page 14 of the Defendant State's memorandum in support of its motion for summary judgment, the State references SB 192 SD1 HD1 CD1. This Court is asked to take judicial notice of the evolution of this "Relating to State Budget." It began as a general appropriation matter and was enacted in its final form to transfer tobacco funds for disaster relief on Kauai and East Oahu.

IV. CONCLUSION

For the foregoing reasons, the Hawai'i State Legislature respectfully request that this Court grants Defendant State of Hawai'i's Motion for Summary Judgment and deny Plaintiffs' Cross-Motion for Summary Judgment on the basis that the Legislature is acting within its Constitutionally granted powers, the issues raised in the Complaint are non justiciable and Plaintiffs have failed to meet their burden.

DATED: Honolulu, Hawaii, _____



COLLEEN HANABUSA

Attorney for the HAWAII STATE LEGISLATURE

Under Plaintiffs' arguments, this important legislation should have triggered additional 3 readings in both houses. It could not be done without extending the session. It is also important to note that a flaw in Plaintiffs arguments on flexibility at page 14 of their memorandum in support of their cross-motion for summary judgment is that a new bill could pass in a week. If a new bill is introduced, it would have to receive 3 readings in one house and cross to the next house for 3 readings before it could be law. The Plaintiffs are arguing that in the event of an emergency, committee hearings are not necessary for the public but the *Constitution* requires decision making to be public. It cannot be the contention that if brought before this Court, the Court will determine which bills are worthy and which are not. This is clearly a non justiciable act. Otherwise this Court could be inviting lawsuits after the adjournment of each legislative session challenging bills that were amended in some manner.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

NOTICE OF HEARING OF MOTION

Judge: The Honorable Gary W. B. Chang

Trial Date: None

NOTICE OF HEARING OF MOTION

TO: ROBERT BRIAN BLACK, ESQ.
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813

Attorney for Plaintiffs

RUSSELL A. SUZUKI
Attorney General for the State of Hawai'i

PATRICIA OHARA, ESQ.
ROBYN B. CHUN, ESQ.
Deputy Attorneys General
425 Queen Street
Honolulu, Hawai'i 96813

Attorneys for Defendant State of Hawai'i

NOTICE IS HEREBY GIVEN that the foregoing Motion, shall come on for hearing before the Honorable Gary W. B. Chang, Judge of the above entitled Court, Circuit Court of the First Circuit, in his courtroom at 777 Punchbowl Street, Honolulu, Hawaii 96813, on December 19, 2018 at 3:00 P.m., or soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, NOV 27 2018, 2018.



COLLEEN HANABUSA

Attorney for the HAWAII STATE LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify the on this date a true and correct copy of the foregoing document
was duly served by hand delivery on the following parties listed below:

ROBERT BRIAN BLACK, ESQ.
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813

Attorney for Plaintiffs

RUSSELL A. SUZUKI
Attorney General for the State of Hawai'i

PATRICIA OHARA, ESQ.
ROBYN B. CHUN, ESQ.
Deputy Attorneys General
425 Queen Street
Honolulu, Hawai'i 96813

Attorneys for Defendant State of Hawai'i

NOV 27 2018

DATED: Honolulu, Hawai'i, _____, 2018.



COLLEEN HANABUSA

Attorney for the HAWAII STATE LEGISLATURE