NO. SCAP-19-000372

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs-Appellants-Petitioners,

vs.

STATE OF HAWAI`I,

Defendant-Appellee-Respondent.

ORIGINAL PROCEEDING
CIVIL NO. 18-1-1376-09 (GWBC)

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I

The Honorable Gary Won Bae Chang, Circuit Court of the First Circuit, State of Hawai`i

APPELLATE PROCEEDING
No. CAAP-19-000372

INTERMEDIATE COURT OF APPEALS, STATE OF HAWAI`I

APPLICATION FOR TRANSFER

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Pursuant to Hawai`i Revised Statutes (HRS) § 602-58 and Hawai`i Rules of Appellate Procedure 40.2, Petitioners League of Women Voters of Honolulu (LWV Honolulu) and Common Cause respectfully petition for transfer from the Intermediate Court of Appeals. This appeal raises questions of fundamental public importance concerning the minimum constitutional procedure for enacting laws in Hawai`i. In 2018, Respondent State of Hawai`i enacted, under the vague title "Public Safety", a hurricane shelter law that the Senate considered only once. The public and the State need guidance as to the scope of the protections in the Hawai`i Constitution under (1) the "three readings" requirement;[1] and (2) the "subject in title" requirement.[2]

For over 100 years, every Hawai`i constitution has protected its citizens from the hasty adoption of legislation without sufficient public notice. The State argues, and the circuit court held, that the Hawai`i Constitution permits any bill amendments—no matter how radical or how late in the process—so long as the bill number did not change. Dkt. 80 at 16; Dkt. 24 at 353; Dkt. 26 at 227.[3] The constitutional tradition requires a far more robust interpretation of the constitutional provisions. Those requirements impose real constraints on the process for enacting laws in Hawai`i.

In this appeal, there are two fundamental questions of constitutional importance.

1. When, if ever, do amendments to a bill so fundamentally change proposed legislation that pre-amendment readings of the bill are not counted toward the three readings requirement?
2. When, if ever, is a bill's title too broad?

Long-standing authority behind the constitutional requirements provides clear answers. When bill amendments are not germane to the original subject, the three readings

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[1] "No bill shall become law unless it shall pass three readings in each house on separate days." Haw. Const. art. III, § 15.

[2] "Each law shall embrace but one subject, which shall be expressed in its title." Haw. Const. art. III, § 14.

[3] "Dkt." refers to the corresponding docket entry in the Intermediate Court of Appeals. The pinpoint citations refer to the page of the PDF.

process must restart. And a bill title is too broad when it fails to put affected citizens on notice that the bill would impact their interests. Whether Hawai`i follows or deviates from these well-established standards, the public deserves decisive resolution from this Court so that it can effectively exercise its right to participate in the legislative process.

This case is appropriate for transfer to this Court because it raises questions of fundamental public importance, as well as novel legal issues, concerning the constitutionally required process for enacting laws in Hawai`i. Petitioners respectfully request that the Court grant their application for transfer.

I. PRIOR PROCEEDINGS

On September 5, 2018, LWV Honolulu and Common Cause filed the Complaint seeking a declaration that the process of adopting Act 84 (2018) violated the Hawai`i Constitution and that Act 84 therefore is void as unconstitutional. Dkt. 24 at 14-21.

On October 9, 2018, the State moved for summary judgment, arguing that Act 84 is constitutional and that the claims were not justiciable. *Id.* at 33-156. LWV Honolulu and Common Cause filed a cross-motion for summary judgment on October 25, 2018. *Id.* at 157-350. In opposition to the cross-motion, the State also challenged whether LWV Honolulu and Common Cause had standing to bring their claim. By oral ruling on December 19, 2018, the circuit court granted leave for the State Legislature to file *amicus curiae* memoranda supporting the State's position on the motions. Dkt. 22 [12/19/18 Tr.] at 45-50; Dkt. 26 at 217-20.

At a hearing on January 24, 2019, regarding the motions for summary judgment, the circuit court orally granted the State's motion and denied LWV Honolulu and Common Cause's cross-motion, holding that the process for adopting Act 84 complied with the court's interpretation of the three readings and subject in title requirements of the Hawai`i Constitution. Dkt. 20 [1/24/19 Tr.] at 46-50. The circuit court concluded that the dispute was justiciable and that LWV Honolulu and Common Cause had standing. *Id.* at 49. That oral ruling was reduced to a written order on April 3. Dkt. 26 at 226-30. The circuit court also entered final judgment on April 3. *Id.* at 224-25.

Petitioners filed their notice of appeal from the April 3 Judgment on May 2. Dkt. 1. They timely filed an opening brief on September 4. Dkt. 41. Tax Foundation of

Hawai`i and the Hawai`i State Legislature filed *amicus curiae* briefs. Dkt. 49, 78. And the State filed its answering brief on November 13. Dkt. 80.

II. STATEMENT OF FACTS

A. The Recidivism Reporting Bill: Three Readings in the Senate and One Reading in the House

On January 24, 2018, the Senate introduced S.B. 2858, entitled "A Bill for an Act Relating to Public Safety." Dkt. 24 at 183-89. As originally introduced, S.B. 2858 required the Department of Public Safety to prepare an annual report with performance indicators regarding community reentry efforts to improve recidivism rates and inmate rehabilitation (the recidivism reporting bill). *Id.*

On January 24, 2018, the recidivism reporting bill passed its *first reading* in the Senate. *Id.* at 192. The Senate Committee on Public Safety, Intergovernmental, and Military Affairs (PSM) heard the bill on February 6, 2018. *Id.* at 194. PSM recommended that the bill be passed with amendments to include information about pretrial detainees in the Department's annual report. *Id.* at 197-200. On February 9, 2018, PSM reported its amendments to the Senate, and the recidivism reporting bill passed its *second reading* in the Senate as amended (S.D. 1). *Id.* at 194, 203-12.

On February 23, 2018, the Senate Committee on Ways and Means (WAM) held a hearing on the recidivism reporting bill. *Id.* at 194. WAM recommended that the bill be passed with clarifying amendments about the Department's annual reports. *Id.* at 214-17. On March 6, 2018, WAM reported to the Senate its proposed amendments, and the recidivism reporting bill passed its *third reading* in the Senate as amended (S.D. 2). *Id.* at 194, 218-31.

On March 8, 2018, after crossover from the Senate, the recidivism reporting bill passed its *first reading* in the House. *Id.* at 194, 237, 240.

B. The Hurricane Shelter Bill: Three Readings in the House and One Reading in the Senate

On March 15, 2018, the House Committee on Public Safety (PBS) held a hearing on the recidivism reporting bill. *Id.* at 194. Testifiers provided PBS comments regarding the recidivism reporting bill. *Id.* at 281-303. PBS, however, recommended

deleting S.B. 2858's content and replacing it with provisions that would require the design of all new State buildings to include hurricane shelter space (the hurricane shelter bill). *Id.* at 305-07.

On March 21, 2018, PBS reported its recommendation to the House. *Id.* at 194, 310. The House amended S.B. 2858 according to the PBS recommendation, and the hurricane shelter bill had its *first reading* in the House (H.D.1). *Id.* at 194, 310-14.

On March 28, 2018, the House Committee on Finance (FIN) held a hearing on the hurricane shelter bill. *Id.* at 195. This was the first and only chance for the public to testify concerning the hurricane shelter version of S.B. 2858. *Id.* at 316-24. The Office of Hawaiian Affairs and Young Progressives Demanding Action offered testimony asking legislators to revert the bill to its original subject as the recidivism reporting bill. *Id.* FIN recommended passing the hurricane shelter bill unamended. *Id.* at 326-28. On April 6, 2018, FIN reported its recommendation to the House, and the hurricane shelter bill passed its *second reading* in the House. *Id.* at 195, 331.

On April 26, 2018, the appointed conference committee recommended amendments to the hurricane shelter bill to only require that the State consider hurricane resistance criteria when designing new schools. *Id.* at 333-36. On May 1, 2018, the House adopted the recommendation of the conference committee, and the hurricane shelter bill passed its *third reading* in the House. *Id.* at 195, 339. The same day, the Senate adopted the recommendations of the conference committee, and **the hurricane shelter bill passed its *first reading* in the Senate**. *Id.* at 195, 342. S.B. 2858 became law on June 29, 2018, when signed by the Governor as Act 84. *Id.* at 344-48.

C. The History and Purpose of the Three Readings Mandate in Hawai`i

A version of the three readings provision first appeared in the 1894 Constitution of the Republic of Hawai`i. Haw. Const. art. 64 (Rep. 1894) (Dkt. 26 at 167); Organic Act § 46 (1900) (Dkt. 26 at 168). The 1950 Constitution reworded the requirement—making clear that it was not intended to change the meaning—to the current language. Haw. Const. art. III, § 16 (1950) (Dkt. 26 at 170); Haw. Const. art. III, § 15 (comma removed in 1968 Constitutional Convention); Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 253 (Dkt. 26 at 174).

The three readings requirement arises from a historical tradition in constitutional law to provide the public and legislators an opportunity to comment on proposed legislation. *E.g.*, 1 Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and Statutory Construction [Sutherland] § 10:4 at 546 (7th ed. 2010) ("The practice of having bills read on three different days also serves to provide notice that a measure is progressing through the enacting process, enabling interested parties to prepare their positions."). "That it has such a purpose, that it is designed to prevent hasty and improvident legislation, and is therefore not a mere rule of order, but one of protection to the public interests and to the citizens at large, is very clear." 1 Thomas Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union, [Cooley] at 288 n.1 (Walter Carrington ed., 8th ed. 1927); *accord* 1 Sutherland § 10:4 at 547 ("Reading requirements are supposed to facilitate informed and meaningful deliberation on legislative proposals, and refinement and modification of the text of a proposal is the natural and desirable product of deliberation."); *see also Mason's Manual of Legislative Procedure* § 720 ¶ 2 (2010 ed.) (*Mason's Manual*) ("The requirement that each bill be read on three separate days, prescribed by the constitution, legislative rules or statutes, is one of the many restrictions imposed upon the passage of bills to prevent hasty and ill-considered legislation, surprise or fraud, and to inform the legislators and the public of the contents of the bill.").

Following this tradition, the 1950 Constitutional Convention acknowledged the benefit of three readings:

> One of the necessary features of laws adopted by the legislature is the necessity for three readings and the opportunity for full debate in the open before committees and in each House, during the course of which the purposes of the measures, and their meaning, scope, and probable effect, and the validity of the alleged facts and arguments given in their support can be fully examined, and if false or unsound, can be exposed, *before* any action of consequence is taken thereon.

Stand. Comm. Rep. No. 47 *in* 1 Proceedings of the Constitutional Convention of Hawai'i of 1950 at 184. As summarized by this Court, "[t]he three-reading requirement not only provides the opportunity for full debate; it also ensures that each house of the

legislature has given sufficient consideration to the effect of the bill." *Taomae v. Lingle*, 108 Hawai`i 245, 255, 118 P.3d 1188, 1198 (2005).

The constitutional tradition also addresses when amendments to a bill would require three additional readings—using a germaneness standard. *E.g.*, 1 Sutherland § 10:4 at 547-48 ("[I]f new provisions which are not germane to the text of the original bill are substituted after one or more readings, the new version of the bill cannot be validly enacted without the requisite readings following the substitution."); 1 Cooley at 289 ("Where a bill has been read twice and referred to a committee who have reported a substitute, which is so germane to the original bill as to be a proper substitute, such substitute need not be read three times; a single reading will suffice."); Earl T. Crawford, The Construction of Statutes [Crawford] § 41 at 65 (1940) ("And in the case of substituted bills, so long as they are germane to, or concerned with the same subject matter or embrace the same general principles of the original, a re-reading is not necessary." (footnotes omitted)); *accord Giebelhausen v. Daley*, 95 N.E.2d 84, 94 (Ill. 1950) ("In order to come within the rule that an amendment need not be read three times in each House, it must be germane to the general subject of the bill as originally introduced.").

The Territorial Supreme Court similarly applied a constitutional germaneness standard when construing the single-subject provision of the Hawai`i Constitution ("Each Law shall embrace but one Subject"). The Court adopted the following understanding of germaneness for constitutional analysis of legislation:

> Literally, 'germane' means 'akin', 'closely allied.' It is only applicable to persons who are united to each other by the common ties of blood or marriage. When applied to inanimate things, it is, of course, used in a metaphorical sense, but still the idea of a common tie is always present. Thus, when properly applied to a legislative provision, the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs. Any provision not having this tendency, which introduces new subject matter into the act, is clearly obnoxious to the constitutional provision in question.

Territory v. Kua, 22 Haw. 307, 313 (Terr. 1914).

D. The History and Purpose of the Subject in Title Mandate in Hawai`i

A version of the subject in title requirement has protected the people of Hawai`i continually since 1852. Haw. Const. art. 102 (Kingdom 1852) (Dkt. 26 at 164); Haw. Const. art. 77 (Kingdom 1864) (Dkt. 26 at 165); Haw. Const. art. 77 (Kingdom 1887) (Dkt. 26 at 166). In 1894, the provision was modified to the current version. Haw. Const. art. 63 (Rep. 1894) (Dkt. 26 at 167); Organic Act § 45 (1900) (Dkt. 26 at 168); Haw. Const. art. III, § 15 (1950) (Dkt. 26 at 170); Haw. Const. art. III, § 14; Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 252 (Dkt. 26 at 173).

The mandate is a constitutional notice provision, requiring that the subject of proposed legislation be fairly expressed in its title. In 1887, the Kingdom Supreme Court relied on Cooley on Constitutional Limitations to explain the purpose of the title provision: "[F]irst, to prevent hodge-podge or log-rolling legislation; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation; and third, to apprise the people of proposed matters of legislation." *Hyman Bros. v. Kapena*, 7 Haw. 76, 77–78 (Kingdom 1887) (voiding legislation for violating the title requirement); *accord Schwab v. Ariyoshi*, 58 Haw. 25, 30-31, 564 P.2d 135, 139 (1977); *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954); 1 Cooley at 296; 1A Sutherland § 18:2 at 45 ("The primary purpose of the constitutional requirement that the subject or object of a legislative act be expressed in its title is to insure reasonable notice of the purview to members of the assembly, and to the public.").

The subject in title mandate does not require that a legislature summarize every provision of proposed legislation in the title.

> It may be stated as a general proposition that the expression of subject in the title of an ordinance is sufficient if it calls attention to the general subject of the legislation. It is not necessary that the title refer to details within the general subject, nor those which may be reasonably considered as appropriately incident thereto, and the title is sufficient if it is germane to the one controlling subject of the ordinance. The crucial test of sufficiency of title is generally found in the answer to the question: Does the title tend to mislead or deceive the people or the municipal board as to the purpose or effect of the legislation, or to conceal or obscure the same? If it does, then the ordinance is void; if not, it is valid.

Territory v. Dondero, 21 Haw. 19, 25 (Terr. 1912);[4] *accord* 1A Sutherland § 18:2 at 48-52 ("The general test is whether the title is uncertain, misleading, or deceptive to the average reader. . . . The title to a bill need only indicate the general contents of the act. The title cannot, however, be so general that it tends to obscure the contents of the act."); 1 Cooley at 297-300 ("The generality of a title is therefore no objection to it . . . . But the title must be such as to reasonably apprise the public of the interests that are or may be affected by the statute."); 26 Am. & Eng. Encyclopedia of Law at 582 (2d ed. 1904) ("But while generality is not objectionable so long as the subject of the legislation is fairly suggested, yet where the title is so very vague and general as not to furnish any intimation at all of the actual contents of the act, and is therefore calculated to mislead the legislature and the public, it will be declared unconstitutional.").

Keeping in mind the intent of the title requirement to apprise the public of proposed legislation, titles are unconstitutional if "too broad and amorphous." 1A Sutherland § 18:2 at 45; *see Jensen*, 40 Haw. at 608. "[T]he title must be such as to reasonably apprise the public of the interests that are or may be affected by the statute." *In re Goddard*, 35 Haw. 203, 208 (Terr. 1939) (citing 1 Cooley at 300); *Taomae*, 108 Hawai`i at 252, 118 P.3d at 1195 ("The titles of those bills provided the public with clear notice concerning the nature and context of the legislation and, thus, alerted the citizenry to the opportunity to legislatively comment and debate those bills in a meaningful way."). A title is thus too broad and misleading if it fails to put a reasonable person on inquiry notice if that person is interested in the subject. *Schwab*, 58 Haw. at 34, 564 P.2d at 141 (title constitutional if it "fairly indicates to the ordinary mind the general subject of the act"); 1A Sutherland § 18:2 at 48 ("All that is necessary is that anyone interested in or affected by the subject matter be put on inquiry"); 26 Am. & Eng. Encyclopedia of Law at 580-82 ("But the title must at least give a reasonable intimation of the subject dealt

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[4] Although *Dondero* concerned the title requirement in the City Charter, this Court has used the same standard for interpreting the Hawai`i Constitution. *E.g.*, *Villon v. Marriott Hotel Servs., Inc.*, 130 Hawai`i 130, 140 306 P.3d 175, 185 (2013) (citing *Dondero* for interpretation of the constitutional title requirement); *Schwab v. Ariyoshi*, 58 Haw. 25, 33-34, 564 P.2d 135, 140-41 (1977) (same).

with, and the courts do not hesitate to declare void an act whose title is misleading in that it does not express the real subject of the act so as to put the legislature and those persons who are to be affected thereby on inquiry into its contents.").

III. POINTS OF ERROR

1. Whether the three readings requirement—article III, section 15—of the Hawai`i Constitution requires that each chamber of the Legislature hold three new readings of proposed legislation after the Legislature removes a bill's content and replaces it with a proposal that is not germane to the intent of the original bill.

Error in the Record: Dkt. 26 at 227 (written order granting the State's motion for summary judgment), 229-30 (written order denying Appellants' cross-motion for summary judgment); Dkt. 20 [1/24/19 Tr.] at 46-50; Appendix.

Preservation of Error: Dkt. 24 at 167-71 (Appellant's cross-motion for summary judgment); Dkt. 26 at 89-93 (Appellants' reply memorandum in support of their cross-motion), 144-48, 150-52, 158 (Appellants' response to *amicus curiae* memorandum); Dkt. 20 at 3-4, 16-17, 19-23, 39, 41-42 [1/24/19 Tr.].

2. Whether legislation broadly titled as "relating to public safety" reasonably apprises the public of the interests that are or may be affected by the statute and otherwise complies with the subject in title requirement—article III, section 14—of the Hawai`i Constitution.

Error in the Record: Dkt. 26 at 227 (written order granting the State's motion for summary judgment), 229-30 (written order denying Appellants' cross-motion for summary judgment); Dkt 20 [1/24/19 Tr.] at 46-50; Appendix.

Preservation of Error: Dkt. 24 at 171-74 (Appellant's cross-motion for summary judgment); Dkt. 26 at 93-94 (Appellants' reply memorandum in support of their cross-motion), 143-44, 149-50, 155-58 (Appellants' response to *amicus curiae* memorandum); Dkt. 20 at 4-6, 28-33 [1/24/19 Tr.].

IV. THIS CASE MEETS THE STATUTORY QUALIFICATIONS FOR TRANSFER

The interpretation of constitutional limits on the legislative process in Hawai`i are a question of fundamental public importance. If the State may repeatedly amend bills with radical changes of purpose (one day, it is about prison inmates; the next

reading, fireworks; the next day, hurricane shelters), members of the public need to know to monitor every bill—regardless whether it affects them—because at any minute it could be amended to impact their interests. If legislative titles need not provide fair notice of the bill's contents, the public needs to know that titles simply can be ignored as irrelevant. While that begs the question why does the Hawai`i Constitution require these procedural complexities if they serve no purpose, this Court's definitive construction of the Hawai`i Constitution will provide much-needed guidance for the public and the State.

Moreover, this case presents novel legal questions. This Court addressed the three readings requirement in *Taomae*, but in the more limited context of bills proposing constitutional amendments. And this Court has never addressed a bill title as vague and unenlightening as "relating to public safety" because as the circuit court observed, "in earlier times that these bills and ordinances had extremely long and detailed titles." Dkt. 20 [1/24/19 Tr.] at 47-48.

In light of the impact on public awareness of legislation and participation in the legislative process, Petitioners seek clarity from this Court. The Hawai`i Constitution requires more than the chaotic free-for-all of unfettered amendments and misleadingly vague titles that the State seeks to defend in this case. The legal issues go to the heart of how our representative democracy works and have not been addressed by this Court. This case thus meets the statutory criteria for transfer.

CONCLUSION

The League of Women Voters of Honolulu and Common Cause respectfully request that the Hawai`i Supreme Court grant its application for transfer to address the fundamental and novel issues of public importance raised in this appeal.

DATED: Honolulu, Hawai`i, November 15, 2019.

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