NO. CAAP-19-0000372

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE, Plaintiffs-Appellants, vs STATE OF HAWAII, Defendant-Appellee.	)	CIVIL NO. 18-1-1376 APPEAL FROM THE FINAL JUDGMENT, filed April 3, 2019 FIRST CIRCUIT COURT HONORABLE GARY W.B. CHANG JUDGE

RECORD ON APPEAL
(PART 2 OF 2)

ROBERT BRIAN BLACK (7659)
LISA EMILY ENGEBRETSEN (10952)
CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST
700 Bishop St., Suite 1701
Honolulu, HI 96813
Telephone: (808) 531-4000

Attorneys for Plaintiffs-Appellants
LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE

CLAIRE E. CONNORS (7936)
Attorney General of Hawaii
PATRICIA OHARA (3124)
ROBYN B. CHUN (3661)
Deputy Attorneys General
Department of the Attorney General, State of Hawaii
425 Queen St.
Honolulu, HI 96813
Telephone: (808) 586-0618
and
CLAIRE E. CONNORS (7936)
Attorney General of Hawaii
CLYDE J. WADSWORTH (8495)
Solicitor General
KIMBERLY TSUMOTO GUIDRY (7813)
First Deputy Solictor General
Department of the Attorney General, State of Hawaii
425 Queen St.
Honolulu, HI 96813
Telephone: (808) 586-1500

Attorneys for Defendant-Appellee
STATE OF HAWAII

COLLEEN HANABUSA (2105)
3660 Waokanaka St.
Honolulu, HI 96817
Telephone: (808) 595-3388

Attorney for Amicus Curiae-Appellee
HAWAII STATE LEGISLATURE

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(To Record On Appeal - LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE,

Plaintiffs-Appellants,

vs

STATE OF HAWAII,

Defendant-Appellee.)

DESIGNATION TO RECORD ON APPEAL

The imaged records of Civil No. 18-1-1376, First Circuit Court, State of Hawaii, herein, contains all scanned images of the original documents (except where noted) entered of record in said matter.

Of Note:

1 The HAJIS Case Summary contains the: 1) minutes; 2) dockets; and links to all documents of record from this appealed case.

2 The "Court Appearance Summary," as referenced in the HAJIS Case Summary, contains the minutes of the record.

3 The "Document Summary," as referenced in the HAJIS Case Summary, contains the docket of the record.

4 The record has been scanned in .PDF format and optical character recognition (OCR) technology was applied. OCR search and find accuracy may be based upon scanning and OCR software available to the Clerk's Office at time of scanning.

~~FILING DATE: 11-27-2018 FILING TIME: 3:10 P.M. DOC NO: 00000000-00000000~~
~~MOTION FOR LEAVE TO FILE A MEMORANDUM OF BEHALF~~
~~OF THE HAWAII STATE LEGISLATURE AS AMICUS CURIAE~~
~~IN SUPPORT OF DEFT STATE OF HAWAII'S MOTION FOR~~
~~SUMMARY JUDGMENT FILED ON OCTOBER 9, 2018 & IN~~
~~OPPOSITION TO PLTFS CROSS-MOTION FOR SUMMARY~~
~~JUDGMENT FILED ON OCTOBER 25, 2018; MEMO/SUPP;~~
~~EXH A; N/H; C/S~~

FILING DATE: 12-06-2018 FILING TIME: 8:27 A.M. DOC NO: 00000000-00000000
DEFT STATE OF HAWAII'S JOINDER IN HAWAII STATE
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DUM ON BEHALF OF THE HAWAII STATE LEGISLATURE
AS AMICUS CURIEAE IN SUPPORT OF DEFT STATE OF
HAWAII'S MOTION FOR SUMMARY JUDMENT FILED ON
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2018; C/S

FILING DATE: 12-11-2018 FILING TIME: 11:24 A.M. DOC NO: 00000000-00000000
PLTFS OPPOSITION TO MOTION FOR LEAVE TO FILE
A MEMORANDUM ON BEHALF OF THE HAWAII STATE
LEGISLATURE AS AMICUS CURIAE & C/S

FILING DATE: 12-14-2018 FILING TIME: 3:43 P.M. DOC NO: 00000000-00000000
REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE A
MEMORANDUM OF BEHALF OF THE HAWAII STATE LEGISLA-
TURE AS AMICUS CURIAE IN SUPPORT OF DEFT STATE OF
HAWAIIS MOTION FOR SUMMARY JUDGMENT FILED ON
OCTOBER 9, 2018 & IN OPPOSITION TO PLTFS CROSS-
MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25
2018; DEC/C HANABUSA; EXH 1; C/S

FILING DATE: 12-14-2018 FILING TIME: 3:30 P.M. DOC NO: 00000000-00000000
DEFT STATE OF HAWAII'S REPLY TO PTLFS OPPOSITION
TO MOTION FOR LEAVE TO FILE A MEMORANDUM ON
BEHALF OF THE HAWAII STATE LEGISLATURE AS AMICUS
CURIAE; C/S

FILING DATE: 12-21-2018 FILING TIME: 3:46 P.M. DOC NO: 00000000-00000000
DEFT STAT OF HAWAII'S MEMORANDUM IN OPPOSITION
TO PLTFS' CROSS-MOTION FOR SUMMARY JUDGMENT FILED
ON 10/25/2018; DEC/R B CHUN, EXHS W-Y; C/S

FILING DATE: 12-27-2018 FILING TIME: 11:03 A.M. DOC NO: 00000000-00000000
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FILING DATE: 01-04-2019 FILING TIME: 1:59 P.M. DOC NO: 00000000-00000000
REPLY MEMORANDUM OF LAW IN SUPPORT OF PLTFS CROSS-MOTION FOR SUMMARY JUDGMENT; DEC/RE JOHNSON III; EXHS 24-28; DEC/N DAVLANTES & C/S

FILING DATE: 01-11-2019 FILING TIME: 11:53 A.M. DOC NO: 00000000-00000000
PLTFS RESPONSE TO MEMORANDUM OF THE HAWAII STATE LEGISLATURE AS AMICUS CURIAE; DEC/RB BLACK; EXH 29-34 & C/S

FILING DATE: 01-18-2019 FILING TIME: 1:24 P.M. DOC NO: 00000000-00000000
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FILING DATE: 03-15-2019 FILING TIME: 2:59 P.M. DOC NO: 00000000-00000000
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FILING DATE: 05-03-2019 FILING TIME: 6:35 A.M. DOC NO: 00000000-00000000
COPY OF NOTICE OF APPEAL; EXH 1; C/S FILED 5/2/19 (ICA CAAP-19-0000372)

FILING DATE: 05-03-2019 FILING TIME: 6:35 A.M. DOC NO: 00000000-00000000
COPY OF EXHIBIT 1 FILED 5/02/2019 (ICA CAAP-19-0000372)

FILING DATE: 05-03-2019 FILING TIME: 6:35 A.M. DOC NO: 00000000-00000000
COPY OF CERTIFICATE OF SERVICE FILED 5/02/2019 (ICA CAAP-19-0000372)

FILING DATE: 05-03-2019 FILING TIME: 6:35 A.M. DOC NO: 00000000-00000000
COPY OF CIVIL APPEAL DOCKETING STATEMENT FILED
5/02/2019 (ICA CAAP-19-0000372)

FILING DATE: 05-03-2019 FILING TIME: 6:35 A.M. DOC NO: 00000000-00000000
COPY OF EXHIBIT 1 FILED 05/02/2019
(ICA CAAP-19-0000372)

FILING DATE: 05-03-2019 FILING TIME: 6:35 A.M. DOC NO: 00000000-00000000
COPY OF CERTIFICATE OF SERVICE FILED 05/02/2019
(ICA CAAP-19-0000372)

FILING DATE: 05-14-2019 FILING TIME: 7:51 A.M. DOC NO: 00000000-00000000
COPY OF NOTICE OF APPEARANCE OF COUNSEL FILED MAY
13, 2019 (ICA CAAP-19-0000372)

RUSSELL A. SUZUKI 2084
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General,
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

v.

STATE OF HAWAI'I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

DEFENDANT STATE OF HAWAI'I'S **JOINDER** IN HAWAI'I STATE LEGISLATURE'S MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI'I STATE LEGISLATURE, AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI'I'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; CERTIFICATE OF SERVICE

Date: December 19, 2018
Time: 3:00 p.m.
Judge: Honorable Gary W.B. Chang

DEFENDANT STATE OF HAWAII'S
JOINDER IN HAWAI'I STATE LEGISLATURE'S MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI'I STATE LEGISLATURE, AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI'I'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

Defendant State of Hawai'i hereby joins the Hawai'i State Legislature's Motion for Leave to File a Memorandum on Behalf of the Hawai'i State Legislature, as *Amicus Curiae* in Support of Defendant State of Hawai'i'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 ("Motion for Leave"). For the reasons stated in the Motion for Leave, it is imperative that the Hawai'i State Legislature be permitted to address the issues raised by the Complaint filed herein on September 5, 2018.

DATED: Honolulu, Hawaii, November 29, 2018.

RUSSELL A. SUZUKI
Attorney General, State of Hawaii

PATRICIA OHARA
ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the forgoing document was duly served by U.S. Mail, postage prepaid, to 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

COLLEEN HANABUSA
3660 Waokanaka Street
Honolulu, Hawai'i 96817

Attorney for Hawaii State Legislature

DATED: Honolulu, Hawai'i, November 29, 2018.

PATRICIA OHARA
ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Defendant
STATE OF HAWAI'I

751006_1

PKN

ROBERT BRIAN BLACK 7659
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
brian@civilbeatlawcenter.org
Telephone: (808) 531-4000

Attorney for League of Women Voters of Honolulu and Common Cause

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE*; and CERTIFICATE OF SERVICE HEARING MOTION JUDGE: Honorable Gary W. B. Chang TRIAL DATE: HEARING DATE: December 19, 2018 HEARING TIME: 3:00 p.m.

PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE*

The Legislature—as the only branch of the State implicated in this lawsuit—is the sole client represented by the Attorney General (AG). There are no allegations in the Complaint that the Executive or Judicial Branches of the State engaged in unconstitutional conduct. The Legislature *is* the State for purposes of this case. But the Legislature ignores its existing ability as client to direct its legal representation and instead asks this Court to grant its motion for leave to file an *amicus curiae* brief. The same entity cannot concurrently be both a "friend of the court" and also a party. And,

as could be expected, the Legislature's proposed memorandum simply rehashes the arguments made by the AG, adding no new relevant legal analysis. In effect, the proposed amicus is nothing more than a futile attempt at political intimidation of this Court by the Legislature on a constitutional issue.[1] For these reasons, Plaintiffs League of Women Voters of Honolulu and Common Cause respectfully request that this Court deny the motion for leave.

I. THE LEGISLATURE'S MOTION FOR LEAVE FAILS RECOGNIZED STANDARDS FOR *AMICUS CURIAE* PARTICIPATION.

This Court has broad discretion to reject amicus briefs for any reason. *Cf.* HRAP Rule 28(g) ("An *amicus curiae* brief may be filed only by leave of the appellate court."); *Nat'l Org. for Women v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000) ("Whether to permit a nonparty to submit a brief, as amicus curiae, is, with immaterial exceptions, a matter of judicial grace."). To avoid unnecessarily increasing the cost of litigation for the parties and for the courts, recognized standards ensure that motions for leave are not "rote

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[1] In recent years, the Legislature has threatened the independence of the Judiciary with efforts to politicize the judicial reappointment and retention process and reduce judges' pension benefits. *E.g.*, S.B. 249 (2017); S.B. 328 (2017); S.B. 673 (2017); Brennan Center for Justice, *Legislative Assaults on State Courts – 2018* (Feb. 6, 2018), at https://www.brennancenter.org/analysis/legislative-assaults-state-courts-2018; Civil Beat, *House Legislators Clash Over Bill to Trim Judges' Pensions* (Apr. 11, 2017); Honolulu Star-Advertiser, *Protect Integrity of Judicial Selection* (Feb. 4, 2017); Civil Beat, *Ian Lind: Hawaii Lawmakers Needlessly Renew Assault on the Judiciary* (Jan. 26, 2017). The Legislature also has undermined the integrity of the courts by denying the Judiciary's budget requests based on the Legislature's criticism of court rulings.

> We also had some tension with the Judiciary. That was very healthy as well. They did some rulings that we thought was stepping into the legislative arena. They were trying to legislate from the bench. We control the purse strings. We said "no" to a lot of their money. They reversed some of their decisions. We gave them some money. So the tension worked.

Civil Beat, *Civil Café: Legislative Wrap-Up 2018 Panel Discussion*, at https://www.youtube.com/watch?v=uNP9r-Hc08I (May 2, 2018) (starting at 23:09) (remarks by Senate Majority Leader J. Kalani English). The Legislature should not be permitted to play political games with the constitutional rights of the people of Hawai`i. The Legislature as *amicus curiae* adds nothing of legal substance to this case.

permission" to file an *amicus curiae* memorandum. *Nat'l Org. for Women*, 223 F.3d at 617; *accord Taylor v. Roberts*, 475 So. 2d 150, 152 (Miss. 1985); *see* HRCP 1 ("[The Hawai`i Rules of Civil Procedure] shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.").

In general, leave to file an *amicus curiae* submission should be granted only where: (1) a party is inadequately represented; (2) the amicus party has a direct legal interest in another case that may be affected by the holding in the present case; or (3) the amicus party has unique information that can help the court in a way beyond what the parties are able to provide. *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997); *accord N. Sec. Co. v. United States*, 191 U.S. 555, 556 (1903); *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012); *Nat'l Org. for Women*, 223 F.3d at 617; *Taylor*, 475 So. 2d at 152; *see also, e.g., Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1177 (D. Nev. 1999) (rejecting proposed amicus filing by the United States); *Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 08-cv-1992 AJB (MDD), 2012 WL 849167, at *4-5 (S.D. Cal. Mar. 13, 2012); *Merritt v. McKenney*, No. C 13-01391 JSW, 2013 WL 4552672, at *4 (N.D. Cal. Aug. 27, 2013); *AmeriCare MedServices, Inc. v. City of Anaheim*, No. 8:16-cv-1703-JLS-AFMx, 2017 WL 1836354, at *1 n.3 (C.D. Cal. Mar. 28, 2017).

The Legislature does not meet any of the recognized criteria for allowing its participation as *amicus curiae*.

A. The Legislature Is Already Represented by the Attorney General and Should Not Be Permitted a Dual Role as *Amicus Curiae*.

Amicus curiae means "friend of the court", not friend of a party. *Ryan*, 125 F.3d at 1063. While the role of *amicus curiae* has evolved to become more partisan, there are limits. *Id.* By definition, *amicus curiae* is "[s]omeone who is *not a party* to a lawsuit." Black's Law Dictionary (10th ed. 2014) (emphasis added). Participation by *amicus curiae* "is generally afforded to a person who has *no right to appear in a suit*, but is allowed to introduce argument, authority or evidence to protect his interests." *Giammalvo v. Sunshine Min. Co.*, 644 A.2d 407, 410 (Del. 1994) (emphasis added) (rejecting amicus brief by a preferred shareholder in the appeal of a class action in which he was a class member because his interests were already represented by class counsel).

Here, the Legislature is the party defending this lawsuit, represented by the AG. The Legislature, as client of the AG in this lawsuit, has full authority to direct the nature of its legal representation. *See* HRPC 1.2 (counsel must abide by its client's decisions concerning the objectives of representation); *Chun v. Bd. of Trustees of Employees' Ret. Sys.*, 87 Hawai`i 152, 174–75, 952 P.2d 1215, 1237–38 (1998) ("Once the state officer [or instrumentality] whom the Attorney General represents has determined the course he [or she] desires the litigation to take, it is the duty of the Attorney General to zealously advocate the public policy positions of h[er] client in pleadings, in negotiations, and in the courtroom and to avoid even the appearance of impropriety by appearing to be in conflict with the desires of h[er] client."); *accord In re Water Use Permit Applications*, 94 Hawai`i 97, 126, 9 P.3d 409, 438 (2000). And this case does not present circumstances where the Legislature's interests are at odds with another state agency or where the Legislature otherwise lacks full control of its legal representation.

To explain its request for *amicus curiae* status, the Legislature offers only an ambiguous statement: "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." Mot. For Leave to File a Mem. on Behalf of the Hawai`i State Legislature as *Amicus Curiae* [Amicus Mot.] at 2. But the Legislature does not clarify what instrumentality or officer of the State it believes the AG purports to represent if not the Legislature itself or how its interests diverge from the AG's representation.

The Legislature's request for dual roles—as the client defending this lawsuit and also *amicus curiae*—is unprecedented. The Legislature cites three cases that granted the Legislature leave to file memoranda as *amicus curiae*, but none of those cases already directly involved the Legislature as a party. Mem. in Supp. of Mot. at 1-2. In *Nelson*, the plaintiffs sued the Hawaiian Homes Commission, the chair and members of the commission individually, the Department of Hawaiian Homelands, the State Director of Finance, and the State of Hawai`i. *Nelson v. Hawaiian Homes Comm'n*, 141 Hawai`i 411, 412 P.3d 917 (2018). In *Sierra Club*, the defendants were the Department of Transportation, its Director, and the Director of Harbors. *Sierra Club v. Dep't of Transp.*,

No. 29035, 2009 WL 1567327 (Haw. May 13, 2009). *Taomae* was an original proceeding in the Hawai`i Supreme Court with only the Governor and Chief Elections Officers as defendants.[2] *Taomae v. Lingle*, 108 Hawai`i 245, 118 P.3d 1188 (2005).

Furthermore, *Nelson v. Hawaiian Homes Commission* – the only cited case in which a *circuit court* permitted amicus participation by the Legislature – involved an issue of ongoing legislative appropriations. *Nelson v. Hawaiian Homes Comm'n*, Civ. No. 07-1-1663-08, 2016 WL 11201231 (Haw. Cir. Ct. Apr. 18, 2016). The circuit court emphasized that the proposed amicus brought to the court's attention "a matter of public importance." *Id.* Unlike here, that issue – the Legislature's appropriations power – directly impacted the Legislature's constitutional authority. Also, different State parties in the *Nelson* case were at odds with each other, creating conflicting State interests that do not exist here.[3] *Id.* at 416-17, 412 P.3d at 922-23. In fact, the Legislature did not seek to submit an amicus filing in *Nelson* until those conflicts among State parties became an issue on remand from the Hawai`i Supreme Court; when the case was first presented to the Hawai`i Supreme Court, the Legislature had not filed an amicus, and all the State defendants were represented collectively by the AG. *See Nelson v. Hawaiian Homes Comm'n*, 127 Hawai`i 185, 277 P.3d 279 (2012).

These cases do not support the Legislature's purported special need for amicus participation here in addition to its existing representation by the AG. "There is something to be said for asking the state to speak in litigation with one voice." *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 546 (7th Cir. 2003). Accordingly, the Court should deny amicus participation on this basis alone.

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[2] The Legislature also cites *Hanabusa v. Lingle*. Mem. in Supp. of Mot. at 2. But that case concerned legislator standing as a party for a writ of mandamus, not submission of an amicus filing. 119 Hawai`i 341, 347-48, 198 P.3d 604, 610-11 (2008).

[3] Reflecting those conflicts of interest, counsel for the Legislature in the *Nelson* case was appointed as special deputy attorney general. *See, e.g.*, Brief of the Hawai`i State Legislature as *Amicus Curiae* (Haw. App. Feb. 27, 2017). Appointment as special deputy attorney general is permitted when the Attorney General declines representation based on conflicts of interest. HRS § 28-8.3(a)(2).

B. The Legislature Does Not Have a Special Legal Interest—Distinct from its Current Role as the Defendant State of Hawai`i—in the Outcome.

Political interests do not justify amicus participation. *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 518 (7th Cir. 2004).

> The [Illinois Chamber of Commerce] does not have "an interest relating to the property or transaction which is the subject of the action"; its concern is not a *legal* "interest" . . . but a political or programmatic one: the Chamber favors more business and less environmental regulation. That does not justify intervention. Indeed, it does not necessarily justify even a filing as amicus curiae. Courts value submissions not to see how the interest groups line up, but to learn about facts and legal perspectives that the litigants have not adequately developed.

Id.; accord Voices for Choices, 339 F.3d at 546 (the "viewpoint of state officials" on a constitutional challenge to legislation did not justify amicus participation where their position was no different from the represented party).

In its proposed amicus, the Legislature asserts an interest in "protect[ing] its constitutional prerogative of determining its own rules of proceeding to enact laws of the State" and that the "constitution protects the Legislature's rules, authorities, along with its custom and practices." Amicus Mot., Ex. A at 3. But, as already briefed among the parties on the merits, the Legislature does not have any constitutional prerogative to adopt rules inconsistent with the constitution. Pls. Mem. at 12-13. If the Legislature's current procedures writ large or as applied to other bills are unconstitutional—issues that are not presented to this Court—that does not confer on the Legislature any special legal interest justifying amicus participation.

The Legislature's purported interest here is indistinguishable from the claims in *Voices for Choices*. In that case, legislators sought to file an amicus—in a case where the state attorney general already represented a party—because the case concerned the constitutionality of a state statute. 339 F.3d 542.

> Insofar as the district court in the decision that has been appealed placed limitations on what a state legislature may do, not only in this case but presumably in any like case that should arise in the future, it might seem that the leaders of the legislature have a direct interest in other cases, one of the situations in which amicus participation is appropriate. But that argument would imply that any state legislator should have a right to file

> an amicus curiae brief when the constitutionality of state legislation is challenged—an extreme position that could invite a blizzard of briefs.

Id. at 546. The court explained that judicial processes differ from the interest politics of the legislative process:

> All this said, comity might seem to be a compelling reason to allow the filing of an amicus curiae brief by the leaders of a state legislature in an appeal concerning the validity of a statute of their state . . . . But in my view the argument from comity bespeaks a misunderstanding of the difference between the legislative and the judicial processes. The legislative process is democratic, and so legislators have an entirely legitimate interest in determining how interest groups and influential constituents view a proposed statute. Statutes pass because there is more political muscle behind than in front of them, not because they are "wise" or "just," though they may be. The judicial process, in contrast, though "political" in a sense when judges are asked to decide cases that conventional legal materials, such as statutory and constitutional texts and binding precedent, leave undetermined, so that some mixture of judges' values, temperament, ideology, experiences, and even emotions is likely to determine the outcome, is not democratic in the sense of basing decision on the voting or campaign-financing power of constituents and interest groups. ***An appeal should therefore not resemble a congressional hearing.***

Id. at 544-45 (emphasis added).

The Legislature does not have a distinct legal interest that should be recognized by this Court as separate from its role as the Defendant in this case.

C. The Legislature's Proposed Amicus Brief Rehashes the AG's Arguments.

The Legislature's brief—mostly duplicative of legal arguments already made by the AG—offers no special legal analysis in its brief. Courts repeatedly caution against accepting such amicus briefs:

> The judges of this court . . . will deny permission to file an amicus brief that essentially duplicates a party's brief. The reasons for the policy are several: judges have heavy caseloads and therefore need to minimize extraneous reading; amicus briefs, often solicited by parties, may be used to make an end run around court-imposed limitations on the length of parties' briefs; the time and other resources required for the preparation and study of, and response to, amicus briefs drive up the cost of litigation;

> and the filing of an amicus brief is often an attempt to inject interest group politics into the federal appeals process.

Id. at 544; *accord Glassroth v. Moore*, 347 F.3d 916, 919 (11th Cir. 2003); *United States v. Ackerman*, 831 F.3d 1292, 1299 (10th Cir. 2016); *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381, 385, 813 N.E.2d 476, 480 (2004).

Again, the factually similar discussion from *Voices for Choices* provides relevant guidance:

> While the amicus briefs sought to be filed in this case contain a few additional citations not found in the parties' briefs and slightly more analysis on some points, essentially they cover the same ground the appellants, in whose support they wish to file, do. (The state legislators' brief is a mere seven and a half pages long.) This is not a case in which a party is inadequately represented, or the would-be amici have a direct interest in another case that may be materially affected by a decision in this one, or they are articulating a distinctive perspective or presenting specific information, ideas, arguments, etc. that go beyond what the parties whom the amici are supporting have been able to provide. ***Essentially, the proposed amicus briefs merely announce the "vote" of the amici on the decision of the appeal.*** But, as I have been at pains to emphasize in contrasting the legislative and judicial processes, ***they have no vote.***

339 F.3d at 545 (emphasis added).

Moreover, the proposed amicus filing conflates issues, serving only to confuse the record and the law. In its motion for leave, the Legislature argues that it seeks a determination that the constitutional challenges to Act 84 are non-justiciable as a violation of the separation of powers doctrine.[4] Amicus Mot. at 2 ("That is to say, for this Court to even address the issue raised, it must first find it to be justiciable."). But the proposed amicus—under its purported analysis for separation of powers—presents arguments focused primarily on the *merits* of Plaintiffs' claims. *See, e.g., Hussey v. Say*, 139 Hawai`i 181, 188, 384 P.3d 1282, 1289 (2016) (non-justiciable claims are dismissed

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[4] Representing the Legislature's interests, the State, of course, also focuses the most attention on the justiciability argument in its motion for summary judgment. Def. Mem. at 9-14. But as Plaintiffs pointed out in opposing summary judgment, the justiciability argument is frivolous in light of more than a century of precedent from the Hawai`i Supreme Court adjudicating similar constitutional claims. Pls. Mem. at 12-13.

without addressing the merits). If the Legislature does not understand its own arguments, it certainly cannot aid this Court in resolving the pending dispute.

The AG—already representing the Legislature—adequately and extensively addressed the separation of powers issue that the Legislature seeks to brief again. And briefing is not complete, so the AG will have a further opportunity to present arguments on this issue in opposing Plaintiffs' cross-motion for summary judgment. The Legislature's proffered amicus brief repeats the AG's arguments without offering any novel information helpful to the court. The amicus brief is merely an attempt to exert political influence on this Court.

II. THE LEGISLATURE'S FRIVOLOUS SEPARATION OF POWERS ARGUMENT IS A THINLY VEILED ATTACK ON JUDICIAL INTEGRITY.

Reflected in the Legislature's posturing about the separation of power doctrine, the Legislature's plainly stated motivation is to demand that the Judiciary not "interfere" with the status quo—regardless whether that status quo is constitutional. Amicus Mot. at 2. The Legislature seeks to pressure this Court to *ignore* the constitution rather than interpret it.

In blatant disregard for the Judiciary's constitutional role in the separation of powers, the Legislature describes judicial review of a constitutional question as *interference* that the Legislature must oppose: "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." Amicus Mot., Ex. A at 2. But as held in numerous cases, the Judiciary, not the Legislature, is the "ultimate interpreter" of the constitution. Pls. Mem. at 12-13 (discussing over a century of similar challenges being held justiciable).

Yet, the Legislature argues that it has unilateral discretion over the process for adopting legislation, irrespective of the numerous limitations imposed by the Hawai`i Constitution, only two of which are at issue in this case. For example, the proposed amicus states:

> [The constitution] empowers each house with rights of self-governance and the determination of its process to adopt legislation. Each house enacts its own rules and procedures and *need only agree on deadlines* where

> the constitution requires them to do so. Thus the Legislature has a strong interest in protecting its governance and rules and procedures as they adopted in compliance with the constitution.

Amicus Mot., Ex. A at 2 (emphasis added).

The Legislature does not need "protection" from the procedural guarantees in the Hawai`i Constitution that ensure the people of Hawai`i understand and have the opportunity to comment on proposed legislation before it becomes law. While it is surprising that the Legislative Branch has chosen to defend a practice that keeps its citizens in the dark, these procedural guarantees have been enshrined in Hawai`i constitutions for over a century specifically to provide a check-and-balance against legislatures overstepping their authority. That is why it is all the more important that the Judiciary require the Legislature to respect courts' independence and integrity to resolve these critical constitutional questions without undue political pressure.

As Alexander Hamilton observed:

> [I]t proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches . . . .
>
> . . .
>
> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.
>
> If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were

> designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Federalist No. 78.

> And as more succinctly explained by Chief Justice Richardson:
>
> [I]n resolving disputes, courts interpret and develop law and act as a check on the other branches of government. In order to effectively perform these functions, the judiciary must be free from external pressures and influences. Only an independent judiciary can resolve disputes impartially and render decisions that will be accepted by rival parties, particularly if one of those parties is another branch of government.

William S. Richardson, *Judicial Independence: The Hawaii Experience*, 2 Univ. of Haw. L. Rev. 1, 4 (1979).

There is no substance to the Legislature's arguments. Its motion, at essence, functions as a barely veiled threat to the Court not to interfere.

III. NOTHING SUGGESTS THE LEGISLATURE AS A BODY AUTHORIZED THE AMICUS SUBMISSION.

Counsel has provided no evidence that the Legislature authorized this amicus filing. The Legislature convenes every third Wednesday in January for a period of sixty days; it has not been in session to vote on a resolution in support of this amicus filing. According to Rule 2.3 of the Rules of the House of Representatives, the Speaker of the House may file legal action if 15 days notice is given to all House members.[5] The motion for leave is silent about who authorized this legal action, whether any notice has been provided to the members of the Legislature, or whether a majority is in favor of it.

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[5] The Senate Rules do not address the filing of legal action.

While perspectives of members of the Legislature are irrelevant to this Court's consideration regardless, the Court should note that the authority for filing this amicus motion is dubious.

IV. PLAINTIFFS MUST BE PERMITTED AN OPPORTUNITY TO RESPOND TO ANY PERMITTED *AMICUS CURIAE* FILING.

As noted, the proposed *amicus curiae* filing confuses several issues. If, contrary to the judicial guidance outlined above, this Court is inclined to grant the Legislature's motion for leave, Plaintiffs must be permitted a separate opportunity to address the Legislature's analysis. *See* HRAP 28(g) ("The order granting leave shall fix the time for filing the *amicus curiae* brief and any response thereto.").

Moreover, the Legislature's role as amicus must be limited in scope. The Legislature has not moved to intervene, so it should not be granted equal status as a party.[6] *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982) ("Courts have rarely given party prerogatives to those not formal parties. A petition to intervene and its express or tacit grant are prerequisites to this treatment."); *United States v. State of Mich.*, 940 F.2d 143, 164 (6th Cir. 1991) (district court's "creation of this legal mutant characterized as 'litigating amicus curiae' . . . if accorded precedential viability, will implicate and erode the future core stability of American adversary jurisprudence as we know it today"). The Legislature has moved solely for authority to file its proposed memorandum of law. Amicus Mot. at 2 ("Thus, the Legislature respectfully requests leave of this Court to file the Amicus Brief as attached as Exhibit 'A,' hereto."). Thus, there is no basis for this Court to authorize any further participation from the Legislature without a further motion for leave. *E.g.*, Docket, *Nelson v. Hawaiian Homes Comm'n*, Civ. No. 07-1-1663-08 JHC (reflecting different motions for leave filed by the Legislature every time it sought to submit a filing).

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[6] Plaintiffs' counsel has had another matter in which an initially unopposed government amicus continually sought to be involved in every aspect of a case and go beyond the initial authority conferred in a motion for leave, causing practical issues and procedural delays. The lesson being that it is critical to define the role of amicus at the outset.

Specifically, the Legislature should not be permitted to file a "reply" to any response filed by the parties to the amicus filing. The Legislature has no burden of proof in this case, and it would be fundamentally unfair to Plaintiffs to permit an amicus the "last word"—to which the parties have no effective opportunity to respond. And the appellate model that should guide this Court does not provide for an amicus reply. HRAP 28(g).

And the Legislature should not be permitted to prolong and muddle the parties' oral argument on the merits of the motions for summary judgment by rearguing the State's position. The Legislature is not presenting any unique perspective on this case that is not covered in the State's arguments. Permitting the Legislature to appear and argue at the hearing only provides an opportunity for grandstanding by an amicus who seeks to exert improper political pressure on the Court. Here, this case is distinguishable from *Nelson*—one of the few cases that permitted oral argument by an amicus—because *Nelson* on remand involved conflicting interests among State instrumentalities. The docket in the second appeal shows that the State expressly moved to permit the Legislature share its oral argument time, resulting in the unusual situation where the State defendants and the Legislature shared time while the plaintiffs and the State Department of Hawaiian Home Lands shared time. There are no comparable internal State conflicts here, nor any motion for leave to argue at the hearing.

If the Court permits an amicus filing, the Legislature's involvement ends with the filing. The parties must be permitted the opportunity to file a response to the amicus filing, but the Legislature is not entitled to a "reply" or the opportunity to argue at the merits hearing.

CONCLUSION

Plaintiffs respectfully requests that this Court deny the Hawai`i State Legislature leave to file a memorandum as *amicus curiae*.

DATED: Honolulu, Hawai`i, December 11, 2018

ROBERT BRIAN BLACK
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
Tel. (808) 531-4000
brian@civilbeatlawcenter.org
Attorney for League of Women Voters of Honolulu and Common Cause

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, R. Brian Black, certify that on December 11, 2018, I will serve a copy of the foregoing Plaintiffs' Opposition to Motion for Leave to File a Memorandum on Behalf of the Hawai`i State Legislature as *Amicus Curiae* on the following parties by U.S. mail, postage prepaid:

Robyn B. Chun
Department of the Attorney General
425 Queen Street
Honolulu, Hawai`i 96813
Attorneys for Defendant State of Hawai`i

Colleen Hanabusa
3660 Waokanaka Street
Honolulu, Hawai`i 96817
Attorney for Hawai`i State Legislature

DATED: Honolulu, Hawai`i, December 11, 2018

ROBERT BRIAN BLACK
Attorney for League of Women Voters of Honolulu and Common Cause

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

Attorney for HAWAI`I STATE LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAI`I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE A MEMORANDUM OF BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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; DECLARATION OF COLLEEN HANABUSA; EXHIBIT "1"; CERTIFICATE OF SERVICE

HEARING:
Date: December 19, 2018
Time: 3:00 PM
Judge: The Honorable Gary W. B. Chang

Trial Date: None

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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

Plaintiffs' Memorandum in Opposition to the HAWAI`I STATE LEGISLATURES' motion for leave to file a memorandum as *Amicus Curiae* (hereinafter "Plaintiffs' Opp"), begins with the perplexing statement that their Complaint does not allege that the Executive Branch of the State "engaged in unconstitutional conduct." (Plaintiffs' Opp at 1). Plaintiffs so state to argue that only the Legislature is implicated as a party to this action. Plaintiffs fail or refuse to recognize that their Complaint challenges Act 84 which became law on July 5, 2018 because of the Executive Branch. For any bill to become law, it requires the concurrence of the Governor. Section 16, article III of the ***Constitution.*** A challenge to Act 84 (2018) is not only against the Legislature but also implicates the Governor and his departments.[1]

It is apparent that the Plaintiffs do not want the Legislature to be before this Court or any court. They refuse to recognize that the Legislature is a co-equal branch of the State and has a Constitutional mandate and responsibility to protect its functions. The Legislature in moving for leave to file a memorandum as a friend of the court does so because it believes it can best assist the Court understanding the process which is being challenged.[2]

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[1] At the very minimum the Office of the Attorney General has permitted SB 2858 to become law by finding it constitutional. Once law, the potentially affected departments, such as public safety, education, accounting and general services and budget and finance could be "parties" as well.

[2] The Legislature takes issue with the allegations by the Plaintiffs that "the proposed amicus is nothing more than a futile attempt at political intimidation of this Court." (Plaintiffs' Opp at 2). In their footnote 1, Plaintiffs cite to Senate Majority Leader J. Kalani English's statements made at Civil Beat's Civil Café to convince this Court to deny the Legislature's motion for leave. The intimidation appears to be by the Plaintiffs against the Legislature for exercising its co-equal status in the State. The Hawai`i Supreme Court in ***Taomae v. Lingle***, 108 Hawai`i 245, 254, 118 P.3d ,1188, 1197 (2005) was very clear in its decision that the holding was limited to Article XVII and was not to be construed as interfering with the Legislature's Article III authorities. In any event, I do not believe that this Court would be politically intimidated.

Plaintiffs raise four major arguments in opposition to the Legislature's Amicus Motion. Each will be addressed herein.

Plaintiffs' First Argument alleges that the Legislature fails to meet the "recognized standards" for participation as an amicus. It is undisputed that the granting of leave to file an amicus brief in this jurisdiction is solely within the discretion of this Court. The Legislature identified instances where the Circuit Court and the Hawai'i Supreme Court has granted it leave. To the best of its knowledge, the Legislature has not been denied leave. Moreover, contrary to what Plaintiffs would like to argue, the Legislature has not abused requesting the filing of Amicus briefs. There are no recognized standards in our court rules or case law except that leave must be sought. Plaintiffs in their opposition to the Legislature cites to the case of ***Nat'l Org. for Women v. Scheidler,*** 223 F.3d 615, 616 (7th Cir. 2000) and other case authorities which will be referred to Judge Posner's progeny of cases.[3] (Plaintiffs Opp at 2-3). Plaintiffs propose that this Court adopt the standards of the Seventh Circuit Court of Appeals to determine whether leave should be granted. Though Judge Posner freely granted leave prior to his decision in ***Ryan v. Commodity Futures Trading Comm'n***, 125 F.3d 1062, 1063 (7th Cir. 1997), he implemented the criteria because of the time he and his colleagues spent reading these briefs; the quality of the briefs and the additional cost to the litigants to respond to the briefs. Judge Posner did note that in the Federal Appellate rules, an argument must be made as to why the filing is desirable. ***Id.*** It is important to note that there is no such requirement in Hawai'i's Court Rules. Notwithstanding, Judge Posner set forth three criteria, the Legislature contends that

[3] Judge Posner may have first used the phrase "judicial grace" to describe the discretion of the Court in granting leave to file an amicus brief.

though not applicable, it could meet Judge Posner's third criteria which is that it has "unique information" that can assist this Court way beyond what he parties can provide.[4]

Judge Posner was not the first to establish criteria which Plaintiffs now seek this Court to adopt. Judge Prather in ***Taylor v. Roberts,*** 475 So.2d 150, 152-153 (Miss. 1985) set forth four criteria. Judge Prather as a state court judge, gave deference to the State of Mississippi and its Attorney General as an exemption to his criteria. As with ***Ryan,*** there is a criteria which can be met by the Legislature; that is, there exists substantial legitimate interest which will likely be affected by the outcome of the case and the interest is not adequately protected by the parties.

None of the cases cited by Plaintiffs were of state courts denying their legislatures' motion for leave to file an amicus. The cases cited were individuals or entities advocating for one party or the other. Plaintiffs do rely heavily on yet another Judge Posner case, ***Voices for Choices v. Ill. Bell Tel. Co.,*** 339 F.3d 542, 543-544 (7th Cir. 2003) as an example of state legislators being denied filing an amicus brief and by analogy why the Hawai`i Legislature should also be denied. In ***Voices***, the Illinois Legislators' motion for leave to file an amicus brief was denied based on Judge Posner's belief that providing the vote count on the legislation did not meet any of the Seventh Circuit's criteria. It is important to note that the Illinois Legislators are filing in the federal court and not as a co-equal branch of a state government. The Seventh Circuit need not concede any special position to the Illinois Legislators or Legislature.

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[4] The review of the string citation by Plaintiffs in support of Judge Posner are for most part either written by him or cases which have cited ***Ryan*** as an authority. The case which appears to be incorrectly listed is ***AmeriCare MedServies, Inc. v. City of Anaheim,*** 2017 WL 1836354 (C.D. Cal. 2017).

The Plaintiffs had three subparts to their first argument. Plaintiffs' Subpart A argues that the Legislature is already represented by the Attorney General and should not be permitted a dual role. Plaintiffs allege that the Legislature's participation would violate Judge Posner's first criteria which is that leave should not be granted to someone who is a party.

The Legislature points to the fact that both parties, the State of Hawai'i and Plaintiffs have filed motion for and cross-motion for summary judgment. Both parties have defined this Complaint as pertaining to Act 84 and only Act 84. The Legislature believes that what is being challenged is its process as to how a bill is introduced and ultimately becomes law. Act 84 is just an innocuous convenient vehicle for their challenge. If, in fact, the Legislature is correct, that the challenge is more than Act 84, then why did Plaintiffs choose Act 84; and what is the injury which Plaintiffs have suffered as a result of Act 84. The Legislature is concerned about *res judicata* and/or collateral estoppel arguments that may be raised as to other bills which have become Acts. The Legislature raised in footnote 5 of its proposed Amicus Brief the number of Acts which might be challenged under Section 14, article III. As well in footnote 14, the Legislature questions whether the provisions of Section 15, article III will be raised to challenge the much needed flood relief for East Oahu and Kauai. The Legislature contends that this challenge to Act 84 has potentially major implications for its self-governance and its legislative process.

It is in this Subpart A to Plaintiffs' first argument that they take issue with the examples of the cases in which the Legislature were permitted to file their amicus briefs. Plaintiffs attempt to distinguish the cases based upon who was sued and argue it was not simply the State of Hawai'i as they have conveniently named as the defendant. Plaintiffs are incorrect to believe drafting the pleading so there is only one defendant, to then argue Legislature is the

true party will justify the denial of the Legislature's request to file amicus brief. Their arguments do not outweigh the examples of when the Legislature was permitted leave to file amicus briefs.

Contrary to what Plaintiffs allege at 4-5 of their Opposition, the cases of ***Nelson v. Hawaiian Homes Commission,*** (Civil No. 07-1-1663-08 JHC) where the Legislature was granted leave to file two amicus briefs, ***Taomae v. Lingle,*** 108 Hawai`i 245, 118 P.3d 1188 (2005) and ***Sierra Club v. Dep't of Transportation,*** No. 29035, 2009 WL 1567327 (May 13, 2007) (***"Superferry"***), were challenges to the acts of the Legislature and alleged violations of the ***Constitution***. Ironically, Plaintiffs opening argument that the Legislature is the only branch implicated is probably true in ***Taomae*** in that the Governor cannot veto a Constitutional Amendment. The Hawai`i Supreme Court granted leave to file an Amicus brief to the Legislature in ***Taomae***.

Plaintiffs are candid in their statement that the State of Hawai`i, in this case the Executive and the Legislative Branches should speak with one voice. (Plaintiffs Opp at 5). The Legislature will speak with its own voice on its constitutionally authorized process.

Plaintiffs' Subpart B of their first argument alleges that the Legislature does not have a special legal interest. Interestingly, Plaintiffs do state at 6 that "[i]f the Legislature's current procedures writ large or as applied to other bills are unconstitutional-issues that are not presented to this court-this does not confer on the Legislature an special legal interest justifying amicus participation." This is criteria four in ***Taylor*** which is a substantial legal interest that will be affected by the outcome.[5] As stated above, the quoted statement by Plaintiffs makes more

[5] The Legislature does not adopt the criteria as proposed by Plaintiffs. The Legislature contends that whether it is permitted leave to file an Amicus brief is within the Court's discretion. However, it raises Plaintiffs' own authorities to show how critical the Legislature's participation is in this matter.

curious as to why Plaintiffs' challenged Act 84 and again, more importantly, what is the injury they suffer. If it is their attempt to challenge the "current procedure . . . as applied to other bills are unconstitutional," this should definitely confer a special legal interest "justifying amicus participation."

Plaintiffs rely upon ***Voices*** which is not analogous to what we have here, a State Legislature and a State Court. Plaintiffs end with the citation, highlighted for emphasis, "[a]n appeal should therefore not resemble a congressional hearing." There is nothing in the Legislature's proposed amicus brief which should give this Court any concern that this brief resembles a congressional hearing.[6] (Plaintiffs Opp at 7).

Plaintiffs' Subpart C of their first argument claims that the Legislature's arguments rehashes the State of Hawai`i's in its Memorandum in Support and Reply Memorandum in support of its Motion for Summary Judgment. Plaintiffs again rely on Judge Posner in ***Voices*** for the position that all the Illinois Legislators added was a vote count. This is Plaintiffs attempt to say that the Legislature's proposed amicus brief is also useless to this Court. The Legislature believes that when this Court reviews the arguments that it raised in its proposed amicus brief and compare to that which the Attorney General's office filed, the Court will find the Legislatures proposed amicus brief contains extensive discussions of the Constitutional

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However, it raises Plaintiffs' own authorities to show how critical the Legislature's participation is in this matter.

[6] The Federal District Court of New Jersey was faced with a request by a Leadership Group of the United States House of Representative for leave to file an amicus brief in the summary judgment motion of the Defendant in ***Yip v. Pagano***, 606 F. Supp. 1566, 1567-1569 (D.N.J. 1985). The Congressional group was permitted to do so because it was viewed as "useful." The issue was Defendant Pagano's opening statement to the House Subcommittee on Crime where he made statements about Hon Yip and crime in the casinos. The issue was immunity in testifying before Congress.

Convention Debates which focus on Section 15, article III and how the Framers viewed three readings of a bill; the significance of the major amendment in the 1968 Constitutional Convention on the 24 (now 48) hour layover of final bills; the significance of the broad titles of Acts; how a ruling in favor of the Plaintiffs in this action may implicate other pieces of legislation; the internal rules of the two Houses and their adoption of ***Mason's Manual of Legislative Procedure***. The Legislature contends that the information it is providing which, in all due respect, differs from that provided by the Attorney General, must be troubling to the Plaintiffs and possibly dispositive of their case for them to object so strenuously.

Plaintiffs' Second Argument is the allegation that the Legislature's desire to preserve the separation of powers is a veiled attack on judicial integrity. This is a troubling allegation against the Legislature for performing its Constitutional responsibilities. Moreover, it is unclear as to how a motion for leave to file an amicus brief is a threat on judicial integrity. The Legislature contends that if there is a veiled threat in this matter, it is Plaintiffs implying that the decision on Act 84, an otherwise innocuous bill, can serve to challenge the constitutionality of other Acts passed. The Legislature needs an independent judiciary. The Legislature wants a judiciary that will not be manipulated to interfere with the independence of its co-equal branch of the State, the Legislature.

Plaintiffs' Third Argument goes to the authority of the Hawai`i State Legislature to file this action. Plaintiffs argument is similar to that raised by plaintiffs in the ***Nelson*** case. It is important to note that Judge Castagnetti did grant leave, twice, to the Hawai`i State Legislature.

Rule 2.3 of the House of Representatives was met with the appropriate notice of Scott K. Saiki, Speaker of the House of Representative. (A copy of the Notice is attached hereto

as Exhibit "1." Declaration of Colleen Hanabusa). Speaker Saiki notified all members of the House of Representatives of his intent to authorize legal action in this matter. The Memorandum is dated November 5, 2018. The Legislature's Motion was filed on November 27, 2018; 22 days after notification. There is no comparable requirement in the Rules of the Senate.

In addition, HR 229, "AUTHORIIZNG AND EMPOWERING THE SPEAKER TO PERFORM AND CARRYOUT ANY OFFICIAL LEGISLATIVE BUSINESS DURING THE INTERIM BETWEEN THE 2018 AND 2019 REGULR SESSIONS" was enacted and passed on May 3, 2018. Likewise, SR 144, "REGARDING COMPLETION OF THE WORK OF THE TWENTY-NINTH LEGISLATURE, REGULAR SESSION OF 2018, SUBSEQUENT TO THE ADJOURNMENT THEREOF," was enacted and passed on May 3, 2018. These Resolutions empower the Speaker and the Senate President to proceed with this action.

Plaintiffs' Fourth Argument is again an attempt to adopt Judge Posner "to speak with one voice;" meaning the Legislature has no voice. The scheduling conference held on December 5, 2018 is dispositive of this argument. The Court ruled that **IF** the Legislature is permitted to file an amicus brief, Plaintiffs and Defendant will have the opportunity in 20 pages to respond. The Legislature would then have a 10 page reply memo. Although I do not recall an objection to the request to file a Reply, Plaintiffs now object. It was understood that the right to participate at argument was reserved by this Court for ruling at the December 19, 2018 hearing, along with the ruling on the Legislatures' motion to file a memorandum as *Amicus* Curiae.

The Legislature is well aware that leave to file and its participation is discretionary on the part of this Court.

For the reasons stated above, the HAWAI'I STATE LEGISLATURE respectfully request that this Court grants its Motion for Leave to file a Memorandum as *Amicus Curiae* in

support of the Defendant State of Hawai'i'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. In addition, the HAWAI'I STATE LEGISLATURE, respectfully request that this Court grant its oral motion to participate and present arguments at the hearing on said motions presently scheduled for January 24, 2019 at 10 AM.

DATED: Honolulu, Hawai'i, December 14, 2018.

COLLEEN HANABUSA

Attorney for HAWAI'I STATE LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC **DECLARATION OF COLLEEN HANABUSA; EXHIBIT "1"** Judge: The Honorable Gary W. B. Chang Trial Date: None

DECLARATION OF COLLEEN HANABUSA

I, COLLEEN HANABUSA, hereby declare pursuant to Rule 7(g), Rules of the Circuit Court of the State of Hawai`i that:

1. I am an attorney duly licensed in the State of Hawai`i; and I am counsel for Movant, the Hawai`i State Legislature.

2. I make this declaration based on my personal knowledge and am competent to testify as to matters set forth herein.

3. Attached hereto as Exhibit "1" is a true and correct copy of a Memorandum sent to all Members of the House of Representatives from Scott K. Saiki, Speaker of the House notifying members of his intent to authorize legal action in order to file an amicus curiae brief in *League of Women Voters of Honolulu and Common Cause v. State of Hawai`i*, Civil NO. 18-1-1376-09 GWBC.

I, COLLEEN HANBUSA, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, December 14, 2018.

COLLEEN HANABUSA

EXHIBIT "1"

SCOTT K. SAIKI
Speaker

Phone: (808) 586-6100
Fax: (808) 586-6101

HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 431
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

November 5, 2018

MEMORANDUM

TO: All House Members

FROM: Speaker Scott K. Saiki

RE: Intent to Authorize Legal Action

This memo is to inform you that the House intends to authorize legal action in order to file an amicus curiae brief in *League of Women Voters of Honolulu and Common Cause v. State of Hawaii,* Civ. No. 18-1-1376-09. As time is of the essence to protect the Legislature's interest, I will authorize legal action as soon as practicable.

Please contact my office if you have any questions. Thank you very much.

cc: Brian L. Takeshita, Chief Clerk
Mark K. Morita, Acting Chief Attorney

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, 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

DATED: Honolulu, Hawai`i, December 14, 2018.

COLLEEN HANABUSA

Attorney for the HAWAI`I STATE LEGISLATURE

RUSSELL A. SUZUKI 2084
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General,
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, v. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC DEFENDANT STATE OF HAWAII'S **REPLY** TO PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAII STATE LEGISLATURE AS *AMICUS CURIAE*; CERTIFICATE OF SERVICE Date: December 19, 2018 Time: 3:00 p.m. Judge: Honorable Gary W.B. Chang

DEFENDANT STATE OF HAWAII'S **REPLY** TO PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAII STATE LEGISLATURE AS *AMICUS CURIAE*

Without any evidence whatsoever, Plaintiffs accuse the Legislature of political intimidation and contend that the separation of powers doctrine "is a thinly veiled attack on judicial integrity." *See* Mem. Supp. at 2, 9. Plaintiffs'

baseless and offensive accusations notwithstanding, the Legislature's Motion for Leave to File a Memorandum should be granted.

Plaintiffs argue at length that the "Legislature is the State for purposes of this case." (*see, e.g.*, Mem. Opp. at 1, 4, 6) and therefore the Legislature should not be permitted to file an *amicus curiae* memorandum. Plaintiffs' argument is belied by the facts.

In fact, Plaintiffs chose to file their lawsuit against the State of Hawai'i, the only named defendant, and not the Legislature. Plaintiffs should not be heard now to contend that even though they named only the State, they meant that the "Legislature is the State" or that it was somehow understood that naming the State is synonymous or inter-changeable with the Legislature. The Legislature is one of three separate and distinct branches of government, each having its own distinct function, its own leadership and its own internal policies and procedures. Plaintiffs could have named the Legislature as the Defendant but instead, they chose to name only the State. The Legislature is not the State.

Plaintiffs also argue that the Legislature should not be allowed to file its *amicus curiae* memorandum because *amicus curiae* means friend of the court, not friend of a party (*see* Mem. Opp. at 3) and the Legislature's memorandum repeats or duplicates arguments already made by the Attorney General. *See* Mem. Opp. at 7. Plaintiffs' argument lacks merit.

While the role of an *amicus* was once that of an impartial individual who sought to provide information or advise the court rather than advocate on

behalf of a party, that description became "outdated" long ago. *See Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 131 (2002) citation omitted). Instead, given the procedural rule requirement that an amicus have an interest in the case, the current view is that it would be "virtually impossible" for an *amicus* to show that it is an impartial individual who serves solely an advisory function. *Id.*

Specifically rejecting Plaintiff's contention that an amicus must be a friend of the court and not a friend of a party, the Third Circuit Court of Appeals stated:

> The implication of this statement seems to be that a strong advocate cannot truly be the court's friend. But this suggestion is contrary to the fundamental assumption of our adversary system that strong (but fair) advocacy on behalf of opposing views promotes sound decision making. Thus, an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend.

Id. at 131. *See Waste Management of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 36 (1995) (amicus is not normally impartial).

Plaintiffs also argue that the Legislature's *amicus curiae* memorandum is "mostly duplicative of legal arguments already made by the AG" and therefore should not be permitted. *See* Mem. Opp. at 7 (emphasis added). Plaintiff's argument lacks merit.

It is generally held that "an amicus curiae must accept the case before the reviewing court as it stands on appeal, with the issues as framed by the parties. Accordingly, an amicus curiae generally cannot raise issues that have not been preserved by the parties." 4 Am. Jur. 2d *Amicus Curiae* § 7 (2007).

See National Commission on Egg Nutrition v. FTC, 570 F.2d 157, 160 n.3 (7th Cir. 1977) (absent exceptional circumstances, *amicus curiae* cannot expand the scope of an appeal to implicate issues that were not presented by the parties)

Accordingly, the Legislature, as *amicus*, is necessarily limited to the issues that the parties have raised and can only address those issues and the arguments that the parties have made while presenting additional argument and information.

Plaintiffs also contend that leave to file an *amicus curiae* memorandum should be granted where a party is inadequately represented. *See* Mem. Opp. at 3. Plaintiffs' contention is disputed.

The Third Circuit Court of Appeals has stated that procedural rule 29 does not require that an *amicus* show that the party to be supported be unrepresented or inadequately represented. *Id.* at 132. Further, the court added, "[e]ven when a party is very well represented, an amicus may provide important assistance to the court" and that "denying motions for leave to file an amicus brief whenever the party supported is adequately represented would in some instances deprive the court of valuable assistance."[1] *Id.*

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[1] The court went on to explain that:

> requiring a prospective amicus to undertake the distasteful task of showing that the attorney for the party that the *amicus* wishes to support is in competent is likely to discourage *amici* in instances in which the party's brief is less than ideal and an *amicus* submission would be valuable to the court.

Neonatology Associates, 293 F.3d at 132 (citation omitted).

It is within the Court's broad discretion to decide "[t]he extent, if any, to which an amicus curiae should be permitted to participate in a pending action" and a "court may grant leave to appear as an amicus if the information offered is 'timely and useful.' " *See Waste Management*, 162 F.R.D. at 36 (citations omitted). *See also United States v. Gotti*, 755 F. Supp. 1157, 1158 (E.D. N.Y. 1991) ("amicus curiae are to provide supplementary assistance to existing counsel and insuring [sic] a complete and plenary presentation of difficult issues so that the court may reach a proper decision").

Here, the Legislature plainly has a keen interest in the issues raised by Plaintiffs' Complaint and will be directly affected by the Court's decision. In the proper exercise of its discretion, the Court should permit the Legislature to file its memorandum and to participate as an *amicus* in this action.

DATED: Honolulu, Hawai'i, December 14, 2018.

RUSSELL A. SUZUKI
Attorney General

PATRICIA OHARA
ROBYN B. CHUN
Deputy Attorney General
Attorneys for Defendant
State of Hawai`i

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the forgoing document was duly served by U.S. Mail, postage prepaid, to 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

COLLEEN HANABUSA
3660 Waokanaka Street
Honolulu, Hawai'i 96817

Attorney for Hawai'i State Legislature

DATED: Honolulu, Hawai'i, December 14, 2018.

PATRICIA OHARA
ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Defendant
STATE OF HAWAI'I

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RUSSELL A. SUZUKI 2084
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General,
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, v. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC DEFENDANT STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018; DECLARATION OF ROBYN B. CHUN, EXHIBITS "W"-"Y"; CERTIFICATE OF SERVICE Date: January 24, 2019 Time: 10:00 a.m. Judge: Honorable Gary W.B. Chang

DEFENDANT STATE OF HAWAII'S MEMORANDUM
IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION
FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018

Plaintiffs' Cross-Motion for Summary Judgment must be denied not only for the reasons that support the State's Motion for Summary Judgment (which are hereby incorporated herein by reference) but also because Plaintiffs lack

standing to bring this lawsuit and their reliance on the *Jensen v. Turner*, 40 Haw. 604 (1954) as support for their contention that the title of Senate Bill No. 2858 is overbroad is misplaced.

I. Plaintiffs Lack Standing to Bring this Action

Plaintiff League of Women Voters is a self-described "nonpartisan Hawaii nonprofit corporation that works to improve government function and impact public policies through citizen education and advocacy." *See* Complaint, ¶ 6 at 1. Similarly, Plaintiff Common Cause "is a national nonprofit grassroots organization dedicated to upholding the core values of American democracy . . ." *Id.*, ¶ 7 at 3. Together, Plaintiffs have sued the State alleging that Senate Bill ("S. B.") No. 2858 violated Article III, sections 14 and 15 of the Hawai'i Constitution and as a result, Act 84 is void. *Id.*, ¶ ¶ 39, 45 at 7, 8. As relief, Plaintiffs seek an order "declaring that (1) the process for adopting Act 84 was unconstitutional; and (2) Act 84 is void." *Id.* at 8. Plaintiffs lack standing to bring this action.

In *Mottl v. Miyahira*, 96 Hawai'i 381, 23 P.3d 716 (2001), the plaintiffs, UHPA, the labor union for the University of Hawai'i faculty, individual faculty members and certain legislators sued the Director of Budget and Finance and the Governor (collectively, "State defendants") for declaratory and injunctive relief to restore certain funding to the University. The plaintiffs alleged that they sought to "enforce the right of the public to see that the funds appropriated by their legislature are in fact released to the public agencies for which the funds were intended without undue interference from the executive

branch." *Id.* at 391, 23 P.3d at 726. The parties filed cross-motions for summary judgment and the court granted summary judgment in favor of the State defendants and the plaintiffs appealed.

On appeal, the State defendants argued, among other things, that the plaintiffs lacked standing to bring their lawsuit and the supreme court agreed. According to the court, "[s]tanding is concerned with whether the parties have the right to bring suit" and "[a] plaintiff without standing is not entitled to invoke a court's jurisdiction." *Id.* at 388, 23 P.3d at 723 (citations omitted).

While acknowledging that standing in an action for declaratory relief "interposes less stringent requirements for access and participated in the court process" (*id.* at 389, 23 P.3d at 724) and that courts have broadened standing in certain types of cases, the court held that standing requires that plaintiffs have suffered an injury in fact. *Id.* at 391, 23 P.3d at 726. To determine whether plaintiffs have the requisite interest in the outcome of a lawsuit, the court applied a three-part test that:

> requires a showing that: (1) they have suffered an actual or threatened injury as a result of the defendants' conduct; (2) the injury is traceable to the challenged action; and (3) the injury is likely to be remedied by a favorable judicial decision.

Id. (citation omitted). *See Bush v. Watson*, 81 Hawai'i 474, 479, 918 P.2d 1130, 1135 (1996). As to the first part of the test, "the plaintiff 'must show a distinct and palpable injury to himself [or herself]' " as opposed to an injury that is "abstract, conjectural, or merely hypothetical." *Mottl* at 389, 23 P.3d at

724 (citations omitted). With respect to the first part of the test, the court concluded that:

> [b]y asserting that they seek to ensure that the executive Branch disburses legislatively appropriated funds to their intended recipients in accordance with the law, the plaintiffs are 'seeking to do no more than vindicate [their] own value preferences through the judicial process.

Id. at 391, P.3d at 726 (citations omitted). *See Sierra Club v. Morton*, 405 U.S. 727 (1972) (unless plaintiff could show some concrete injury, plaintiff was asserting a value preference and not a legal right). According to the supreme court,

> [t]he proper forum for the vindication of a value preference is in the legislature, the executive, or administrative agencies, and not the judiciary. For it is in the political arena that the various interests compete for legal recognition.

Mottl, at 392, 23 P.3d at 727. Relying on the United States Supreme Court's decision in *Sierra Club*, the court similarly held that a special interest in a problem is not sufficient to confer standing and that the plaintiffs therefore lacked standing to sue the State defendants. *Id.*

Here, Plaintiffs have not suffered <u>any</u> injury, yet alone a distinct and palpable injury, let alone <u>any</u> injury, as a result of the legislative process used to enact Act 84. In fact, they did not even show any interest in S.B. No. 2858. Neither the League of Women Voters nor Common Cause submitted testimony either in support or in opposition to the original version of S.B. No. 2858 (requiring the Department of Public Safety to establish performance indicators

and submit reports regarding prisoner rehabilitation).[1] *See* Declaration of Robyn B. Chun attached hereto and incorporated herein by reference ("Chun Declaration"). Subsequently, when the hurricane preparedness text was substituted into S.B. No. 2858, neither the League of Women Voters nor Common Cause submitted testimony in support or opposition or like others, to complain about the substitution.[2] *Id.* Whether the original version of S.B. No. 2858, or the hurricane preparedness version of the bill was enacted apparently did not matter to Plaintiffs.

Because Plaintiffs have suffered no injury, there is no need to reach the second and third parts of the test or inquiry. But as to the second and third parts of the test, there can be no injury traceable to the legislative process that they challenge and a favorable decision in this case will not provide Plaintiffs with any relief.

In any event, both versions of S.B. No. 2858, the hurricane preparedness version and the prisoner rehabilitation version, were enacted as Act 84 and Act 212 (in substance, the original version of S.B. No 2858), respectively. Therefore, even if Plaintiffs were genuinely interested in, or affected by, these

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[1] Common Cause did submit testimony in support of S. B. No. 2861, S.D. 2, H.D. 1. *See* Testimony in support submitted by Corie Tanida, Executive Director, Common Cause Hawaii, Exhibit "W" to the Chun Declaration attached hereto.

[2] *See, e.g.*, Testimony on S.B. No. 2858, S.D. 2, H.D. 1 dated March 28, 2018 submitted by OHA; Testimony submitted by Will Caron, Social Justice Action Committee Chair, Young Progressives Demanding Action – Hawaii, Exhibits "X" and "Y" to the Chun Declaration attached hereto.

measures, they suffered no injury as a result of the legislative process used to enact them.

In short, Plaintiffs here "are seeking to do no more than vindicate [their] own value preferences through the judicial process." *Mottl* at 391, 23 P.3d at 726 (citations omitted). Their value preferences are expressly stated in their Complaint where they allege that: " 'Gut and replace' legislation is abhorrent to basic principles of democracy"; "Gut and replace legislation reflects a fundamentally undemocratic disregard for the public" and "This action seeks to enforce the constitutional provisions that prohibit the State from using processes that avoid input from the electorate into how the people of Hawai'i should be governed." *See* Complaint, ¶¶ 1, 4 and 5 at 1-2.

Even assuming they are/were sincerely interested in Act 84, that "special interest" is not an "injury in fact" and is "insufficient to invoke judicial intervention." *Id.* at 392, 23 P.3d at 727. In short, Plaintiffs do not have standing to bring this action and this Court lacks jurisdiction to decide Plaintiffs' claims.

II. The Title of S.B. No. 2858 is Not Misleading or Overbroad for Legislation

Plaintiffs rely on *Jensen v. Turner*, 40 Haw. 604 (1954), a case where the supreme court held that the title of a bill was too limited or specific and therefore violated the Organic Act. *Id.* at 611-612. According to the court,

> [i]f the title to the amendment had been merely to amend chapter 6 relating to elections, there would be a much better argument for sustaining the law as this provision of the

> Organic Act should be liberally construed, particularly as to amendatory statutes.

Jensen, 40 Haw. at 608. Thus, according to the court, in light of the liberal construction to be given the subject-title requirement, a general title is preferable. The court further explained that the subject-title requirement:

> is satisfied if provisions of the Act are naturally connected and expressed in a general way in the title – nor need all the provisions be referred to in the title – yet a sweeping change such as contended for, which would make radical changes in both the primary and election laws, should be included in the title to give proper notice to legislators and to the electorate at large. At least the title should not be so worded as to mislead by appearing to provide merely for the purpose and use of voting machines.

Id.

Here, the title "A Bill for an Act Relating to Public Safety" meets the criteria set out in *Jensen*. The hurricane preparedness subject is expressed in a general way in the public safety title and the title is not misleading (where, for example, the bill pertains to more than one subject but only one is reflected in the title). Further, unlike the bill in *Jensen*, S.B. No. 2858 makes no "sweeping" or "radical" change in the requirements for the design and construction of state buildings that should be included in the title; it simply requires that hurricane resistant criteria be considered in the construction of new public schools. In short, Plaintiffs' reliance on *Jensen* is misplaced.

III. CONCLUSION

For the foregoing reasons, in addition to those stated in the State's Memorandum in Support of its Motion for Summary Judgment and its Reply,

the State respectfully urges the Court to grant summary judgment in favor of the State and against Plaintiffs.

DATED: Honolulu, Hawai'i, December 21, 2018.

RUSSELL A. SUZUKI
Attorney General

PATRICIA OHARA
ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI'I reviewed all of the testimony that was submitted for Senate Bill No. 2858 and for Senate Bill No. 2861 I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC DECLARATION OF ROBYN B. CHUN; EXHIBITS "W" - "Y"

DECLARATION OF ROBYN B. CHUN

I, ROBYN B. CHUN, hereby declare pursuant to Rule 7(g), Rules of the Circuit Court for the State of Hawai'i reviewed all of the testimony that was submitted for Senate Bill No. 2858 and for Senate Bill No. 2861 that:

1. I am an attorney with the Department of the Attorney General, State of Hawaii, counsel for Defendant State of Hawai'i herein.

2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. All of the exhibits attached hereto are copies of documents that are posted on the Hawai'i State Legislature's website, www.capitol.hawaii.gov. I printed each exhibit from that website.

4. Pursuant to Rule 201(b), Haw. R. Evid., the Court may take judicial notice of the documents attached as exhibits hereto as they are "capable of

accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

5. In addition, pursuant to Hawai'i Rules of Evidence, Rule 803 (8), the attached exhibits are admissible as an exception to the hearsay rule and are self-authenticating under Hawai'i Rules of Evidence, Rule 902(5).

6. Attached hereto as Exhibit "W" is a true and correct copy of the testimony that Corie Tanida, Executive Director of Common Cause submitted in support of Senate Bill No. 2861, S.D. 2, H.D. 1.

7. Attached hereto as Exhibit "X" is a true and correct copy of the testimony that OHA submitted regarding Senate Bill 2858, S.D. 2, H.D. 1.

8. Attached as Exhibit "Y" is a true and correct copy of the testimony that Will Caron, Social Justice Action Committee Chair, Young Progressives Demanding Action, submitted regarding Senate Bill No. 2858, S.D. 2, H.D. 1.

9. I reviewed all of the testimony that was submitted for Senate Bill No. 2858 and for Senate Bill No. 2861 and did not find any testimony submitted by the League of Women Voters for either of those measures.

10. I reviewed all of the testimony that was submitted for Senate Bill No. 2858 and for Senate Bill No. 2861 and found that Common Cause submitted only that testimony that is attached hereto as Exhibit "W".

I, ROBYN B. CHUN, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, 12/21/18.

Robyn B. Chun

ROBYN B. CHUN

Common Cause

Hawaii

Holding Power Accountable

House Committee on Finance
Chair Sylvia Luke, Vice Chair Ty Cullen

04/03/2018 1:30 PM Room 308
SB2861 SD2 HD1 – Relating to Public Safety

TESTIMONY / SUPPORT
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Luke, Vice Chair Cullen, and members of the committee:

Common Cause Hawaii supports SB2861 SD2 HD1 which would require the Department of Public Safety to develop performance measures to evaluate the outcomes of the programs on which it reports, to report on an annual basis data relevant to program participation, and to post the reports on the DPS website.

Currently, tax money supports the Department, but the public has little knowledge or understanding of its programs, record of success, or degree of participation of inmates in programs. Regular reporting of this information, both to the legislature and on the DPS website will give the public a greater understanding of the activities of DPS.

Thank you for the opportunity to testify in support of **SB2861 SD2 HD1**.

307A Kamani Street, Honolulu, HI 96813 | 808/275-6275
HAWAII@commoncause.org | www.hi.CommonCause.org
Twitter.com/CommonCauseHI | Facebook.com/CommonCauseHawaii

EXHIBIT "W"

OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

SB2858 SD2 HD1
RELATING TO PUBLIC SAFETY
House Committee on Public Safety

March 28, 2018 3:00 p.m. Room 308

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees offer the following **COMMENTS** on SB2858 SD2 HD1, which would ensure state buildings built after July 1, 2018 adhere to State Civil Defense standards of disaster preparedness. Although protecting Hawai'i state buildings and citizens is a laudable goal, this draft would abandon the critically important purpose of previous drafts to require the Department of Public Safety (PSD) to collect, aggregate, and publicly report data relating to key enumerated performance indicators. **This previous draft would promote important legislative and community oversight, and provide information that may be critical to the enactment of much-needed reforms to our criminal justice system.**

Decades of a traditional criminal justice approach have led to the highest prison population in Hawai'i's history. Between 1977 and 2008, the number of people incarcerated in Hawai'i increased by more than 900 percent, between 1977 and today, our incarcerated population increased by 1,400 percent.[1] The Native Hawaiian community has been particularly impacted by this increase, making up 40% of our current prison population.[2] Moreover, the overrepresentation of Native Hawaiians in the criminal justice system indicates larger systemic issues, such as implicit bias and disparate treatment in interactions from arrest, to adjudication, to final release.[3] **Accordingly, OHA has long advocated for criminal justice reform that would thoroughly examine and effectively implement evidence-based incarceration alternatives, that can improve public safety, effectively rehabilitate pa'ahao, reduce recidivism, and save taxpayer dollars.[4]**

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[1] THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010), *available at* http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.
[2] In contrast, Native Hawaiians only represent 24% of the general public in Hawai'i. *Id.* at 36.
[3] OHA's 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage, noting that Native Hawaiians made up "24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population." *Id.* at 10. Moreover, controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. *Id.* at 28-38.
[4] The Native Hawaiian Justice Task Force recommended several options to address systemic issues resulting in the overrepresentation of Native Hawaiians in the criminal justice system. These included reconsidering several legislative proposals from the 2011 Justice Reinvestment Initiative that were not originally passed or implemented, investing in early intervention programs, increasing public defender funding, expanding

EXHIBIT "X"

The Native Hawaiian Justice Task Force, in its 2012 report, found that data collection, integration, and infrastructure needed to be improved at various levels within the criminal justice system.[5] The Task Force noted that an analysis of additional control variables "would provide a richer understanding of why Native Hawaiians remain disproportionately represented in the criminal justice system."[6] Consistent with the Task Force's report, this measure could help to provide robust and comprehensive data, which can inform the exploration, development, and implementation of policies and programs that meaningfully address the costly and growing impacts of our criminal justice system on Native Hawaiians and the larger community.

Therefore, OHA respectfully requests that the Committee amend this bill, to revert to the original or amended Senate versions of this measure. Mahalo for the opportunity to testify on this measure.

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implicit bias training, strengthening supervised release programs, executing compassionate release consistently, supporting indigenous models of healing alternatives such as pu'uhonua, and bolstering reintegration programs and services to better prevent recidivism. *Id.* at 27-30.

[5] OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT (2012) at 8, *available at* http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

[6] *Id.*

EXHIBIT "X"

LATE

YOUNG PROGRESSIVES DEMANDING ACTION

Aloha Chair Luke, Vice Chair Cullen and members of the House Committee on Finance,

The members of the Young Progressives Demanding Action – Hawai'i offers comments on SB2858 SD2 HD1. While we do not oppose the construction of hurricane shelters and the concept of planning for increasingly destructive storms in the 21st century, we are nevertheless disappointed that the House Public Safety committee decided to gut an important bill that would have required the Department of Public Safety (DPS) to report on program outcomes.

We desperately need more information from the DPS in order to craft a "smart justice" policy that advances programming and restorative justice techniques over incarceration and punishment. Such an approach will save the state millions of dollars, and create far better outcomes for offenders who will be able to reintegrate in society effectively, reducing recidivism and keeping out communities safer.

The previous version of this bill represented a step toward accountability and transparency when dealing with corrections and the criminal justice system. People who are committed to this system are stripped of certain rights because they have been deemed to have violated some part of the social contract. They are also locked away from sight and mind of the public, physically, emotionally and mentally cut off from their loved ones and advocates. As a result, they are particularly vulnerable to civil and human rights violations.

We feel it is critical that some form of legislation advancing this data-driven approach to criminal justice reform be passed this year. So while we do not oppose this bill, we ask that the Finance Committee please schedule SB2861 SD2 HD1 and pass it.

This session has been a disappointment for criminal justice reform: Many good bills aimed at assessing and reforming pretrial incarceration, reforming the bail system and establishing more effective incarceration practices died. We currently have two task forces studying this issue, and these task forces were used as cover to kill many of these bills. However, without specific data, task forces currently

looking at both avenues of reform will continue to be limited in their ability to formulate good recommendations on policy for this legislature to act on.

Even basic information, like the demographics of our jail and prison population and the cost of incarceration, are only available upon request and are difficult to acquire from the department. More and more states are adopting data-driven approaches to incarceration to implement truly best practices in reducing rates of recidivism, taxpayer costs, and to improve the safety of their communities. And their progress has been well-documented now. Hawai'i should join this "smart justice" approach and implement a comprehensive data collection system. This information must be made publicly available. These bills will help the state to develop sound policies that improve our communities, improve safety, and promote justice, and we ask that you support both and pass them through committee today.

Mahalo,

Will Caron
Social Justice Action Committee Chair
Young Progressives Demanding Action – Hawai'i

EXHIBIT "Y"

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the forgoing document was duly served by U.S. Mail, postage prepaid, to the following party 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

COLLEEN HANABUSA, ESQ.
3660 Waokanaka Street
Honolulu, Hawai'i 96817

Attorney for Hawai'i State Legislature

DATED: Honolulu, Hawai'i, December 21, 2018.

PATRICIA OHARA
ROBYN B. CHUN
Deputy Attorneys General
Attorneys for Defendant STATE OF HAWAI'I

KTU

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

Attorney for HAWAII STATE LEGISLATURE

2018 DEC 27 AM 11:03

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAI`I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

MEMORANDUM OF BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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;
CERTIFICATE OF SERVICE

HEARING:
Date: January 24, 2019
Time: 10 A.M.
Judge: The Honorable Gary W. B. Chang

Trial Date: None

MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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

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TABLE OF AUTHORITIES

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

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[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 Rule59 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]

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[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 at1194. 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 at1197. 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.

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[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).

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]

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 Section16[6] be adopted. The rationale was:

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[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, www.capitol.hawaii.gov/. A review of the bill titles that have become law or were enrolled, 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" (1 Bill was vetoed), 3 Bills are "Relating to Education;" 3 Bills are Relating to "Medical Cannabis" (1 Bill vetoed), 3 Bills "Relating to Non General Funds," 2 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 . . .

> 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 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 CHING**[7]: . . . **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

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

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

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 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 MIYAKE: The constitutional provision as proposed by the committee on Section 16 does not state that the bill has to be read throughout. Therefore, it would be permissive for the legislative bodies [to] provide the requirements as to how final readings will be interpreted in its own house or senate rules.

. . .

DELEGATE DONALD CHING: . . . [T]he committee discussed this procedure at length and what would happen if the passage of this amendment to the Constitution would mean to legislative processes would be that **the 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 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.[8]

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[8] The following debate is included to show that the framers did address the issue of how a bill can change from that which is originally introduced and discussed how it complies with the three reading requirements.

> **DELEGATE KAUHANE**: . . .As a compromise to all the objections that I would raise on the matter of third reading of bills, what I am about to say is familiar to all members that served in the legislature. In the first instance, a bill having been introduced by a sponsor, it is the practice on first reading that the bill be read by title, be ordered to print so it conforms with the first act of passing on first reading. Later, after the bill having been printed, lay before all of the legislators. Next, on second reading it would be referred to committee. The bill is still in its original form as when it was introduced . . . The committee handling the action having been approved to pass the bill on second reading goes to the committee for its consideration and any amendments that they can make to the particular bill.
>
> . . . **The most important thing comes to third reading of the bill. When the bill comes out of the committee, we send an elephant into the committee in the first instance. The committee reports the bill entirely new in concept, not the changing of one figure when appropriation of dollars are needed, but a whole complete change with the contents in which the bill was originally introduced may contain one page. That bill comes out either 14 or 10 pages, different than the original. The committee recommends that**

the bill pass third reading in its amended form. You may have intended to request consideration of the matter of the caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill. I dare ask whether this has passed the required procedures of the bill having passed three readings on three separate days. . . .

. . . Did the bill really pass and meet the criteria that the bill has been read in three different days? And because of this consultation that I had during –early in the recess . . . we entered into an agreement that extended – extended the 24-hour waiting period to 48 hours. There has been before the committee other jurisdiction which carries over to 72 hours . . . .

[M]y question to you . . . does the reading of a bill by title after it has come out from the committee recommending passage on third reading, does this constitute that the bill has had three readings?

. . .

DELEGATE MIYAKE: . . . [I]t has been the procedure in the legislature that the motion for the passage on third reading includes the words "bill having been read throughout pass third reading." Now the words, or the phrase "having been read throughout" is used since we have now the modern technique of photostating our bills . . . Because of modern technical machinery, each bill on final reading, on third reading is on the desk of each legislator. Therefore, we go through the form of using the words "the bill having been read throughout pass third reading" or "pass final reading." And according to the interpretation of the Attorney General in the past, the inclusions of these words, "having been read throughout" is sufficient to meet the requirement of having the bill read.

. . .

DELEGATE KAUHANE: . . . The bill having been read throughout passes third reading and yet the bill having been read throughout at the command, having been read throughout pass third reading is not the bill that was originally introduced and then came back on the floor on second reading, on second reading and asked that it be recommitted to the committee having been voted upon on passage on second reading .

. . .

DELEGATE UEOKA: I believe that the committee has reported our stating that there shall be three readings, and I don't believe that it's for this body at this time to determine as to how the legislature will comply with the mandates of the Constitution, assuming that it's adopted. I think it's clear that it calls for three readings. And I don't think we should at this point argue about what the legislature will do.

. . .

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.[9]

> **DELEGATE KAUHANE**: -- the way the bill has gone through the procedure, Mr. Chairman. After the bill has come out in a disguised form from the original intent and purposes that this bill has met the requirements of the amended bill in the disguised form has passed three readings from three separate days. There is a legal question, I think, involved in here, but I am willing to accept the practices today that have been continuing as the format. Lo and behold, that in the event this is questioned later, I can safely say that I had an opportunity to provide the loophole through a constitutional provision as provided before by other jurisdiction that face the same kind of problem that I am raising.

II Proceedings of the Constitutional Convention of Hawaii of 1968, Committee of the Whole Debates at 168-171 (1973) (emphases added).

Delegate Kauhane was convinced that three readings of a bill that was worded differently at each reading could not possibly satisfy the "three readings" requirement because the final contents of the bill that ultimately passed had only been read or printed once. The other delegates who participated in the debate disagreed, believing instead that a "reading" consisted simply of making the contents of a bill available to legislators and the public, either by reading it aloud or printing it, before it was passed.

[9] Standing Committee Report No. 46 reported:

> Your Committee has included the twenty-four hour rule as a requirement for the passage of bills. The purpose of this rule is to assure members of the legislature an opportunity to take informed action on **the final contents** of proposed legislation. This is accomplished by requiring the printing and availability of each bill in the "form to be passed" to the members of a house and a twenty-four hour delay between such printing and availability before final reading in each house. "Form to be passed" means the form in which a bill is passed on third reading in each house, concurrence of one house to amendments made by the other, and the form in which a bill is passed by both houses after conference on a bill. The twenty-four hour rule not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage.

I *Proceedings of the Constitutional Convention of Hawaii of 1968* at 216 (1973) (emphasis added). The underlined portion of the report shows that the delegates appreciated that bills could undergo substantial revisions before becoming law.

The then 24 (now 48) hour rule is what provides the Legislators and the public the opportunity to know what the bill contains.[10] 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"[11] 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.[12]

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.

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[10] 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."

[11] 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.

[12] 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 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.

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.[13]

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.

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[13] Section12 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-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member.

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.[14] Likewise, the respective Rules provide that the Second and Third or Final readings of the bill can be by title only.[15]

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 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

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[14] Rule 48 of the Senate and Rule 34 of the House of Representative. State Ex. "A" at 21 and State Ex. "B' at 33.

[15] 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.

> 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.[16]

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[16] 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. 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

IV. CONCLUSION

The *Amicus Curiae* contends that what should be evident from the Constitutional Convention Debates and the reference in the ***Constitution*** to the word "reading" is what constitutes and satisfies this requirement before it was passed. The intent of the Framers was to leave it up to each chamber of the legislature. With technology as it was in 1968, the reference is to "photostating." In other words that fact that a printed version was available mooted whether it needed to be read throughout. This is why the requirement of Section 15, article III of the ***Constitution*** is as to "the form to be passed it shall have been printed and made available to the members of that house for at least forty-eight hours."

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, December 27, 2018

COLLEEN HANABUSA
Attorney for the HAWAI`I STATE LEGISLATURE

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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 HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, 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

DATED: Honolulu, Hawai`i, December 27, 2018.

COLLEEN HANABUSA

Attorney for the HAWAI`I STATE LEGISLATURE

ROBERT BRIAN BLACK 7659
LISA EMILY ENGEBRETSEN 10952
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
brian@civilbeatlawcenter.org
Telephone: (808) 531-4000

Attorneys for League of Women Voters of Honolulu and Common Cause

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, Defendant,	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT; DECLARATION OF R. ELTON JOHNSON, III; EXHIBITS 24-28; DECLARATION OF NANCY DAVLANTES; and CERTIFICATE OF SERVICE

REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

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Defendant State of Hawai`i finds the Hawai`i Constitution lacking in flexibility. But that is the point. The constitution preserves the most basic principles of democracy to ensure that the public has an opportunity to express its voice *before* laws are enacted. The convenience to the State in allowing last-minute, hasty legislation with little public notice is irrelevant because it violates the letter and spirit of the constitution. This case is not about the niceties of legislative rules and definitions. The State's refusal to respect article III, sections 14 and 15 of the Hawai`i Constitution in the adoption of Act 84 requires this Court's intervention. The constitutional mandates are not a nullity to be ignored and are not left for the Legislature to interpret.

There are two questions for this Court:

(1) Does section 15 require three readings of a substitute bill when the amendments are not germane to the bill's original purpose? The State does not claim that the hurricane shelter version of S.B. 2858 is closely akin to the inmate reporting bill or that the Senate had three readings of the bill after the non-germane amendments. Every source of constitutional interpretation—and the State's authority on legislative procedure, *Mason's Manual of Legislative Procedure* (2010 ed.) (*"Mason's Manual"*)—concludes that amendments to a bill must be germane or it will be treated as a new bill.

(2) Does "public safety" fairly apprise the general public of the subject matter of proposed legislation? "Public safety" is patently meaningless to put any potentially interested person on inquiry notice and as shown and undisputed, has been used historically by the State to mean almost anything. Pls. Mem. at 10-11.

The State's opposition is premised on its misreading of *Schwab* and the Hawai`i Constitution, its willful disregard of basic principles of constitutional law, and its misleading references to its only purported authority—*Mason's Manual*. No authority supports the State's suggestion that this Court may not interpret and enforce the Hawai`i Constitution. This case has nothing to do with the Legislature's rules, only constitutional mandates. And Plaintiffs have standing to raise these constitutional issues under existing precedent. There is no genuine issue of material fact, and on the undisputed facts, the law requires summary judgment in favor of Plaintiffs, declaring

that the process for enacting Act 84 (2018) violated article III, sections 14 and 15 of the Hawai`i Constitution and declaring Act 84 void as unconstitutional.

A. The State Ignores the Purpose of the Three Readings Requirement.

The State asks this Court to disregard the Hawai`i Supreme Court's interpretation of the three readings requirement in *Taomae*, discussion of the mandate in the 1950 constitutional proceedings, and over a century of constitutional treatises that the Hawai`i courts have consistently relied on when interpreting constitutional provisions. Pls. Mem. at 4-8. The three readings provision is not the empty formalism portrayed by the State. It is a constitutional requirement that dates back to 1894 and deserves respect commensurate with its status as a declaration of the will of the people regarding how laws should be enacted.

1. Three Readings Prevents a Legislative Shell Game.

According to the State's interpretation of three readings, the State can enact whatever law it wants—so long as the *bill number* was approved on three different days in each house. State Reply Mem. at 3. For the State, it does not make a difference if the bill had completely different content every time it was read. One day, it is about prison inmates; the next reading, fireworks; the next day, hurricane shelters. Nor, according to the State's interpretation, would it matter that the public had no idea (nor opportunity to express an opinion) about the nature of the bill until final reading. For example, the State would claim that a bill about fireworks that goes to conference committee at the very end of the legislative session could be enacted as a law about seawalls without violating the Hawai`i Constitution. To the contrary, the constitution does not permit the State to play games with the laws that govern the people of Hawai`i.

The Hawai`i Constitution requires three readings of a "bill" before it becomes law, not three readings of the bill number. Haw. Const. art. III, § 15. As summarized in Plaintiffs' opening memorandum, the Hawai`i Supreme Court, the 1950 constitutional convention, and the constitutional treatises explain that the purpose of the three readings requirement is to ensure a full opportunity for debate and sufficient consideration of the effect of proposed legislation. Pls. Mem. at 4-6; *accord Mason's Manual* § 720 ¶ 2 ("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."). It is the height of hubris for the State to conclude that it may ignore the public's role in the legislative process and enact whatever laws it wishes.

There is no dispute that the Senate received the hurricane shelter bill for the first time on the same day that it passed "final reading". There was none of the opportunity for debate and vetting of consequences contemplated by the Hawai`i Constitution.

2. There Is No Dispute About the "Readings" of S.B. 2858.

Plaintiffs do not contest the definition of a "reading" as stated in the Legislature's rules. While some might question whether votes by bill number are a "reading" for purposes of the Hawai`i Constitution, that issue is a red herring here. *See* State Mem. at 11-14; State Reply Mem. at 6-8. For purposes of this case, Plaintiffs accept that the events that occurred on various dates throughout the 2018 legislative session are "readings"; there is no dispute of facts. The question is whether all the readings are of the same bill for constitutional purposes after the State made non-germane amendments. Pls. Mem. at 7-8.

3. Legislative Rules Do Not Change Constitutional Standards.

The Legislature's rules are irrelevant to the constitutional standards in this case. *Mason's Manual* recognizes that legislative rules must yield to the constitution. *E.g.*, *Mason's Manual* § 4 ¶ 4 ("For example, where the constitution requires three readings of bills, this provision controls over any provision of adopted rules, statutes, adopted manual or parliamentary law."), § 6 ("A constitutional provision regulating procedure controls over all other rules of procedure."), § 10 ("The power of each house of a state legislature to make its own rules is subordinate to the rules contained in the constitution."), § 12 ("A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do by indirection what it cannot directly do."), § 73 ¶ 2 ("Insofar as legislative acts and actions are restrained by constitution, courts may examine the same and have authority to rule

upon the validity of such acts or actions."). Hawai`i cases reaffirm that principle.[1] Pls. Mem. at 12-13. The State's references to the Legislature's rules are mere obfuscation.

4. *Mason's Manual* Also Requires that Bill Amendments Be Germane to the Bill's Original Purpose.

As Plaintiffs explained in the opening memorandum, the Hawai`i Constitution does not require three new readings every time a bill is amended; it only requires three new readings when the content of a substituted bill is not germane to the bill's original purpose. *Id.* Rather than address the cited authority, the State argues that *Mason's Manual* allows any substitute bill to be considered the same bill for purposes of the three readings requirement. State Reply Mem. at 2-3 (citing *Mason's Manual* § 722). The State, however, failed to read or understand the entirety of *Mason's Manual.*

The State's quoted portion of section 722 of *Mason's Manual* provides: *"Where a substituted bill may be considered as an amendment*, the rule with reference to reading a bill on three separate days does not require the bill to be read three times after substitution." (emphasis added). *Mason's Manual* clarifies elsewhere that bill amendments must be germane to the original bill. *E.g., Mason's Manual* § 415 (Consolidation and Substitution of Measures), ¶ 2 ("Substitution is only a form of amendment and may be used, *as long as germane*, whenever amendments are in order." (emphasis added)), § 616 (Proposing Amendments to Bills), ¶ 3 ("There is no limit to the number of amendments that may be proposed to a bill *as long as the amendments are germane to the original purpose of the bill.* Amendments may be so numerous as to amount to a substitute version of the bill." (emphasis added)), § 617 (Substitute Bills), ¶ 1 ("A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted *as long as the new matter is relevant to the title and subject of the original bill.*" (emphasis added)). Thus, contrary to the State's contention that "[a]dditional readings in the Senate were not required," the State's only authority

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[1] *Schwab* does not support the State's position. State Reply Mem. at 7. In *Schwab*, the "alleged violations of its own legislative rules" concerned an effort to enforce legislative rules requiring public committee meetings, not constitutional standards. Defendants-Appellees' Answering Brief, *Schwab v. Ariyoshi*, No. 6179, at 2 (Haw.).

supports Plaintiffs' position that gutting a bill and replacing it with a non-germane substitute bill requires three readings of the new bill.

5. *Taomae* Did Not Adopt a Special Interpretation of the Three Readings Provision for Constitutional Amendments.

In *Taomae*, the Hawai`i Supreme Court held that when the State fundamentally changes the nature of a bill, it must provide three readings of the new bill. *Taomae v. Lingle*, 108 Hawai`i 245, 254-55, 118 P.3d 1188, 1197-98 (2005). The State seeks to distinguish *Taomae* as limited to constitutional amendments, not ordinary legislation. State Reply Mem. at 4. As support, the State quotes the court's separate discussion of the title requirement out of context. *Id.* But *Taomae*'s holding *on the three readings requirement* applied the same standard as "required for legislation."

In the title analysis quoted by the State, the Hawai`i Supreme Court made clear that it was delineating special requirements for constitutional amendments: "While that interpretation of article III, section 14 is appropriate when applied to ordinary legislation, it must be remembered that article XVII specifically governs constitutional amendments." *Taomae*, 108 Hawai`i at 254, 118 P.3d at 1197. In its three readings analysis, however, the supreme court repeatedly stated that the three readings requirement applied "in the manner required for legislation." *Id.* at 254-55, 118 P.3d at 1197-98.

Fundamentally, the State misapprehends the relevance of *Taomae* to this case. Obviously, this case does not concern a constitutional amendment. But the Hawai`i Supreme Court's analysis focused on what must happen for purposes of the three readings requirement when there is a constitutionally significant change in proposed legislation. In *Taomae*, the constitutionally significant event was adding the constitutional amendment to the bill. Here, the constitutionally significant event was the non-germane substitute bill. *Taomae* illustrates how three readings are analyzed after such an event. And in that regard, this case is indistinguishable from *Taomae*.

The State does not claim that hurricane shelters are germane—meaning "akin" or "closely allied"—to inmate recidivism reports. According to both Plaintiffs' and the State's authorities, the hurricane shelter version of S.B. 2858 was a new bill that required

three readings in both houses. There is no dispute that after the non-germane amendments, the bill received only one reading in the Senate. Pls. Mem. at 2-3.; State's Mem. at 3-4. Thus, the State violated article III, section 15 of the Hawai`i Constitution.

B. "Relating to Public Safety" Tells the Public Nothing About What Interests Will Be Impacted by Proposed Legislation.

Contrary to the State's position, this Court is not left without a standard for evaluating whether a bill title is unconstitutionally overbroad. State Reply Mem. at 5 ("the Hawai`i Constitution does not specify the detail required for a title or define what is overbroad").[2] The Hawai`i Supreme Court and numerous constitutional treatises hold that the title must fairly apprise the public of the interests that may be affected by the proposed legislation. Pls. Mem. at 8-11; *see also Mason's Manual* § 728 ¶ 1 (title requirement "is to prevent a legislative body and the public from being entrapped by misleading titles, whereby legislation relating to one subject might be obtained under the title of another"). Plaintiffs are not aware of any case in which Hawai`i courts have addressed—much less upheld—the use of a bill title as generic as "public safety."

The State cites *Schwab*. The title challenged in *Schwab* was "A Bill for an Act Making Appropriations for Salaries and Other Adjustments, Including Cost Items of Collective Bargaining Agreements Covering Public Employees and Officers." *Schwab v. Ariyoshi*, 58 Haw. 25, 27, 564 P.2d 135, 137 (1977). The court found that title fairly apprised an ordinary person that the contents of legislation "dealt with salaries for all officers and employees of the state." *Id.* at 32, 564 P.2d at 140. Although the bill dealt with salaries for executive, judicial, and legislative branches, as well as personnel under collective bargaining, the Hawai`i Supreme Court held that "these parts are so connected and related to each other, either logically or in popular understanding, as to

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[2] The State implies a standard based on *Jensen v. Turner* that bills making "sweeping" or "radical" changes in law might require more specific titles. State Mem. in Opp. to Cross-Mot. (State Opp.) at 7. But the *Jensen* court did not advocate for such a judicially unmanageable standard; it voided the law because the title was misleading and failed to apprise the public of the bill's contents. 40 Haw. 604, 607-08 (Terr. 1954).

be parts of or germane to that general subject. These parts are not and cannot be held to be dissimilar or discordant subjects which would render the act unconstitutional." *Id.*

No similar thread holds together the multitude of incongruous subjects that could be—and that have been—covered by the State's use of a "public safety" bill title. Pls. Mem. at 10-11. Under the State's interpretation, a single bill that combined laws about fireworks, medical marijuana, seawalls, hurricane shelters, and inmate recidivism reports could be enacted as "relating to public safety" without violating the title requirement of the Hawai`i Constitution. Yet, nothing would be a better example of the "hodge-podge or log-rolling legislation" that the title requirement was intended to prevent. Pls. Mem. at 8.

The State cites nothing else to support its contention that "Relating to Public Safety" is a constitutionally sufficient title.[3] There is no question that "public safety" tells the public nothing about the scope and subject of proposed legislation. Thus, the State violated article III, section 14 of the Hawai`i Constitution.

C. Flexibility Is Not a Defense to Unconstitutional Conduct.

Desperate to preserve its perceived ability to enact hasty legislation without public notice or input, the State continues to argue that it needs flexibility to address emergency situations. Notably, the State does not claim that the legislation at issue here—providing building design considerations for schools—was an emergency or unanticipated need.[4] But, more importantly, as discussed in Plaintiffs' opening

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[3] Consistent with Hawai`i precedent and constitutional treatises, the State's legislative drafting manual explains: "The drafter should take care, however, to avoid a title that is so broad or general that it fails to fairly express the one subject of the bill." Legislative Reference Bureau, Hawai`i Legislative Drafting Manual (10th ed. 2012) at 5, *at* http://lrbhawaii.org/reports/legrpts/lrb/2012/legdftman12.pdf.

[4] To the contrary, as the State noted in its opening memorandum, the House introduced and advanced a bill with similar provisions that received first reading in the Senate. State Mem. at 12 & n.4 (discussing H.B. 2452). Thus, even the State's purported concerns about the bill introduction deadline are irrelevant to this case because, as it concerns the three readings requirement, the State could have proceeded with additional readings of H.B. 2452 in the Senate, instead of gutting and replacing S.B. 2858 with the contents of H.B. 2452.

memorandum, the State's desire for flexibility does not justify violating the bare minimum requirements set by the Hawai`i Constitution. Pls. Mem. at 14-15.

The Hawai`i Constitution outlines the enactment of legislation as a deliberate and collaborative process that includes participation by the people of Hawai`i. The State is seeking a legislative free-for-all that leaves interested citizens confused and frustrated with the process. *E.g.*, Black Decl. Ex. 17 (public testimony seeking that S.B. 2858 revert to its original purpose). The State cannot ignore constitutional requirements simply because it is easier than complying.

D. Plaintiffs Have Standing to Assert These Claims.

Plaintiffs are not aware of any case—and the State cites none—in which a Hawai`i court has dismissed for lack of standing a case concerning title or "three readings". Standing is "whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of the court's jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Pele Def. Fund v. Paty*, 73 Haw. 578, 592, 837 P.2d 1247, 1257 (1992). "This court has adopted a broad view of what constitutes a 'personal stake' in cases in which the rights of the public might otherwise be denied hearing in a judicial forum." *Id.*; *accord Bush v. Watson*, 81 Hawai`i 474, 479, 918 P.2d 1130, 1135 (1996) ("Standing barriers should be lowered in cases of public interest under our jurisdiction."); *Sierra Club v. Dep't of Transp.*, 115 Hawai`i 299, 319, 167 P.3d 292, 312 (2007) ("[T]he touchstone of this court's notion of standing is the needs of justice, and . . . standing requirements should not be barriers to justice."). The critical focus is whether "a *particular* private party is an appropriate plaintiff" to bring the asserted claim. *Kaleikini v. Yoshioka*, 128 Hawai`i 53, 69, 283 P.3d 60, 76 (2012).

As a general rule, a party has standing if: (1) he or she has suffered an actual or threatened injury as a result of the defendant's wrongful conduct, (2) the injury is fairly traceable to the defendant's actions, and (3) a favorable decision would likely provide relief for a plaintiff's injury. *Bush*, 81 Hawai`i at 479, 918 P.2d at 1135. Concerning "actual or threatened injury," the requirement is more liberally construed when a plaintiff seeks declaratory relief, especially in the context of injuries to the plaintiff's procedural rights. *Sierra Club*, 115 Hawai`i at 325, 167 P.3d at 318; *accord Mottl v.*

Miyahira, 95 Hawai`i 381, 389, 23 P.3d 716, 724 (2001); *Pele Def. Fund*, 73 Haw. at 594, 837 P.2d at 1258 ("generalized" injury recognized because otherwise "the State would be free to dispose of the trust res without the citizens of the State having any recourse"); *see generally* HRS § 632-6 ("[This chapter] is to be liberally interpreted and administered, with a view to making the courts more serviceable to the people.").

Here, Plaintiffs are member organizations with an organizational interest, and members with an interest, in being able to follow the legislative process. Decl. of R. Elton Johnson, III, dated Jan. 3, 2019 (Johnson Decl.), ¶¶ 2-4, 6-16; Decl. of Nancy Davlantes, dated Jan. 3, 2019 (Davlantes Decl.), ¶¶ 2-6, 8-14. Plaintiffs' organizational missions focus on, among other objectives, encouraging civic engagement. Johnson Decl. ¶ 2; Davlantes Decl. ¶¶ 2-3. As part of their missions, Plaintiffs—as organizations or through other organizations in which Plaintiffs are members—and their members regularly testify or organize others to testify before the Legislature on proposed legislation, including testimony on S.B. 2858 (2018).[5] Johnson Decl. ¶¶ 3-5, 11, 13-16; Davlantes Decl. ¶¶ 5-7, 14. The State's conduct in gutting and replacing S.B. 2858 adversely impacted Plaintiffs' ability to effectively follow the legislative process—in a manner that article III, sections 14 and 15 of the Hawai`i Constitution were intended to prevent. Johnson Decl. ¶¶ 12-16 & Ex. 27-28; Davlantes Decl. ¶¶ 10-14. Plaintiffs expressly complained to the State about the constitutional violation before S.B. 2858 was enacted.[6] Johnson Decl. ¶¶ 13-16 & Ex. 27-28; Davlantes Decl. ¶ 14. Plaintiffs have a

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[5] The State implies that a plaintiff must testify regarding a bill to have standing. State Opp. at 4-5. Although satisfied here, such a requirement is illogical. Legislative testimony is only one way to participate in the legislative process, and lack of testimony does not equate to an indifference in the subject matter of the proposed legislation nor mean that an organization or individual is not monitoring the process. Obviously, with hundreds of bills introduced in the Legislature each year, more people are interested in following the bills' progress individually, through organizations, or in the news, than the handful of persons who have the resources to testify.

[6] It is unreasonable to expect—as the State implies—that Plaintiffs would testify in opposition to every instance in which the Legislature completely replaces the text of a bill. State Opp. at 5. Each bill requires an individualized assessment to determine whether it complies with the constitutional requirements, and many substitute bills—even if unconstitutional—never become law. Moreover, Plaintiffs' inability to easily

demonstrated history of raising similar constitutional concerns for years and clearly are an appropriate party to bring this action. Johnson Decl. ¶¶ 6-10 & Ex. 24-26; Davlantes Decl. ¶¶ 8-13.

Contrary to the State's opposition, Plaintiffs are not asserting a "value preference," but a constitutional mandate. None of the standing cases cited by the State concerned a plaintiff asserting a constitutional mandate.

Participating in the legislative process is already difficult for the people of Hawai`i. But it is made all the more difficult when the public is misled as substantive provisions of a bill are completely replaced by something else late in the process. If not Plaintiffs, the State has not identified anyone else who would be a more appropriate plaintiff for this action. And it is contrary to existing precedent and any notion of good sense, that no one in Hawai`i has standing to challenge the State's violation of the Hawai`i Constitution.

CONCLUSION

Plaintiffs respectfully request that this Court grant summary judgment in favor of the League of Women Voters of Honolulu and Common Cause and declare that (1) the State violated the three readings and title requirements of article III, sections 14 and 15 of the Hawai`i Constitution by enacting Act 84, and (2) Act 84 is void as unconstitutional.

DATED: Honolulu, Hawai`i, January 4, 2019

ROBERT BRIAN BLACK
LISA EMILY ENGEBRETSEN
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
Tel. (808) 531-4000
brian@civilbeatlawcenter.org
Attorneys for League of Women Voters of Honolulu and Common Cause

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track and comment on bills that are improperly amended only underscores the adverse impact on Plaintiffs that the constitutional provisions were intended to prevent.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) DECLARATION OF R. ELTON JOHNSON, III; EXHIBITS 24-28

DECLARATION OF R. ELTON JOHNSON, III

1. I am chair of the board of directors for the Hawai`i chapter of Plaintiff Common Cause. I make this declaration in support of Plaintiff Common Cause's standing to bring this action based on personal knowledge, review of the records kept in the ordinary course of the Hawai`i chapter's business, and review of public records.

2. Common Cause is a nonprofit, nonpartisan grassroots organization dedicated to upholding the core values of American democracy by encouraging open, honest, and accountable government that serves the public interest, promoting equal rights, opportunity, and representation for all, and empowering people to make their voices heard in the political process.

3. To accomplish its mission, the Hawai`i chapter follows many of the hundreds of bills introduced in the Hawai`i Legislature each year, and monitors the fairness of the overall legislative process in an effort to ensure that the public, including its members, are informed and empowered to participate in the process.

4. The Hawai`i chapter participates in the legislative process by, for example, speaking with legislators directly, testifying during committee hearings, monitoring bills of interest to members, working with coalitions of interested organizations and individuals on testimony, educating members of its grassroot network so that interested

members may testify on legislation, and advocating for a more open and transparent legislative process.

5. The Hawai`i chapter does not testify on every bill that it, its members, or its coalition partners are monitoring.

6. Approximately six years ago, the Hawai`i chapter began advocating publicly for the Legislature to stop its practice of wholesale amendment of a bill with content unrelated to the original bill. With the League of Women Voters of Hawai`i and other organizations and individuals, the Hawai`i chapter of Common Cause petitioned the leaders of the Legislature to prohibit the practice.

7. Attached as Exhibit 24 is a true and correct copy of the petition from the Hawai`i chapter of Common Cause and other organizations and individuals filed with the Legislature on April 24, 2013, as Miscellaneous Communication No. 4.

8. Attached as Exhibit 25 is a true and correct copy of a Community Voice piece by Hawai`i chapter of Common Cause board member Barbara Polk that Honolulu Civil Beat published on January 2, 2013, advocating for a change to "gut and replace" practices at the Legislature.

9. When that effort to encourage self-regulation at the Legislature was unsuccessful, the Hawai`i chapter of Common Cause and the League of Women Voters of Hawai`i began publishing a Rusty Scalpel award at the end of each legislative session.

10. Attached as Exhibit 26 is a compilation exhibit with true and correct copies of the press releases for the 2013 to 2017 Rusty Scalpel awards.

11. During the 2018 legislative session, the Hawai`i chapter of Common Cause was monitoring S.B. 2858 and other legislation that would establish performance indicators for the Department of Public Safety. Among others, Barbara Polk—a member and director of the Hawai`i Chapter of Common Cause—testified concerning S.B. 2858.

12. Substantive non-germane changes to bills during the legislative process and vague bill titles make it difficult, if not impossible, for the directors of the Hawai`i

chapter to keep informed—and in turn keep our members and coalition partners informed—about bills of potential interest.

13. Before S.B. 2858 was signed by the Governor, the Hawai`i chapter of Common Cause and the League of Women Voters of Hawai`i published their 2018 Rusty Scalpel award, which was awarded to S.B. 2858.

14. Attached as Exhibit 27 is a true and correct copy of the press release for the 2018 Rusty Scalpel award.

15. The Hawai`i chapter also wrote to Governor Ige expressing concerns about the constitutionality of S.B. 2858 before it was adopted.

16. Attached as Exhibit 28 is a true and correct copy of the May 18, 2018 memorandum from Corie Tanida, Executive Director of the Hawai`i chapter of Common Cause, to Governor Ige concerning, among other things, the constitutionality of S.B. 2858.

I, R. ELTON JOHNSON, III, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 3, 2019

R. ELTON JOHNSON, III

MISC. COMM. NO. 4

TO: 27TH HAWAII STATE LEGISLATURE

A petition to the Hawaii State Senate under Rule 67 and to the Hawaii State House under Rule 44

FROM: Americans for Democratic Action/Hawaii; Common Cause Hawaii; League of Women Voters of Hawaii; Citizen Voice; Choon James, Country Talk Story; Conservation Council for Hawaii; Hawaii Coalition for Legislative Reform; Hawaii Open Data; Hawaii's Thousand Friends; Kokua Council; Media Council Hawaii; Open Law Alliance; and members of the public

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It is the clear intent of the Hawaii State Constitution, and it should be legislative policy, that the public be given reasonable notice and the opportunity to submit testimony in both one committee of the State House and in one committee of the State Senate concerning any proposed statutory amendment and concerning any proposed appropriation of public funds. (Article 3, Section 14 of the State Constitution)

As provided in Senate Rule 67 and House Rule 44, we are submitting this petition to ask the Senate and the House for two things:

1) DO NOT pass the "gut-and-replace" bills and "Frankenstein" bills generated in the 2013 legislative session, due to the way the bills have moved forward.

2) BAN the "gut-and-replace" and "Frankenstein" practices from being used in the future.

We have identified a number of bills with non-germane material added. We are calling on the current Legislature to REJECT all bills which were substantively amended in a manner which evades the Constitutional public right to testify on proposed legislation.

"Gut and replace" is a legislative practice rightfully scorned by the public. Due to maneuvers by various legislative committees resulting in major changes in bills without public notice, we are petitioning the legislative bodies to defeat the following bills that were subject to "gut and replace" procedures:

- HB399 HD1 SD2
- HB473 HD1 SD2
- HB747 HD1 SD1
- HB785 HD1 SD1

- SB15 SD2 HD2
- SB757 SD2 HD2
- SB948 SD1 HD1

Another toxic practice concerns resurrecting bills from the dead, and adding language from dead bills into existing, un-related bills. This practice has brought forth at least the eleven "Frankenstein" bills in the 2013 session and we the public are unsettled and provoked by this practice. We are petitioning that the following "Frankenstein" bills, that had non-germane material added to them after the opportunity for review in a publicly-noticed hearing, be defeated or be amended to remove the non-germane material prior to a final vote:

- HB70 HD2 SD2
- HB252 HD2 SD2
- HB487 HD2 SD2
- HB529 HD1 SD2
- HB546 HD2 SD2
- HB1405 HD2 SD2
- SB66 SD1 HD2
- SB515 SD2 HD1
- SB642 HD2
- SB753 SD2 HD1
- SB1214 SD1 HD2

We are affronted that some legislators think that ambiguous bill titles and last-minute amendments are an appropriate way to evade basic, procedural safeguards established by our State Constitution. The standard for determining whether a bill addresses only one subject is found in *Schwab v. Ariyoshi* < http://ow.ly/kb4LP >: "The term "subject," as used in the constitution is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that act should embrace someone general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject." (*Schwab v. Ariyoshi*, 564 P. 2d 135 - Haw: Supreme Court 1977)

HB252, "Relating to Government," illustrates our concerns. Here un-related language from a dead bill was added to the original bill. The broad title of the bill, "Relating to Government" was justified as a reason to use this "Frankenstein" practice. But under this justification the legislature could label all bills as "Relating to Government," and continue to play shell games with the public. Whether a bill addresses a single subject is not determined solely by the title of

the bill. It is clear that the last minute additions to HB252 are not sufficiently related to the original subject of the bill to pass the *Schwab v. Ariyoshi* test. See < http://ow.ly/kaJi3 > again, and < http://ow.ly/kb4LP >.

We condemn these tactics and strongly oppose these misleading practices which keep the public in the dark. Again, we ask the Senate and the House for two things:

1) DO NOT pass the "gut-and-replace" bills and "Frankenstein" bills generated in the 2013 legislative session, due to the way the bills have moved forward.

2) BAN the "gut-and-replace" and "Frankenstein" practices from occurring again in the future.

Thank you for taking appropriate action on these two sets of bills. We look forward to you addressing and correcting these legislative practices to address our concerns.

Sincerely,

1. Americans for Democratic Action/Hawaii; Barbara Polk, Legislative Chair
2. Common Cause Hawaii; Carmille Lim, Executive Director
3. League of Women Voters of Hawaii; Beppie Shapiro, President
4. Citizen Voice
5. Choon James, Country Talk Story
6. Conservation Council for Hawaii
7. Hawaii Coalition for Legislative Reform
8. Hawaii Open Data
9. Hawaii's Thousand Friends
10. Kokua Council
11. Media Council Hawaii
12. Open Law Alliance

Members of the public

	Name	City
1.	Aaddnn Oshiro-Kauwe	Volcano, HI
2.	Adriel Robidoux	Wailea, HI
3.	Andrea W Bell	Kailua, HI
4.	Art Mori	Honolulu, HI
5.	Barbara Polk	Honolulu, HI
6.	Beth Stone	Kailua, HI
7.	Betty Depolito	Waialua, HI
8.	Bianca Isaki	Honolulu, HI
9.	Brigitte Cooper	Ocean View, HI

Name	City
10. Carlton York	Weaverville, NC

please stop the pldc in all its many permutations, allow public land to remain truly public!

11. Charles Tuttle	Hilo, HI
12. Cherilyn Inouye	Kailua, HI
13. Citizen Voice	Honolulu, HI
14. cynthia Franklin	Honolulu, HI
15. Deanna Espinas	Honolulu, HI
16. Deborah Ward	Kurtistown, HI

We insist on democracy and transparency in lawmaking!

17. Dennis McPhee	Honolulu, HI
18. Dorothy J. Hayes	Honolulu, HI
19. Douglas Cobeen	Kamuela, HI
20. Duane Likens	Denver, CO
21. Elaine D.	Lihue, HI

If the bills can't pass muster on their own w/o 'tactics' maybe they shouldn't be considered. Make sense?

22. Elaine Shirley	Honolulu, HI
23. Eleu Puhipau	Waialua, HI
24. Gail Breakey	Waipahu, HI
25. George Kent	Honolulu, HI
26. H. Doug Matsuoka	Honolulu, HI
27. Jade English	Kihei, HI
28. Jake Jacobs	Kailua-Kona, HI
29. James Macey	Kapolei, HI
30. Jamie Rego	Waialua, HI
31. Joan	Honolulu, HI
32. John	Honolulu, HI
33. Joy Quick	Kaneohe, HI
34. Julie Smith	Honolulu, HI
35. Juliet Begley	Honolulu, HI
36. Karen Chun	Paia, HI
37. Karen Cobeen	Kamuela, HI
38. Kenneth R. Hunt	Keaau, HI

We need stronger language than this to help our so call representatives understand they are our servants and the blatant disregard of that will result in commercial damages to them.

39. Kerri Marks	Hilo, HI

	Name	City
40.	Kerry Hubbell	Pahoa, HI
41.	Larry Geller	Honolulu, HI
	I ask the Legislature to act democratically and to abandon practices which mislead the public	
42.	Larry Wenberg	Honolulu, HI
43.	Linda Sola	Makawao, HI
44.	Lisa Andrews	Kapa'au, HI
45.	Luann	Haleiwa, HI
46.	Lynlie Waiamau	Lihue, HI
	Make government more transparent and accountable to the people.	
47.	Mary Kohman	Ninole, HI
48.	Mary Lacques	Haleiwa, HI
	Transparency, accountability and honorable practices are what we elected you to uphold. Ban these disingenuous practices.	
49.	Mary Oyama	Ewa Beach, HI
50.	Melanie Pendleton	Honolulu, HI
	This practice makes the Senate and the House look sleazy to the people that voted or supported a certain bill and creates another area of distance between the representatives and the voters.	
51.	Michael Daly	Honolulu, HI
	Gun regulations save innocent lives.	
52.	Michelle Matson	Honolulu, HI
53.	Nancy Aleck	Honolulu, HI
54.	Paula N	Waikoloa, HI
55.	Pearl Johnson	Honolulu, HI
56.	Polli Oliver	Koloa, HI
57.	Ray Pace	Honolulu, HI
58.	Rexann Dubiel	Haleiwa, HI
59.	Richard Mindar	Honolulu, HI
60.	Robert Freitas Jr.	Kailua Kona, HI
	I support this!!!	
61.	Robert McCoy	Hilo, HI
	I am a Hawaii Resident, and I agree with this petition.	
62.	Scott Foster	Honolulu, HI
	I too am a Hawaii Resident and voter and I agree with this petition.	

Name	City
63. Shannon Rudolph	Holualoa, HI

These sneaky practices MUST STOP - no matter what you call them. If legislators can not be honorable and their bills can not stand the light of day and must resort to dispicable, deceitful backroom deals - those legislators have no business in public office. NO public notice, is sickening.

64. Sharon Willeford	Keauhou, HI
65. Stephen Major	Hilo, HI
66. T. J. Davies Jr.	Honolulu, HI
67. Thomas Ah Yee	Tolleson, AZ
68. Thomas and Julie Pasquale	Naalehu, HI

The practice of amending bills to include subjects irrelevant to the original bill has really kept the government watchdogs in the public on their toes this session. It should not be so difficult to follow what is happening in the legislature. This is wrong and a terrible disservice to the public who have a right to know about and comment on bills. This needs to stop!

69. Tom Thompson	Kamuela, HI
70. Valerie Barnes	Kapa'au, HI
71. Yolanda Clay	Kailua-Kona, HI
72. Zita Frederic	Kahului, HI

Hawaii

Time for Fresh Air at the Legislature

Will new leadership stop "gut and replace" actions and strike down other undemocratic rules?

January 2, 2013

Reading time: 5 minutes.

Sen. Donna Kim has become the President of the Hawaii State Senate and Rep. Calvin Say has announced that he is stepping down as Speaker of the State House of Representatives. At this writing, it appears that the dissident legislators in the House are now the majority and have begun to organize for the coming session. These changes open the opportunity for new leadership to make our Legislature more democratic. We should know, early in the session, whether this will happen, as the House and Senate approve their rules and the committees begin to meet.

Will the rules in both houses require three working days' notice for hearings so that neighbor islanders and others who need to make special arrangements can attend? And will both houses stick to that rule with minimal exceptions throughout the session? Will more hearings be broadcast and will all hearings be archived on-line so they can be watched later? Will the rules specify that the Public Access Office designate which of the committee hearings will be broadcast, based on their assessment of public interest, rather than the current House practice of letting chairs block the public from viewing controversial hearings?

Will there be strong language to stop "gut and replace" actions, in which the content of a bill is removed and an entirely different one inserted instead? Probably such a rule will need to address the current overly broad statements of the subject of the bill. And how about listing committee members who voted for a major change in the intent of a bill as the introducers in subsequent versions (at the request of the original introducers)?

Will bill amendments prepared by committee chairs be required to be posted prior to the hearing rather than passed out to committee members after testimony? But will the rules specify that testimony will be heard on the original bill as well as on the proposed draft? (I don't object to committee chairs announcing in advance that they intend to make certain changes and that there is no need for extensive comment by those who agree.) And what about the correspondence sent to conference committees—will rules require that they be posted on-line, as is testimony received for hearings?

Will the rules strengthen transparency of conflict of interest and will the President and Speaker carry out the intent of conflict of interest rules by barring representatives with conflicts from introducing, chairing hearings on, or voting on bills in which the conflict arises? Will the rules specify that legislators not hold fund-raisers during the session (a rather obvious way

of inviting pay-to-play)?

Will the rules require that bills that have changed substantially in conference committee be voted on individually, rather than being subsumed in a lengthy list, so that legislators have the opportunity to seriously consider the changes prior to voting?

Then there's the way the committees conduct business. Will the new regime encourage committee chairs to hold public discussion of bills, rather than limiting them to asking questions and voting Yes, No or Maybe (WR)? When committee members come into the room only for the vote and there's no discussion, it appears that only the chair's opinion matters, except in extreme cases. It would be like a breath of fresh air to have chairs ask members what they think about controversial aspects of a bill, rather than just announcing their intended amendments and asking for a vote. While there is discussion behind the scenes, since the Legislature is not bound by Sunshine Laws, it would be more appropriate in a democracy to have at least some of the stickier points discussed publicly, so that the public has a better understanding of the committee's recommendations.

I'm sure others who keep an eye on the Legislature, as well as the dissidents who have lived under the previous speaker, can suggest other needed changes in the rules and procedures of our Legislature. And just maybe the new Senate President will take heed as well and begin to make her mark by reexamining and improving Senate rules and procedures. It's shaping up to be a year of major changes. There are many of us who will be watching and waiting, hoping that a more democratic Hawaii State Legislature emerges.

About the author: *A retired University of Hawaii administrator, Barbara Polk is currently on the boards of Americans for Democratic Action/Hawaii*

and Common Cause Ha[illegible]ii and has testified at the sta[illegible]egislature on good government and other issues on behalf of these organizations for the past several years.

Community Voices aims to encourage broad discussion on many topics of community interest. It's kind of a cross between Letters to the Editor and op-eds. We do not solicit particular items and we rarely turn down submissions. This is your space to talk about important issues or interesting people who are making a difference in our world. Columns generally run about 800 words (yes, they can be shorter or longer) and we need a photo of the author and a bio. We welcome video commentary and other multimedia formats. Send to news@civilbeat.com.

Hawaii
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Holding Power Accountable

LEAGUE OF WOMEN VOTERS OF HAWAII

Common Cause Hawaii: P.O. Box 22703 • Honolulu, HI 96823 • (808) 275-6275
League of Women Voters of Hawaii: 49 S. King St., Rm 314 • Honolulu HI 96813 • (808) 531-7448

Contact: **Piilani Kaopuiki, President,**
League of Women Voters of Hawaii
808-531-7448
voters@lwv-hawaii.com

FOR IMMEDIATE RELEASE

GOVERNMENT WATCHDOG ORGANIZATIONS ANNOUNCE "RUSTY SCALPEL" AWARD

New award will recognize the most drastically altered bill during 2014 legislative session

(Honolulu, HI, January 13, 2014)-- Common Cause Hawaii and the League of Women Voters of Hawaii have announced a new virtual "Rusty Scalpel" award for the most altered bill whose original content are no longer recognizable because of "gut and replace" and "Frankenstein" amendments -- "surgical techniques" that severely change the original purpose of a bill. .. "Gut and replace" amendments replace existing content with new content unrelated to a bill's original purpose. "Frankenstein" amendments add content unrelated to a bill's original purpose. For the 2013 Legislative Session, Common Cause and League cited SB1214 HD1 as an example of "gut and replace" because the House removed the original content concerning the Transportation Commission, and substituted new content concerning County regulation of wheel boots. In contrast, HB252 SD1 is an example of a Frankenstein bill because it began as a measure concerning the Native Hawaiian Rolls Commission, before the Senate added unrelated language concerning geothermal energy.

The League of Women Voters of Hawaii will highlight these practices on Twitter at @ LWV_ Hawaii using the #RustyScalpel searchable hashtag. Each tweet will contain a call to action: either 1) "DO NOT pass this bill because" or 2) "BAN these practices. "

The winner of the 2014 Rusty Scalpel award will be made at the conclusion of the 2014 session, and will be posted on Common Cause Hawaii and the League of Women Voters of Hawaii's websites.

Common Cause Hawaii is a state chapter of the national Common Cause organization. Common Cause is a nonpartisan, grassroots organization dedicated to reinventing an open, honest and accountable government that serves the public interest. For more information, visit www.commoncause.org/HI

League of Women Voters of Hawaii is a non-partisan political organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. For more information visit www.lwv-hi.com

ETHICS & ACCOUNTABILITY

HB2434 Merits Rusty Scalpel

07.16.2014 / 9:05 PM

HB2434 MERITS RUSTY SCALPEL

For immediate release:

Wednesday, July 16, 2014

The League of Women Voters and Common Cause Hawaii have a 2014 "Rusty Scalpel" winner, HB2434, CD1, Relating to the Transient Accommodations Tax. The two organizations offer a "Rusty Scalpel" award for the most altered bill whose original content is no longer recognizable because of "surgical techniques" that changed the original purpose of the bill.

During a Conference Committee near the end of the 2014 legislative session, without meaningful opportunity for public or agency comment, HB 2434 SD 2 was drastically amended. When introduced the measure was a bill to allocate $3 million of hotel tax revenues to a multi-purpose conservation fund. After the Conference Committee discarded the SD2, the bill morphed to a measure to refinance the Convention Center debt. Proceeds of the refinancing will be used to acquire the conservation easement at Turtle Bay, Oahu. Regardless of the final proposal's merits, there was no compelling reason not to extend the session and hold public hearings on this important amended bill.

It disrespects Hawaii's Constitution when a legislative committee adopts bill amendments with no rational connection to the subject of the bill referred to that committee. Article III, Section 14 of our

Constitution specifically requires that each bill have a single subject expressed in the bill's title and prohibits changing any bill's title. Article III, Section 15 requires that each bill have three separate readings in each house of the Legislature. The unambiguous intent is to encourage informed public comment on all proposed legislation and thorough consideration of all relevant factors by both House and Senate subject matter committees. The public obviously is not aware of and cannot comment on substantive amendments being proposed in Conference Committee.

Ann Shaver, League President, said "This makes a travesty of the democratic process. Just because there are enough votes to pass a measure doesn't make it Constitutional. HB2434 CD1 proposed a new idea, maybe even a great idea, but it was obviously unrelated to the bill's original purpose. The content of the CD1 stunned us; it was passed without a single public hearing when there was no emergency. "

Carmille Lim of Common Cause added, "Citizens should be able to participate in the legislative process in a fair and orderly manner. In this case, a $40 million dollar appropriation was grafted on to a major last-minute change, depriving many members of the legislature from the normal review and give and take of budget discussions. Gutting bills and replacing content with new and unrelated content that alters the bill's original intention does a disservice to members of the public and distorts the legislative process."

Last year the League of Women Voters, Common Cause and other civic organizations petitioned both houses of the Legislature asking that they amend legislative rules to ban such practices, but the

legislature chose to c nothing. Maybe a Constit onal amendment to prohibit this would make democracy work a little better.

In the 2014 session the League and Common Cause identified dozens of bills which were subjected to these techniques. For example, HB 193 concerned developer compliance with conditions for land use district boundary amendments while HB 193, SD 1 concerned use of State property for transit-oriented development. Or for example, SB 2535 concerned State acquisition of real property for agricultural production while SB 2535, proposed HD 1 concerned labeling of genetically modified food. In general, when the subject of a bill was totally changed after cross-over, only one public hearing was held on the amended subject (with the Senate totally disregarding public testimony to the House, and the House totally disregarding public testimony to the Senate). However, HB2434, CD1 was our "winner" because not only was it a "gut and replace" no hearing was held on the CD1 version of the bill.

Common Cause Hawaii is a state chapter of the national Common Cause organization. Common Cause is a nonpartisan, grassroots organization dedicated to protecting and improving Hawaii's political process and holding government accountable to the public interest. For more information, www.commoncause.org/states/hawaii/

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Reduce Money's Influence

Expand Voting Rights & Election Integrity

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Common Cause Hawaii: P.O. Box 22703 • Honolulu, HI 96823 • (808) 275-6275
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Contact: Ann Shaver, President
League of Women Voters of Hawaii
(808) 696-4186
voters@lwv-hawaii.com

GOOD GOVERNMENT GROUPS ANNOUNCE 2015 "RUSTY SCAPEL" WINNER
And recognize legislative corrections to the 2014 "Rusty Scalpel" Winner

August 13, 2015

For Immediate Release:

The League of Women Voters and Common Cause Hawaii have identified HB 15, CD 1 (Act 173, Session Laws of Hawaii 2015) "Relating to Elections" as their 2015 "Rusty Scalpel" winner. The "Rusty Scalpel" recognizes enactment of a bill whose subject has been substantially amended without opportunity for public input and legislative review as required by the Hawaii Constitution.

The Hawaii Constitution sets procedures for enactment of new laws. The purpose of these procedures is to facilitate public participation and to discourage "fraud" and "logrolling". Article III, Section 14 provides "Each law shall embrace but one subject which shall be expressed in its title." In plain English, our Legislature is NOT supposed to pass a bill which addresses 2 or more unrelated subjects. Article III, Section 15 provides that "No bill shall become law unless it shall pass three readings in each house on separate days." In plain English, our Legislature is NOT supposed to pass a bill whose subject has not had three separate readings in the State House and three separate readings in the State Senate.

During the 2015 session, the League of Women Voters and Common Cause Hawaii identified more than 20 bills which did not comply with Article III, Section 14 and/or Article III, Section 15. The 2015 Legislature actually passed seven bills whose subjects did not receive 3 readings in both the House and Senate. (These are Acts 104, 118, 126, 142, 173, 186 and HB 540, CD 1 which was vetoed.) From these seven "candidates", the League and Common Cause Hawaii have selected Act 173, Session Laws of Hawaii 2015, for our 2015 "Rusty Scalpel" award because:
\

1. Act 173 addresses three unrelated subjects (absentee ballot procedures, terms of Election Commission Chair, evaluation of Chief Elections Officer).
2. One subject of Act 173 (terms of Election Commission) did not have either 3 readings or a public hearing in the House.
3. Another subject of Act 173 (evaluation of Chief Elections Officer) did not have 3 readings or a public hearing in either the House or the Senate.

Last year the League and Common Cause chose Act 81, SLH 2014, for our 2014 "Rusty Scalpel" award. The subject of Act 81 (which authorized the Hawaii Tourism Authority to acquire a conservation easement at Turtle Bay using revenue bonds amortized with hotel tax revenues) did not have 3 readings or a public hearing in either the House or the Senate. This year the League and Common Cause are pleased to report that the Legislature followed appropriate procedures, and held numerous public hearings, before passing legislation to clarify, replace, and "fix" Act 81.

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Common Cause Hawaii: 307A Kamani Street • Honolulu, HI 96813 • (808) 275-6275
League of Women Voters of Hawaii:49 South Hotel Street, Room 314 • Honolulu HI 96813 • (808) 531-7448

Contact: Ann Shaver, President
League of Women Voters of Hawaii
(808) 696-4186
voters@lwv-hawaii.com

GOOD GOVERNMENT GROUPS ANNOUNCE 2016 "RUSTY SCAPEL" WINNER

For immediate release:

July 8, 2016

The outcome of all 2016 legislative measures transmitted to the Governor will be known by July 12, which is the deadline for final approval or veto of the legislature's bills from this year. Unfortunately, the Governor has not announced his intent to veto HB1689, CD1 "Relating to Taxation," which the League of Women Voters and Common Cause Hawaii have identified as their 2016 "Rusty Scalpel" winner. The "Rusty Scalpel" award recognizes enactment of a bill whose subject has been substantially amended without opportunity for public input and legislative review as required by the Hawaii Constitution.

Towards the end of the 2016 legislative session, without meaningful opportunity for public or agency comment, a conference committee replaced the contents of HB 1689, SD 2 with a totally unrelated bill whose subject never had a public hearing in the Senate. The original HB 1689 amended the existing ethanol facility income tax credit to include other renewable fuels. All House and Senate committee hearings on HB 1689 concerned tax credits for production of renewable fuels. But inexplicably, HB 1689, CD 1 did not in any way concern tax credits for production of renewable fuels. Instead, to everyone's surprise, HB 1689, CD 1 proposed a new tax credit for production of organic food.

The Hawaii Constitution sets procedures for enactment of new laws. The purpose of these procedures is to facilitate public participation and to discourage "fraud" and "logrolling". Article III, Section 14 provides "Each law shall embrace but one subject which shall be expressed in its title." In plain English, our Legislature is NOT supposed to pass a bill which addresses 2 or more unrelated subjects. Article III, Section 15 provides that "No bill shall become law unless it shall pass three readings in each house on separate days." In plain English, our Legislature is NOT supposed to pass a bill whose subject has not had three separate readings in the State House and three separate readings in the State Senate.

Ann Shaver, League President, said "This makes a travesty of the democratic process. Just because there are enough votes to pass a measure doesn't make it Constitutional. HB1689, CD1 was obviously unrelated to the bill's original purpose. The content of the CD1 stunned us; it was passed without a single public hearing. There clearly was no justification."

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League of Women Voters of Hawaii
(808) 696-4186
voters@lwv-hawaii.com

AND THE 2017 "RUSTY SCAPEL" WINNER IS…

For immediate release:

July 21, 2017

HB 375, CD 1 (Act 214, Session Laws of Hawaii 2017) has been selected by the League of Women Voters and Common Cause Hawaii for their 2017 "Rusty Scalpel" award. The "Rusty Scalpel" award recognizes enactment of a bill whose subject has been substantially amended without opportunity for legislative review as required by the Hawaii Constitution.

Article III, Section 14 of our State Constitution provides "Each law shall embrace but one subject which shall be expressed in its title." HB 375 was titled "Relating to Taxation". When introduced, HB 375 proposed amending income tax rates to negate any income tax liability for those at or below poverty thresholds. The Senate Ways and Means Committee was the first to drastically amend the bill, gutting its contents, and replacing it with provisions to repeal the sunset date for the refundable food/excise tax credit. Then during Conference Committee, the bill was drastically altered to appropriate $1 million, subject to a dollar for dollar match by the private sector, to the Hawaii Tourism Authority, working in conjunction with the Hawaii Lodging and Tourism Association, for projects to address homelessness in tourist and resort areas.

Corie Tanida, of Common Cause Hawaii said, "While addressing homelessness in Hawaii is important and commendable, an 'appropriation' is not the same as 'taxation'. The final version of this bill doesn't pass the relatively 'low bar' of having the bill's subject match the bill's title."

Article III, Section 15 of our State Constitution provides that "No bill shall become law unless it shall pass three readings in each house on separate days." The unambiguous intent is to provide the House and Senate, separately, the opportunity to thoroughly review every single bill. Amending a bill's subject in conference committee without such review ignores this Constitutional requirement.

According to Ann Shaver, President of the League of Women Voters of Hawaii, "The 2017 session was a 'Good News, Bad News' situation. HB 375, CD 1 was the only real candidate for our 2017 'Rusty Scalpel' award. On the other hand, HB375, CD1 was the worst we've seen in the five years we have presented this award." On July 12, 2017, without the Governor's signature, HB 375 became Act 214, Session Laws of Hawaii 2017.

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Common Cause
Hawaii

DISCLOSURE & TRANSPARENCY ABUSE OF POWER

SB2858 Fails to Meet Constitutional Requireme

05.22.2018 / 7:32 PM

Media Contact

For Immediate Release

May 22, 2018

Contact: Corie Tanida

808.275.6275

hawaii@comm cause.org

SB2858 Fails to meet Constitutional requirement

(HONOLULU, HI)— SB2858 SD2 HD1 CD1, which requires the State to consider hurricane resistant criteria when designing and constructing new public schools for the capability of providing shelter refuge, has been selected by the League of Women Voters of Hawaii and Common Cause Hawaii as the 2018 Rusty Scalpel "winner."

The "Rusty Scalpel" award recognizes passage of a bill whose subject has been substantially amended without opportunity for adequate legislative review as required by the Hawaii Constitution. Article III, Section 15 of the Hawaii State Constitution provides that, "No bill shall become law unless it shall pass three readings in each house on separate days." SB 2858 CD1 failed to meet this requirement, as the content was not considered in the Senate.

The original version of SB2858, as well as the subsequent Senate Drafts of this measure, would have required the Department of Public Safety to establish key performance indicators for a post-incarceration inmate re-entry system. The House gutted the bill and inserted the contents of HB2452 (which crossed-over but was never heard by the Senate) which would have required the state to include hurricane shelter rooms in new state buildings.

"The point of the legislative process as laid out in our Constitution is to ensure proposals are properly vetted and discussed before passage. Maneuvers like those used with SB2858 cut out both legislators and the public. Coupled with the high number of bills in 2018 that were subject to the 'gut and replace' practice, it's no wonder people are feeling disillusioned and discouraged from participating in government," said Corie Tanida, Executive Director, Common Cause Hawaii. "We expect everyone, especially our elected officials, to respect and abide by our laws and Constitution."

"Apparently, some House members thought it was fine to use an overly generic title like "Relating to Public Safety" to deceive their Senate colleagues about what topic was under consideration," said Ann Shaver of the League of Women Voters of Hawaii. "The Legislature has failed to stop the use of 'shortcuts' even though all legislators took an oath to uphold the Constitution," Shaver added.

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Common Cause Hawaii
307A Kamani St.
Honolulu, HI 96813
808.275.6275

Common Cause

Hawaii

Holding Power Accountable

Memo

Date: May 18, 2018

To: Governor David Ige

From: Corie Tanida, Executive Director Common Cause Hawaii

Re: Concerns about SB2992, SB2858, SB3058

Common Cause Hawaii is a nonpartisan good-government watchdog. We specialize in process issues, and work to ensure that government is open, honest, and accountable to the people.

We have reviewed the bills that survived the 2018 Legislative Session and have been sent to you for consideration. We have concerns regarding the following bills.

- **SB2992 SD1 HD1 CD1 Relating to Campaign Finance.** We believe that in this post *Citizens United* world, coupled with the "fake news" phenomenon, it is more important than ever to identify sources of campaign materials, including signs and banners. Disclosure on signs and banners should not only be applied to ballot issues, but materials advocating for or against candidates.

- **SB2858 SD2 HD1 CD1 Relating to Public Safety**. The original intent of this bill would have required the Department of Public Safety to establish key performance indicators on their reentry system. Once the bill crossed over to the House, the "gut and replace" tactic was used and the bill transformed to require the State to consider hurricane-resistant criteria when designing new buildings (the topic was never heard by the Senate in this or other vehicles). Due to this, the bill was not properly vetted and we believe that it does not fulfill the three readings requirement as mandated by our state constitution.

- **SB3058 SD2 HD2 CD1 Relating to Public Lands**. Our concerns regarding this bill echo the Attorney General's concerns, as explained in their testimony to the House Finance Committee. Because this bill only applies to a specific area of East Hawaii, we consider this bill to be special legislation. This could be a violation of Article XI, section 5 of the state constitution, which provides that legislative power over state lands shall be exercised by general laws.

Please do not hesitate to contact us if you have any questions or concerns. Mahalo for your consideration.

307A Kamani Street, Honolulu, HI 96813 | 808/275-6275
HAWAII@commoncause.org | www.hi.CommonCause.org
Twitter.com/CommonCauseHI | Facebook.com/CommonCauseHawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) DECLARATION OF NANCY DAVLANTES

DECLARATION OF NANCY DAVLANTES

1. I am President of Plaintiff League of Women Voters of Honolulu (LWV Honolulu). I make this declaration in support of Plaintiff LWVH's standing to bring this action based on personal knowledge and review of the records kept in the ordinary course of the LWV Honolulu's business.

2. LWV Honolulu is a nonprofit, non-partisan organization established to encourage informed citizen participation in government.

3. Since its founding in 1948, the LWV Honolulu has fought to improve our systems of government and impact public policies through citizen education and advocacy. The philosophy of LWV Honolulu is that democracy thrives only if citizens play an active role in elections and government oversight.

4. LWV Honolulu works closely with its partner organization the League of Women Voters of Hawai`i (LWV Hawai`i). As President of LWV Honolulu, I also have an *ex officio* position on the LWV Hawai`i board of directors. And the former President of LWV Hawai`i—Ann Sack Shaver—currently serves on the LWV Honolulu board of directors. LWV Honolulu typically takes action on matters of statewide significance through LWV Hawai`i; in other words, on most matters of statewide significance, LWV Honolulu works through its partnership with LWV Hawai`i, rather than duplicate efforts.

5. To accomplish its mission, LWV Honolulu—through its members and through LWV Hawai`i—follows many of the hundreds of bills introduced in the Hawai`i Legislature each year, and monitors the fairness of the overall legislative process in an effort to ensure that the public, including its members, are informed and empowered to participate in the process.

6. LWV Honolulu participates in the legislative process—through its members and through LWV Hawai`i—by, for example, speaking with legislators directly, testifying during committee hearings, monitoring bills of interest to members, working with coalitions of interested organizations and individuals on testimony, educating members of its grassroot network so that interested members may testify on legislation, and advocating for a more open and transparent legislative process.

7. LWV Honolulu does not testify on every bill that it, its members, or its partners are monitoring.

8. Approximately six years ago, LWV Honolulu began advocating publicly for the Legislature to stop its practice of wholesale amendment of a bill with content unrelated to the original bill. With the Hawai`i chapter of Common Cause and other organizations and individuals, LWV Honolulu—through LWV Hawai`i—petitioned the leaders of the Legislature to prohibit the practice.

9. When that effort to encourage self-regulation at the Legislature was unsuccessful, the Hawai`i chapter of Common Cause and LWV Hawai`i began publishing a Rusty Scalpel award at the end of each legislative session.

10. Substantive non-germane changes to bills during the legislative process and vague bill titles make it difficult, if not impossible, for LWV Honolulu to keep informed—and in turn keep our members and partners informed—about bills of potential interest.

11. Such actions during the legislative process undermine public confidence in government because it makes the process appear sneaky. While the material that replaces the original wording may have merit, acting in a less than open and deliberative manner that includes an opportunity for public participation undermines trust in the legislative process. That the State continues to engage in such actions after

Common Cause, LWV Hawai`i, and others have raised serious concerns over the last several years is extremely disheartening.

12. It is embarrassing that some legislators continue to openly embrace such actions—purportedly for the public good—when it only causes confusion among the public, as reflected in the testimony about S.B. 2858 after the House amendments, and confusion among legislators, as reflected for example in committee discussions about a GMO-labeling bill in 2014. Will Caron, *Wooley's Gut-and-Replace Gambit*, Hawaii Independent (Mar. 20, 2014), *at* http://hawaiiindependent.net/story/wooleys-gut-and-replace-gambit.

13. The public, including LWV Honolulu members, need the fair, transparent, and deliberative process for legislative enactments, as guaranteed by the Hawai`i Constitution, in order for citizens to have a meaningful voice on matters that would change State law.

14. Before S.B. 2858 was signed by the Governor, the Hawai`i chapter of Common Cause and LWV Honolulu—through LWV Hawai`i—published their 2018 Rusty Scalpel award, which was awarded to S.B. 2858.

I, NANCY DAVLANTES, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 3, 2019

Nancy DavLantes

NANCY DAVLANTES

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, R. Brian Black, certify that on January 4, 2019, I will serve a copy of the foregoing Reply Memorandum of Law in Support of Cross-Motion for Summary Judgment; Declaration of R. Elton Johnson, III; Exhibits 24-28; and Declaration of Nancy Davlantes by U.S. mail, postage prepaid:

Robyn B. Chun
Department of the Attorney General
425 Queen Street
Honolulu, Hawai`i 96813
Attorneys for Defendant State of Hawai`i

Colleen Hanabusa
3660 Waokanaka Street
Honolulu, Hawai`i 96817
Attorney for Amicus Curiae
Hawai`i State Legislature

DATED: Honolulu, Hawai`i, January 4, 2019

ROBERT BRIAN BLACK
Attorney for League of Women Voters of Honolulu and Common Cause

ROBERT BRIAN BLACK 7659
LISA EMILY ENGEBRETSEN 10952
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
brian@civilbeatlawcenter.org
Telephone: (808) 531-4000

Attorneys for League of Women Voters of Honolulu and Common Cause

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAI`I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC
(Other Civil Action)

PLAINTIFFS' RESPONSE TO MEMORANDUM OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE*; DECLARATION OF R. BRIAN BLACK; EXHIBITS 29-34; and CERTIFICATE OF SERVICE

HEARING
JUDGE: Honorable Gary W. B. Chang
TRIAL DATE: NONE
HEARING DATE: January 24, 2019
HEARING TIME: 2 p.m.

PLAINTIFFS' RESPONSE TO MEMORANDUM OF HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE*

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Constitutional History

Realizing that century-old constitutional history and case precedent supports Plaintiffs' interpretation of the title and three readings requirements of the Hawai`i Constitution, the *Amicus Curiae* Hawai`i State Legislature attempts to craft arguments from the premise that constitutional history restarted with Statehood. Plaintiffs explain here why that is incorrect and outline the long constitutional tradition in Hawai`i to protect meaningful public notice and participation in the legislative process.

Plaintiffs also outline how some of the other constitutional provisions were intended to function. This Court asked the *Amicus Curiae* Legislature to share its experience—as the end user of the Hawai`i Constitution—in implementing the constitutional provisions that restrict the legislative process. Because *Amicus Curiae* focused more on repeating arguments made by the Defendant State of Hawai`i, Plaintiffs seek to provide the Court with some sense of the process that citizens have agreed in the constitution to be the minimum path that proposed legislation must follow to be deemed a valid law of the State of Hawai`i.

Lastly, to the extent that the Legislature identified different authority or variations of arguments made by the State, Plaintiffs address those issues as it concerns the title and three readings requirements. The Legislature's justiciability arguments merely repeat the State's prior briefing.

I. THE CONSTITUTIONAL HISTORY OF THE TITLE AND THREE READINGS PROVISIONS REFLECTS A CLEAR INTENT TO PROTECT INFORMED CIVIC ENGAGEMENT IN THE LEGISLATIVE PROCESS.

The title and three readings mandates in the Hawai`i Constitution are two foundational building blocks of an interdependent network of protections to ensure the public can understand, and be heard during, the process for enactment of laws in Hawai`i. For over a century, constitutional framers have consistently adhered to the principle that the legislative process functions best when it is open, transparent, and allows for informed public input.[1]

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[1] These and other constitutional protections reflect the democratic principle that a representative government derives its authority from the people. The first principle of the Bill of Rights is: "All political power of this State is inherent in the people; and the

A. Constitutional Intent Is Determined by Examining the History and Intent at the Time of Adoption.

If a constitutional provision is ambiguous, a court may look to "the history of the times and the state of being when the constitutional provision was adopted." *State v. Kahlbaun*, 64 Haw. 197, 202, 638 P.2d 309, 315 (1981); *accord Hanabusa v. Lingle*, 105 Hawai`i 28, 32, 93 P.3d 670, 674 (2004) ("[A] constitutional provision must be construed in connection with other provisions of the instrument, and also in the light of the circumstances under which it was adopted and the history which preceded it."); *Pray v. Judicial Selection Comm'n*, 75 Haw. 333, 343, 861 P.2d 723, 728 (1993) ("[T]he fundamental principle in construing a constitutional provision is to give effect to the intention of the framers and the people adopting it."). To understand that history, courts should "examine the debates, proceedings and committee reports of the [Constitutional Convention]". *Kahlbaun*, 64 Haw. at 204, 638 P.2d at 316. Additionally, courts may also "look to the object sought to be accomplished and the evils sought to be remedied by the amendment." *Pray*, 75 Haw. at 343, 861 P.2d at 728.

Technological advances do not impact a court's understanding of constitutional intent at the time of adoption. *E.g., F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 532 (2009) ("The original meaning of the Constitution cannot turn on modern necessity.").[2] And constitutional history for subsequent amendments does not change the meaning of unamended provisions. *See Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 73, 376 P.3d 1, 21 (2016) (legislative history for a subsequent statutory amendment

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responsibility for the exercise thereof rests with the people. All government is founded on this authority." Haw. Const. art. I, § 1. Thus, by outlining the bare minimum process for the enactment of laws, the Constitution defines what laws carry the authority of the people of Hawai`i. The Legislature has no independent authority to create enforceable law if it fails to abide by this agreed process.

[2] The Legislature rehashes the State's argument that the Internet makes the constitutional provisions obsolete. *Compare* Mem. on Behalf of the Hawai`i State Legislature as *Amicus Curiae* (Amicus Mem.) at 13 n. 11, *with* State Mem. at 9. The Internet does not change the Legislature's obligations to comply with the Hawai`i Constitution. Pls. Mem. at 10.

explains the intent of the amendment, but does not change the intent of the original statute).

To understand the meaning of the title and three readings requirements, this Court must look to the circumstances of their adoption into the Hawai`i Constitution. These provisions are not simply remnants from a bygone era. They have been consistently incorporated into Hawaii's constitutional history for over a century and maintain their relevancy and full effect today.

B. History and Purpose of the Title Mandate in Hawai`i.

A version of the title provision first appeared in the 1852 Constitution of the Kingdom of Hawai`i. It read: "To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title." Haw. Const. art. 102 (Kingdom 1852); Haw. Const. art. 77 (Kingdom 1864); Haw. Const. art. 77 (Kingdom 1887); Decl. of R. Brian Black, dated January 11, 2019 [Black Decl.], Ex. 29.[3] In 1894, the opening clause was removed to read: "Each Law shall embrace but one Subject, which shall be expressed in its Title." Haw. Const. art. 63 (Rep. 1894); Organic Act § 45 (1900); Black Decl. Ex. 29. The 1950 Constitution kept the title requirement unmodified, and the language has remained unchanged. Haw. Const. art. III, § 15 (1950); Haw. Const. art. III, § 14; Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 252 ("This section further requires that each law shall embrace but one subject, which is required to be expressed in its title, as is provided by section 45 of the Organic Act."); Black Decl. Ex. 29-31.

The Hawai`i Supreme Court first interpreted the title provision in 1887. *Hyman Bros. v. Kapena*, 7 Haw. 76, 77-78 (Kingdom 1887). The Court relied on the constitutional treatise 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

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[3] For the Court's convenience, Plaintiffs have provided exhibits with copies of the historical constitutional provisions and cited constitutional history.

the titles give no intimation; and third, to apprise the people of proposed matters of legislation." *Id.* at 77-78 (voiding legislation for violating the title requirement); *accord Schwab v. Ariyoshi*, 58 Haw. 25, 30-31, 564 P.2d 135, 139 (1977). Thus, as explained more fully in Plaintiffs' prior memoranda, the intent of the title requirement is to ensure public notice of the bill's contents. Pls. Mem. at 8; Pls. Reply Mem. at 6.

This constitutional notice provision, requiring that the subject of proposed legislation be fairly expressed in its title, has protected the people of Hawai`i continually since 1852.

C. 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, reading: "A Bill, in order to become law, shall, except as herein provided, pass three readings in each House, the final passage of which in each House, shall be by a majority vote of all the elective members to which such House is entitled, taken by ayes and noes and entered upon its journal." Haw. Const. art. 64 (Rep. 1894); Black Decl. Ex. 29. In furtherance of the requirement's purpose, the Organic Act specified that the three readings must be "on separate days." Organic Act § 46 (1900); Black Decl. Ex. 29. The 1950 Constitution reworded the requirement—making clear that it was not intended to change the meaning—to the current language: "No bill shall become law unless it shall pass three readings in each house on separate days." Haw. Const. art. III, § 16 (1950); Haw. Const. art. III, § 15; Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 253 ("Section 17 sets forth the requirement of passage on three readings in each house on separate days for any bill to become law, as is provided in section 46 of the Organic Act."); Black Decl. Ex. 29-31.

As explained in Plaintiffs' prior memoranda, the three readings requirement is intended to: "protect[] the public interest"; "provide notice that a measure is progressing through the enacting process, enabling interested partied to prepare their positions"; "facilitate informed and meaningful deliberation on legislative proposals"; and "prevent hasty and improvident legislation." Pls. Mem. at 4-5; Pls. Reply Mem. at 2-3. The 1950 Constitutional Convention recognized the benefit of the three readings

mandate to ensure that "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." Stand. Comm. Rep. No. 47 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 184; Black Decl. Ex. 31.

The 1950 Constitutional Convention even briefly discussed whether to modify the long-standing three readings requirement to provide more flexibility to the Legislature for emergencies.[4] 2 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 153-54, 190-91; Black Decl. Ex. 31. Delegate Tavares raised the issue:

> There is a possibility of a need sometimes for faster action than one reading on each day. However, I am not going to labor the point. If the delegation still feels that as we have operated for 50 years we can safely operate in the future, why that's all right. There are some constitutions that allow by a two-thirds vote or some other special manner, the legislature or each house of the legislature can waive that separate reading on each day for emergency measures.

Id. at 190 (remarks of Delegate Tavares). Confirming the constitutional convention's understanding about the justiciability of three readings concerns, one delegate suggested: "If the legislature were to pass a bill by three readings in one day, the only objection could be on the grounds of unconstitutionality. While that was being labored in the courts they could repass the same law and take three days to do it." *Id.* at 190-91 (remarks of Delegate Bryan).

Responding to the delegate's invitation for a future legislature to violate the constitution, Delegate Roberts explained:

> I don't think that statement should be left in our record uncontested. I think the intention of this section is quite clear. *The purpose is to see to it*

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[4] In the aftermath of World War II and at the onset of the Cold War, the 1950 Constitutional Convention had a different conception of an emergency than contemplated by the Legislature now. 2 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 154 (remarks of Delegate Tavares) ("I can imagine a case where, if we were at war and wanted to mobilize quickly, that there would be a little advantage in being able to pass a bill in one day to raise a national guard or state guard or something a little higher."); Black Decl. Ex. 31. Nevertheless, as discussed above, the delegates rejected a modification to the three readings mandate.

> *that no legislation is passed hurriedly and without due and careful consideration by the legislature.* The intention is to provide three separate readings. I for one would not suggest that we look aside at this thing and say make it a constitutional section and violate our Constitution. I think the language is clear and ought to stay that way.

Id. at 191 (remarks of Delegate Roberts) (emphasis added); *accord id.* at 154 (remarks of Chair of the Committee on Legislative Powers and Functions William Heen) (responding to concerns about enacting emergency legislation for significant matters, "It would seem to me that if you have a very important measure, that measure should at least require three days' deliberation and not less."). The delegates voted to adopt the three readings provision without amendment or further discussion. *Id.* at 191.

The three readings requirement provides for an orderly and informed legislative process that has protected the people of Hawai`i continually since 1894.

D. The 1968 Constitutional Convention Did Not Amend the Three Readings Mandate.

The Legislature seeks to muddy the intent of the three readings requirement by reference to debates about the 24-hour [now 48-hour] final printing mandate during the 1968 Constitutional Convention. Amicus Mem. at 7-13. The 1968 Constitutional Convention did not substantively amend the three readings mandate. Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 215-17 (only change to three readings requirement was removal of a comma with no explanation to indicate that the change was intended to be substantive); *accord* 2 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 146 (remarks of Chair of the Committee on Legislative Powers and Functions Hung Wo Ching) ("The proposed amendment [to the first paragraph of now-Section 15, including the three readings requirement] 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."); Black Decl. Ex. 32. First, as the Hawai`i Supreme Court has explained, the intent or understanding of these subsequent lawmakers does not change the meaning of the law where they do not make a relevant substantive amendment. *See Peer News*, 138 Hawai`i at 73, 376 P.3d at 21. The discussions of the

1968 Constitutional Convention about the 24-hour final printing mandate do not vary the well-established purpose and meaning of the three readings requirement.

Second, the Legislature misrepresents the nature of the discussion about three readings during the 1968 Constitutional Convention. As Plaintiffs have previously pointed out, the State and the Legislature incorrectly elide the distinction between germane and non-germane amendments when the difference is constitutionally significant. Pls. Mem. at 7-8; Pls. Reply Mem. at 4-6. During the debates, Delegate Kauhane expressed a concern about significant germane amendments on final reading that do not receive adequate consideration. *E.g.*, 2 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 169 ("You may have intended to request consideration of the matter of caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill."); Black Decl. Ex. 32.[5] The dispute now before the Court, however, concerns non-germane amendments.

Third, the Constitutional Convention rejected Delegate Kauhane's concerns as unfounded. Delegate Kauhane noted that the application of three readings mandate was not settled and that he was concerned about a constitutional challenge to the practice he described. *Id.* at 171 (repeating advice of a convention attorney that "[t]here is a question, he says, that this legal question has never been raised yet"). Before the Constitutional Convention rejected Delegate Kauhane's proposal, Committee Chair Ching explained that the issue of late-session significant amendments to legislation was not the current practice in the Legislature and that the proposal would not cure the practice even if it existed. *Id.* at 170 ("[T]he practice that has been mentioned here has not prevailed in the legislature since the advent of Statehood. And secondly, that this

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[5] Consistent with the general expectation in constitutional treatises and legislative manuals that amendments are germane, *e.g.*, Pls. Mem. at 7; Pls. Reply Mem. at 4, Delegate Kauhane's hypothetical bill illustrates that his concern focused on significant *germane* amendments in which the legislature stayed true to the original subject of the bill—caring for elephants. His concerns did not contemplate the type of unrelated and clearly non-germane amendments that the Legislature made to S.B. 2858.

amendment, even if this practice were prevailing in the legislature at the present time, the amendment that is suggested here would not cure the practice."). Thus, contrary to the Legislature's argument, the 1968 Constitutional Convention did not broadly endorse gut-and-replace practices; rather, it took no action because such practices were not presently occurring. *Id.* at 145-46, 168-71.

II. DURING THE LEGISLATIVE PROCESS, OTHER CONSTITUTIONAL LIMITATIONS ADDED TO ARTICLE III ONLY FURTHER STRENGTHEN PUBLIC ACCESS TO AND OVERSIGHT OF THE LEGISLATURE.

Every constitutional convention has amended the Hawai`i Constitution with the express intent to add further protections for the public's role in the legislative process. The Legislature and the State argue here for virtually unfettered flexibility despite the constitutional restrictions, *e.g.*, focusing solely on compliance with the 48-hour final printing mandate. Amicus Mem. at 2, 11-13; State Mem. at 14-16; State Reply Mem. at 8-9. No constitutional authority supports those claims; rather constitutional framers often expressly *rejected* those arguments. These arguments only underscore the failure to understand the purpose and intent of the well-considered constitutional limitations on the Legislature that protect public access. The plain text of Article III, as well as the constitutional history for the adoption of each amendment, evidences an overarching purpose to protect public oversight of the Legislature.

Delegates to the 1968 and 1978 conventions did not supplant the three readings and title provisions by adding more restrictions on the legislative process. They chose to supplement and *bolster* the public's access, to help protect against deceptive closed-door tactics by the legislature that would frustrate the public's ability to participate. Because the Legislature failed to address how the Hawai`i Constitution impacts the legislative process—despite this Court's request—Plaintiffs outline below the procedure for enacting a law based on the bare minimum required by the constitution and how each of the constitutional limitations works as part of a comprehensive system to safeguard public participation and oversight.

A. Bill Introduction: Title and Single Subject Mandates and a Bill Introduction Deadline Help the Public Identify Bills of Interest.

Thousands of bills are introduced at the Legislature every year. Absent extensions or special sessions, the Legislature has 60 working days for its session each year. Haw. Const. art. III, § 10. The title requirement, as at issue here and thus discussed at length elsewhere, ensures that the public receives fair notice regarding the interests that may be affected by proposed legislation. *Id.* art. III, § 14. The related single-subject clause of that provision keeps each bill focused on one subject, serving the intent to avoid hodgepodge legislation and provide fair notice to the public. *Id.*

The 1978 constitution also required the Legislature by rule to limit the period for introducing bills.[6] *Id.* art. III, § 12 ("By rule of its proceedings, applicable to both houses, each house shall provide for the date by which all bills to be considered in a regular session shall be introduced."). The convention delegates explained that the intent of the deadline was to ensure that the public could "review every bill that will ever be introduced in that legislative session." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("[T]his amendment should further aid the public in its attempts to actively follow and participate in the legislative process."); Black Decl. Ex. 33. And in 1984 the deadline provision was amended further with the express intent to give the public more time to review bills.[7] The 1984 amendment allowed the Legislature to set an earlier

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[6] This constitutional limitation—like many others and in contrast with the title and three readings requirements—illustrates that constitutional framers knew well how to commit particular issues to legislative discretion. The bill introduction deadline expressly leaves the exact deadline to legislative rules. Haw. Const. art. III, § 12 ("By rule of its proceedings, applicable to both houses . . . .").

[7] The 1978 Constitution provided that new bills could be introduced for at least the first 20 days of the legislative session, but included a minimum 5-day recess after the cutoff date for public review of the proposed legislation. Haw. Const. art. III, §§ 10, 12 (1978); Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 ("This is to allow the public the use of the mandatory 5-day recess to review every bill that will ever be introduced in that legislative session."). But the minimum 20 days for bill introduction adversely limited the public's ability to timely

deadline for bill introduction and focus on prefiling bills before the session started. Stand. Comm. Rep. No. 417-84, in 1984 House Journal at 1031; Black Decl. Ex. 34. "This allows the public to familiarize itself with legislation, prepare testimony, and consult with legislators, before the legislators' time is taken up by committee meetings. It allows the public more time to research the issues and prepare more detailed and thoughtful testimony." *Id.* The amendment was expected "to allow for a more deliberative, open, and rational legislative process. The result should be better legislation." *Id.* at 1032.

As with the title and three readings mandates, the bill introduction deadline, however, does not serve its constitutional function if the bills do not remain germane to their original purpose as introduced. Citizens cannot "review every bill that will ever be introduced" if the Legislature radically amends bills to something that bears no reasonable relationship to the original content of the bill. Over the last century, the constitutional framers designed a bill introduction process with the title, single subject, and deadline provisions that makes it possible for the public to follow the process for enacting laws. When those constitutional limitations work as designed, any ordinary person would be able to identify and monitor all bills of interest as soon as the bill deadline passes. With such proper notice, no law would be enacted that surprises an interested person who reviewed every bill after introduction.

B. Deliberations: Three Readings, Public Decision-Making Meetings, and the Mandatory Recess Ensure an Orderly and Deliberate Process that Protects the Public's Role in the Legislative Process.

The three readings requirement, as at issue here and discussed at length by Plaintiffs elsewhere, ensures that the Legislature follows an orderly process that gives sufficient consideration to the consequences of proposed legislation and provides the public an opportunity to be heard in the legislative process. Haw. Const. art. III, § 15. The goal of this provision is to produce better crafted legislation through thoughtful deliberation and public participation.

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review all proposed legislation because the Legislature would start taking action on bills during the 20-day period while bills were still being introduced.

In 1978, the Constitutional Convention introduced several other constitutional limitations on the Legislature's deliberative process in furtherance of that goal. The Legislature must hold a five-day mandatory recess between the twentieth and fortieth days of the legislative session. *Id.* art. III, § 10 ("Each regular session shall be recessed for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution."). The constitutional convention delegates intended the recess

> to provide both legislators and the public an opportunity to review during the recess all bills that have been introduced in both houses, and an opportunity for legislators and constituents to communicate on matters before the legislature at about the midpoint of the session. . . . [It] will also afford the public an opportunity to become acquainted with and follow the bills through the legislature more intelligently.

Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; *accord* 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input."); Black Decl. Ex. 33.

The 1978 Constitutional Convention also added a requirement that all decision-making committee meetings at the Legislature "shall be open to the public." Haw. Const. art. III, § 12 ("Every meeting of a committee in either house or of a committee comprised of a member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public."). The constitutional convention delegates explained, "the public's right to know what their legislators are deciding is deserving of constitutional protection." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("It was felt that this right should be constitutionally protected rather than left to the discretion of the house or the senate."); Black Decl. Ex. 33. Delegates to the 1978 Constitutional Convention expected these changes to "make the legislature more deliberative, more cautious, more informed, and more accessible to the

public." 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 279 (remarks of Delegate Shon).

Replacing a bill with content not germane to its original intent disregards every effort by the public to participate in the legislative process before the amendment. Contrary to these constitutional limitations on the Legislature's deliberations, public participation is reduced to a meaningless formality and warnings against hasty and ill-conceived legislation become mere words. The Hawai`i Constitution recognizes—even if the Legislature does not—that the Legislature cannot give necessary consideration to the consequences of proposed legislation without informed public input.

C. Last Touch: The 48-Hour Printing Mandate Allows the Public a Final Opportunity to Review and Comment on Bills.

At the end of the legislative process, bills must be printed and made available in final form for 48 hours for public review. Haw. Const. art. III, § 15 ("No bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least forty-eight hours."). This provision allows interested persons who have been following a bill to see all the amendments that have been made and raise concerns before the final vote.

This final printing mandate was first adopted by the 1968 Constitutional Convention as a 24-hour requirement. Aside from the debates with Delegate Kauhane discussed above, the intent of the mandate was straightforward because it "not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 216; Black Decl. Ex. 32. At the time, the constitutional convention delegates debated concerns about impeding the flexibility of the Legislature and increasing the possibility of constitutional challenges for procedural violations. *Id.* But the 1968 Constitutional Convention concluded that with the "complexity of modern legislation" on issues that are "highly technical in nature yet far-reaching in effect," the mandate gives legislators and the public the opportunity to understand the impact of last-minute amendments. *Id.* The report emphasized:

> The importance of interest groups and their representatives to the legislative process as sources of information and barometers of public support for proposed legislation is unquestioned. By giving notice that a measure is coming up for final reading and by providing an opportunity to study the measure in its final form, the twenty-four hour rule enhances the functions served by these groups. Moreover, the delay better enables those concerned to marshal their forces in favor or against the matter under consideration.
>
> In deliberating on the merits and demerits of the twenty-four hour rule, your Committee was guided by the belief that any change in procedure must be evaluated in terms of its contribution to the two principal legislative functions of representing people, groups and communities and of rendering decisions which can be accepted as carefully weighed and fairly made. It is our considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of proposed legislation decisively overrides the possible problems latent in its adoption.

Id.

Ten years later, the 1978 Constitutional Convention increased the delay to 48 hours.

> In view of the increasing numbers of bills being introduced in the legislature and the public concern expressed on the difficulty of following the many bills through the legislature in the closing days of the session, your Committee believes that enlargement of time from 24 hours to 48 hours, during which a legislator or a constituent could review a bill before third or final reading, would help both legislator and constituent to avoid hasty decisions and surprises regarding the bill.

Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) ("It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills."); Black Decl. Ex. 33.

The Legislature incorrectly implies that no other constitutional limitation is relevant because the public has 48 hours at the end of the legislative session to figure out whether any bills will impact interests. Amicus Mem. at 12-13. The history of the

48-hour final printing mandate is clear that it is an opportunity for people *already following a bill* to examine and be heard on last-minute, often highly technical amendments. No one expected the public to review every single bill in the last few days of the legislative session because a completely off-topic bill might now impact different specific interests after non-germane amendments. Nothing in the history of the final printing requirement reflects an intent to supplant, or cure any violations of, the other constitutional restrictions on the legislative process.

All of the constitutional limitations on the legislative process are an interdependent set of protections that benefit the public with greater oversight of and ability to participate at the Legislature. The final printing requirement is not the only limitation that serves that purpose. If constitutional framers considered the other requirements superfluous after adopting the 48-hour mandate, they could have eliminated the title, three readings, and other constitutional limitations. To the contrary, the 1978 Constitutional Convention, for example, not only kept those restrictions on the Legislature, but also added the mandatory recess and public decision-making requirements to further bolster the public's meaningful access and opportunity to be heard at the Legislature. The constitutional framers recognized that as proposed legislation has become increasingly technical and prolific, it was necessary to build on the title and three readings mandates that had protected the voice of the people of Hawai`i—the true political power—for over a century. All the new restrictions added since Statehood are empty formalism without the foundational protections of the title and three readings requirements to ensure that members of the public can readily ascertain what bills impact their particular interests and monitor the progress of those specific bills through the legislative process.

The Hawai`i Constitution plainly reflects an overarching design, rooted in title and three readings mandates, to protect rights of public participation in the legislative process and oversight of the Legislature. Regardless what degree of flexibility the Legislature believes appropriate, this covenant with the people of Hawai`i regarding how laws are enacted cannot be ignored.

III. THE TITLE ISSUE IS WHETHER "RELATING TO PUBLIC SAFETY" FAIRLY APPRISES THE PUBLIC THAT S.B. 2858 CONCERNED HURRICANE SHELTERS.

Neither the State nor the Legislature has attempted to explain how "Relating to Public Safety" fairly apprises the public that the bill concerns hurricane shelters. The Legislature only seeks to confuse the issues. First, without any authority, the Legislature invents a distinction between the words "law" and "bill" in the title provision—a distinction expressly rejected by constitutional treatise. Amicus Mem. at 5-6. Next, the Legislature attempts to divert the Court to arguments about other legislation and legislative titles not before the Court. *E.g., id.* at 7 n.5.

The title issue in dispute here concerns whether "Relating to Public Safety" fairly indicates to the ordinary mind—a standard uncontested by the Legislature and the State—that S.B. 2858 is about hurricane shelters. No Hawai`i court has approved of a title as broad and misleading as "Relating to Public Safety," and the Legislature does not add any analysis to support otherwise.

A. "Relating to Public Safety" Does Not Fairly Apprise the Public that S.B. 2858 Concerns Hurricane Shelters.

The Legislature, like the State, does not dispute the standards for sufficiency of title found in Hawai`i precedent and treatises.[8] Pls. Mem. at 8-11; Pls. Reply Mem. at 6-7. The only new case that the Legislature adds to the prior briefing is *Gallas v. Sanchez*, 48 Haw. 370, 405 P.2d 772 (1965). Amicus Mem. at 6. *Gallas* does not support the claim that a title as meaningless and generic as "public safety" is constitutional.

Gallas held that the title "Relating to Public Service" sufficiently identified civil service employment as the topic of proposed legislation. *Gallas*, 48 Haw. at 372, 405 P.2d at 774. The Hawai`i Supreme Court did not provide any analysis of the issue other

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[8] Contrary to the Legislature's arguments, Amicus Mem. at 5, the 1950 Constitutional Convention did not adopt the title requirement on a blank slate, making all prior Hawai`i precedent on the issue irrelevant. *Schwab v. Ariyoshi*, 58 Haw. 25, 30, 564 P.2d 135, 139 (1977) ("The language of [the title provision] is identical to that contained in Section 45 of the Organic Act. Therefore, we would ascribe to the former what this court has said to be the purposes of the latter as well as the legal effect we have given to that section.").

than to "adopt the statement of the lower court on this point: 'Although the title of Act 207 [relating to public service] does not refer with particularity to the amendments included herein, it clearly refers to the general subject matter of such amendments . . . .'" *Id.* at 376, 405 P.2d at 776. But the decision falls squarely within the constitutional tradition that "courts should not embarrass legislation by technical interpretations based upon mere form or phraseology." *Schwab*, 58 Haw. at 32, 564 P.2d at 140; *accord, e.g.*, 1A Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and Statutory Construction § 18:2 at 45 (7th ed. 2010) ("The provision was not intended to exercise pedantic tyranny over the grammatical efforts of legislators . . . ."). "Public service" is sufficiently synonymous with civil service employment to pass constitutional muster. *E.g.*, Random House Unabridged Dictionary (2019), *available at* www.dictionary.com (defining "public service" as, among other things, "government employment; civil service").

In stark contrast, "public safety" is not synonymous with hurricane shelters. No reasonable person interested in hurricane shelters is on inquiry notice when a bill is titled only "public safety"; the title requires the public to play a guessing game about a virtually unlimited range of topics. Pls. Mem. at 10; Pls. Reply Mem. at 7. And, as demonstrated by the change in the bill's subject from inmate reporting requirements to hurricane shelters, the title was *calculated to mislead* so that the Legislature could substitute any content into the bill, no matter how unrelated it was to the original bill. *Gallas* thus does not support the constitutionality of Act 84's overly broad and misleading title.

B. No Distinction Exists Between "Law" vs. "Bill" in the Title Provision

The Legislature argues that the title requirement only matters once the "law" is enacted, not during the legislative process while the law is only a "bill". Amicus Mem. at 5-6; *see* Haw. Const. art. III, § 14 ("Each law shall embrace but one subject, which shall be expressed in its title."). In the end, the distinction is irrelevant to this case because "public safety"—as law or bill—is too broad and amorphous to fairly apprise interested members of the public that it concerns hurricane shelters. But more fundamentally, the Legislature's position ignores the well-established purpose of the title provision to

provide notice to the public concerning proposed legislation *before* it is enacted. Pls. Mem. at 8-9; Pls. Reply Mem. at 6; *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954) ("to apprise the people of *proposed* matters of legislation" (emphasis added)); *United Pub. Workers v. Yogi*, 101 Hawai`i 46, 53, 62 P.3d 189, 196 (2002) ("A constitutional provision must be construed 'to avoid an absurd result' and to recognize the mischief the framers intended to remedy.")

Again, the constitutional tradition expressly undermines the Legislature's position:

> Whether the constitutional provision uses the word "act" or "bill," it is generally understood that the requirement applies to a bill during the enacting process as well as to the enacted statute. [I]t would violate the letter and spirit of the constitutional safeguard against stealthy legislation to hold that the subject of a bill must be clearly expressed in its title during the progress of the measure through the legislature, but that any misleading or delusive title may be attached to it when it is presented to the governor for approval.

1A Sutherland on Statutes and Statutory Construction § 18:1 at 45.

The Legislature's purported distinction between "law" and "bill" in the title mandate is meritless.

C. Other Laws Are Not in Dispute.

The only dispute before this Court concerns the constitutionality of Act 84. Compl. at 8 ("Plaintiffs respectfully request that this court: . . . Enter an order declaring that (1) the process for adopting Act 84 was unconstitutional; and (2) Act 84 is void.").[9] Plaintiffs have no position on the constitutionality of any other legislation, especially bills with other titles. Amicus Mem. at 7 n.5. There is no basis for the Court to take judicial notice of such other bills enacted into law in 2018 because those laws are not adjudicative facts in dispute before the Court and will significantly expand the scope of

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[9] Plaintiffs are not seeking a sweeping judicial order that would automatically invalidate other past legislation. Each law has unique circumstances, and there is an open question whether statutes may be retroactively voided on constitutional procedural grounds years after enactment. This case only concerns Plaintiffs' timely challenge to Act 84.

this case beyond the pleadings if Plaintiffs must take a position on and litigate whether those other bills are constitutional. *See* HRE 201; *Territory v. Furubayashi*, 20 Haw. 559, 561 (1911) ("[E]ach case must be decided according to its own peculiar facts."). This Court already emphasized at the December 19 hearing on the Legislature's motion for leave to file an amicus memorandum that if the Complaint is focused on Act 84—which it is—then the Court's attention will be focused on Act 84. The Legislature has not presented any basis for the Court to go beyond the claims asserted by the Plaintiffs.

IV. NON-GERMANE SUBSTITUTE BILLS RESET THE THREE READINGS.

By reference to the debates of the 1968 Constitutional Convention, the Legislature argues that it can make complete non-germane bill substitutions at any point during the legislative process. Amicus Mem. at 7-12. As already discussed above, it is improper to rely on the 1968 debates for authority concerning the three readings requirement because that constitutional convention did not substantively amend that mandate. But critically, as has been pointed out in earlier briefing, the Legislature's position ignores the clear intent of three readings provision in preventing hasty legislation. Construing the constitution to require only three readings of a bill *number* rather than the bill's *contents* would eviscerate the intent and purpose of three readings. Pls. Mem. at 4-5; Pls. Reply Mem. at 2-3; *United Pub. Workers*, 101 Haw. at 53, 62 P.3d at 196 ("A constitutional provision must be construed 'to avoid an absurd result' and to recognize the mischief the framers intended to remedy."); *accord State v. Kahlbaun*, 64 Haw. 197, 206, 638 P.2d 309, 317 (1981) ("A legislative construction implementing a constitutional amendment cannot produce an absurd result or be inconsistent with the purposes and policies of the amendment.") The Legislature cited no authority to support its interpretation that discussion of amendments would include non-germane amendments—even the Legislature's adopted rulebook expressly authorizes only germane amendments. Pls. Mem. at 7; Pls. Reply Mem. at 4-5.

V. JUSTICIABILITY HAS BEEN ADDRESSED.

The Legislature's justiciability arguments merely repeat the State's position. *Compare* Amicus Mem. at 13-16, *with* State Mem. at 9-14; State Reply Mem. at 6-8. Plaintiffs responded. Pls. Mem. at 12-13. Though the Legislature says separation of

powers is the "main issue", Amicus Mem. at 3, it provides no additional authorities not already addressed in prior briefing.[10]

CONCLUSION

Plaintiffs respectfully request that this Court grant summary judgment in favor of the League of Women Voters of Honolulu and Common Cause and declare that (1) the State violated the three readings and title requirements of article III, sections 14 and

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[10] While Hawai`i precedent is clear that the constitutional procedural protections of the title and three readings provisions are justiciable, a recent Kentucky Supreme Court decision addressed the precise question that the State and the Legislature raise here. *Bevin v. Commonwealth ex rel. Beshear*, No. 2018-SC-000419-TGE, 2018 WL 6575518 at *5-6 (Ky. Dec. 13, 2018). Appellants argued that the three-readings requirement was left to the determination of the General Assembly because the Kentucky Constitution also provided that each house "may determine the rules of its own proceedings." The court disagreed:

> [W]e acknowledge our obligation to refrain from interfering with the internal processes and internal rules by which the other branches perform their constitutional functions. However, in this instance we are not addressing whether the passage of SB 151 conformed to the internal rules and processes of the General Assembly. We are confronted, instead, with the question of what § 46 of the Kentucky Constitution means when it says that "every bill shall be read at length on three different days in each House"; and whether the enactment of SB 151 comports with that constitutional provision.
>
> We must reject the argument that this Court has no voice in that determination. The foundational principle described in *Marbury v. Madison* has been a cornerstone of the American republic for as long as the republic has endured: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. . . . This is of the very essence of judicial duty."
>
> Kentucky has not wavered in its allegiance to that principle. Section 46 is not a procedural rule or policy written and adopted by the legislature to perform its constitutional function; it is an explicit provision of the Kentucky Constitution.

Id. at *5. (citations omitted). The court recognized that its "power to determine the constitutional validity of a statute does not infringe upon the independence of the legislature." *Id.* at 6.

15 of the Hawai`i Constitution by enacting Act 84, and (2) Act 84 is void as unconstitutional.

DATED: Honolulu, Hawai`i, January 11, 2019

ROBERT BRIAN BLACK
LISA EMILY ENGEBRETSEN
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
Tel. (808) 531-4000
brian@civilbeatlawcenter.org
Attorney for League of Women Voters of Honolulu and Common Cause

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) DECLARATION OF R. BRIAN BLACK; EXHIBITS 29-34

DECLARATION OF R. BRIAN BLACK

1. I am attorney for the Plaintiffs in this action. I make this declaration in support of Plaintiffs' response to the memorandum of *Amicus Curiae* Hawai`i State Legislature based on review of public records and ancient documents.

2. Attached as Exhibit 29 is a true and correct copy of excerpts from the 1852 Constitution of the Kingdom of Hawai`i, the 1864 Constitution of the Kingdom of Hawai`i, the 1887 Constitution of the Kingdom of Hawai`i, the 1894 Constitution of the Republic of Hawai`i, and the 1900 Organic Act, as reprinted in *The Fundamental Law of Hawaii* (ed. Lorrin A. Thurston 1904) and electronically scanned by Google.

3. Attached as Exhibit 30 is a true and correct copy of an excerpt from the 1950 Hawai`i Constitution, as reprinted in 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 and electronically scanned by the Legislative Reference Bureau.

4. Attached as Exhibit 31 is a true and correct copy of excerpts from the Proceedings of the Constitutional Convention of Hawai`i of 1950 and electronically scanned by the Legislative Reference Bureau.

5. Attached as Exhibit 32 is a true and correct copy of excerpts from the Proceedings of the Constitutional Convention of Hawai`i of 1968 and electronically scanned by the Legislative Reference Bureau.

6. Attached as Exhibit 33 is a true and correct copy of excerpts from the Proceedings of the Constitutional Convention of Hawai`i of 1978 and electronically scanned by the Legislative Reference Bureau.

7. Attached as Exhibit 34 is a true and correct copy of Standing Committee Report No. 417-84 as published in the 1984 House Journal.

I, R. BRIAN BLACK, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 11, 2019

R. BRIAN BLACK

Acts and Laws, shall be:—"Be it enacted by the King, the Nobles and the Representatives of the Hawaiian Islands in Legislative Council assembled."

ART. 102. To avoid improper influences which may result from intermixing in one and the same Act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

ART. 103. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws now enacted, or that may hereafter be enacted, contrary to this Constitution, shall be null and void.

ART. 104. This Constitution shall be in force from the first Monday of December in the year one thousand eight hundred and fifty-two; but that there may be no failure of justice, or danger to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the powers to them granted, until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all executive and legislative officers, bodies and powers, shall continue in full force, in the enjoyment and exercise of their trusts, employments and authority, until new appointments or elections shall take place under this Constitution.

MODE OF AMENDING THE CONSTITUTION.

ART. 105. Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of the members of each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or amendments shall be published for three months previous to the election of the next House of Representatives; and if, in the next Legislature, such proposed amendment or amendments, shall be agreed to by two-thirds of all the members of each house, and be approved by the King, such amendment or amendments shall become part of the Constitution of this Kingdom.

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of his pardon, declared to be appointable to offices of Trust, Honor, and Profit.

ARTICLE 74. No officer of this Government shall hold any office, or receive any salary from any other Government or Power whatever.

ARTICLE 75. The Legislature votes the Appropriations biennially, after due consideration of the revenue and expenditure for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the Minister of Finance.

ARTICLE 76. The enacting style in making and passing all Acts and Laws shall be, "Be it enacted by the King, and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled."

ARTICLE 77. To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ARTICLE 78. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void.

ARTICLE 79. This Constitution shall be in force from the Twentieth day of August in the year One Thousand Eight Hundred and Sixty-Four, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the power to them granted, until other persons shall be appointed in their stead.

ARTICLE 80. Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or amendments shall be published for three months previous to the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all the members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country.

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for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the Minister of Finance.

ARTICLE 76. The enacting style in making and passing all Acts and Laws shall be, "Be it enacted by the King, and the Legislature of the Hawaiian Kingdom."

ARTICLE 77. To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ARTICLE 78. Wherever by this Constitution any Act is to be done or performed by the King or the Sovereign, it shall, unless otherwise expressed, mean that such Act shall be done and performed by the Sovereign by and with the advice and consent of the Cabinet.

ARTICLE 79. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void.

ARTICLE 80.—The Cabinet shall have power to make and publish all necessary rules and regulations for the holding of any election or elections under this Constitution, prior to the passage by the Legislature of appropriate laws for such purpose, and to provide for administering to officials, subjects and residents the oath to support this Constitution. The first election hereunder shall be held within ninety days after the promulgation of this Constitution, and the Legislature then elected may be convened at Honolulu upon the call of the Cabinet Council, in extraordinary session at such time as the Cabinet Council may deem necessary, thirty days notice thereof being previously given.

ARTICLE 81. This Constitution shall be in force from the 7th day of July, A. D. 1887, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the power to them granted. Such officers shall take an oath to support this Constitution, within sixty days after the promulgation thereof.

ARTICLE 82. Any amendment or amendments to this Constitution may be proposed in the Legislature, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its jour-

Article 63.—Title of Laws.

Each Law shall embrace but one Subject, which shall be expressed in its Title.

The Title of a Law amending or repealing another law shall refer to the section or chapter of the law amended or repealed, and to the subject-matter involved.

Article 64.—Readings of Bills.

A Bill, in order to become law, shall, except as herein provided, pass three readings in each House, the final passage of which in each House, shall be by a majority vote of all the elective members to which such House is entitled, taken by ayes and noes and entered upon its journal.

Article 65.—Certification of Bills from One House to the Other.

Every Bill when passed by the House in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the Chairman and Clerk and sent to the other House for consideration.

Article 66.—Signing Bills.

Except as herein provided, all Bills passed by the Legislature shall, in order to be valid, be signed by the President.

Article 67.—Veto of President.

Every Bill which shall have passed the Legislature shall be certified by the Chairman and Clerk of the House last considering it, and shall thereupon be presented to the President. If he approves it, he shall sign it and it shall become a law. If the President does not approve such bill, he may return it, with his objections, to the Legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

ENACTING CLAUSE—ENGLISH LANGUAGE.

SEC. 44. That the enacting clause of all laws shall be, "Be it enacted by the legislature of the Territory of Hawaii."

All legislative proceedings shall be conducted in the English language.

TITLE OF LAWS.

SEC. 45. That each law shall embrace but one subject, which shall be expressed in its title.

READING OF BILLS.

SEC. 46. That a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

CERTIFICATION OF BILLS FROM ONE HOUSE TO THE OTHER.

SEC. 47. That every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

SIGNING BILLS.

SEC. 48. That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor.

VETO OF GOVERNOR.

SEC. 49. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it, and it shall become a law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

Exhibit 30

the senate unless he shall have attained the age of thirty years, have been a resident of the State for not less than three years and be a qualified voter of the senatorial district from which he seeks to be elected. No person shall be eligible to serve as a member of the house of representatives unless he shall have attained the age of twenty-five years, have been a resident of the State for not less than three years and be a qualified voter of the representative district from which he seeks to be elected.

Privileges of Members

Section 8. No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of his legislative functions; and members of the legislature shall, in all cases except felony or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same.

Disqualifications of Members

Section 9. No member of the legislature shall hold any other public office under the State, nor shall he, during the term for which he is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term. The term "public office", for the purposes of this section, shall not include notaries public, reserve police officers or officers of emergency organizations for civilian defense or disaster relief. The legislature may prescribe further disqualifications.

Salary and Allowances

Section 10. The members of the legislature shall receive such salary and allowances as may be prescribed by law, but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same. No salary shall be payable when the senate alone is convened in special session, or when the legislature convenes in special session pursuant to Section 17 of this article.

Sessions

Section 11. Regular sessions of the legislature shall be held annually. The governor may convene the legislature, or the senate alone, in special session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session shall be held at some other place. Regular sessions in odd numbered years shall be known as "general sessions" and regular sessions in even numbered years shall be known as "budget sessions".

Budget Sessions

At budget sessions the legislature shall be limited to the consideration and enactment of the general appropriations bill for the succeeding fiscal year and bills to authorize proposed capital expenditures, revenue bills necessary therefor, urgency measures deemed necessary in the public interest, bills calling elections, proposed constitutional amendments and bills to provide for the expenses of such session and the special session to be convened thereafter in accordance with the provisions of Section 17 of this article.

The legislature may also consider and act upon matters relating to the impeachment or removal of officers. No urgency measure shall be considered unless a statement of facts constituting such urgency shall be set forth in one section thereof and until such section shall have been first approved by each house.

The approval of such section and the final passage of such measure in each house shall require a two-thirds vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

Sessions; Commencement; Duration

Regular sessions shall commence at 10:00 o'clock a. m., on the third Wednesday in February. General sessions shall be limited to a period of sixty days and budget sessions and special sessions to a period of thirty days, but the governor may extend any session for not more than thirty days. Sundays and holidays shall be excluded in computing the number of days of any session.

Adjournment

Section 12. Neither house shall adjourn during any session of the legislature for more than three days, or sine die, without the consent of the other.

Organization; Discipline; Rules; Procedure

Section 13. 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-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member. Each house shall choose its own officers, determine the rules of its proceedings and keep a journal. The ayes and noes of the members on any question shall, at the desire of one-fifth of the members present, be entered upon the journal.

Twenty days after a bill has been referred to a committee in either house, the same may be recalled from such committee by the affirmative vote of one-third of the members to which such house is entitled.

Quorum; Compulsory Attendance

Section 14. A majority of the number of members to which each house is entitled shall constitute a quorum of such house for the conduct of ordinary business, of which quorum a majority vote shall suffice; but the final passage of a bill in each house shall require the vote of a majority of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal. A smaller number than a quorum may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Bills; Enactment

Section 15. No law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title. The enacting clause of each law shall be, "Be it enacted by the legislature of the State of Hawaii".

Passage of Bills

Section 16. No bill shall become law unless it shall pass three readings in each house, on separate days. Every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

Approval or Veto

Section 17. Every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses and shall thereupon be presented to the governor.

If he approves it, he shall sign it and it shall become law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same; but he shall veto other bills, if at all, only as a whole.

The governor shall have ten days to consider bills presented to him ten or more days before the adjournment of the legislature sine die, and if any such bill is neither signed nor returned by the governor within that time, it shall become law in like manner as if he had signed it.

Reconsideration After Adjournment

The governor shall have forty-five days, after the adjournment of the legislature sine die, to consider bills presented to him less than ten days before such adjournment, or presented after adjournment, and any such bill shall become law on the forty-fifth day unless the governor by proclama-

Exhibit 31

other trials and tribulations that must be suffered by citizens and taxpayers, is caused for sincere concern.

5. The use of the initiative eliminates the mature deliberation, amendment and compromise usually necessary to produce sound and lasting legislation. The people must vote "yes" or "no" on a proposal once submitted to the electorate. In the legislature, a bill may be amended any number of times after debate discloses its weaknesses, or opposition forces compromise to meet objections raised to its form or substance. After the initiative measure is submitted to the people, no matter how many weaknesses, evils or faults are discovered during the course of the campaign for or against its adoption, it can not be amended--the people must take it or leave it "as is."

Realizing this basic weakness, the proponents of the initiative have hit upon the "indirect initiative" as an alleged means of overcoming this defect. However, even this does not fully meet the situation. If an initiative measure appears to the legislature, to which it is submitted under the indirect initiative system, to be so improvident, impracticable or otherwise undesirable as to warrant its being entirely rejected, it is asking too much of human nature to expect them to spend days, perhaps weeks, of study, debate and redrafting, just to put the measure in as nearly perfect form as possible. The result will be a submission of the original, or some poorly redrafted substitute, to the electorate, to be voted on, without any further opportunity for amendment.

6. The initiative is expensive. The State must pay for printing the petitions, the ballots, the information pamphlets, the cost of mailing such information to voters, other advertising costs, the checking of the petitions to see that they have been signed by the requisite number of voters, and the election expenses.

An additional, and much greater expense falls on the sponsors and opponents of the measure. They must bear the cost of securing signers to the petition and underwrite an extensive campaign to inform and influence the voters on the issue. Your Committee was given figures indicating that the cost to defeat the Townsend pension plan in Oregon was $44,000. Recently in California, because the taxpayers did not make available substantial private funds to oppose Proposal 4, which provided abnormally high payments to the aged, leaving insufficient funds for other government purposes, it was necessary to spend $900,000 to bring the matter again before the electorate and defeat it.

The initiative has, according to some authorities, even produced professional publicists who, for stated fees of so much per head, or other considerations, undertake to secure the required number of signers to any petition, and to sway the election.

7. The small size of the proposed State of Hawaii (having a population less than that of many large cities) with its less complex problems than those of most of the states which has a very large number of counties, make it possible for our legislators, because of personal knowledge and contact, to consider adequately and with reasonable promptness all of the local and general problems which are likely to arise. The majority of your Committee believes that an unbiased examination of the history of Hawaii and the laws passed since the inception of the Territorial government will disclose that with but one notable exception--reapportionment (which will be much better remedied by automatic reapportionment than by initiative) our legislature has been fully responsive to the real needs of the Territory and the counties and to popular opinion when convinced that such opinion is sustained and not transient. Considering the small size of the Territory, and the aids to more efficient legislation and government in general contemplated by the constitution, some of which are mentioned in this report, that tradition of legislative responsiveness can fully be expected to continue.

8. Assuming, as the majority of your Committee does, that this convention will approve the principle of full representation according to population in the House of Representatives of the State Legislature, and geographic representation in the Senate, thereby giving control of the House to the City and County of Honolulu and of the Senate to the other counties, the adoption of a statutory initiative provision in the constitution would destroy the balance of legislative representation, since, unlike the situation in any other state, one county here contains much more than one-half of the entire population of the state--about sixty-five percent. If the principle of such balance between popular and geographic representation in the Legislature is sound, as the majority of your Committee believes it to be, in view of the special conditions prevailing in these Islands, then to give to the people of one city and county alone the power to enact legislation regardless of the needs or desires of those of the other counties would be to contradict that principle, unless so many restrictions should be written around the exercise of the initiative as to render it either unworkable or unrecognizable as compared to that of any other state system.

9. 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. To be sure, bills can be introduced in the legislature with the same kinds of defects, improvident or impractical provisions, and selfish or improper motives, as might exist in initiative measures. But the expenses attendant upon the introduction of such a bill in the legislature and its decease by action or inaction of the members and the consequences of such introduction and defeat of the measure, are quite likely to be infinitesimal as compared to those attendant upon the initiation of a measure through the popular initiative. On the other hand, once an initiative petition is signed by the requisite number of electors, an irrevocable chain of circumstances is set up under which, even under the indirect initiative, the measure in some form or other *must* be submitted to the voters, (if it does not become law by overawing the legislature into its enactment) regardless of how unsound or improvident the whole scheme may be, and with all the large expenses, direct and indirect, attendant thereon. And how is this chain of circumstances so irrevocably forged? By the circulation of a petition by persons, often selfishly interested in a special group, either secretly or in such manner as to make it impossible for any opponents of the scheme to hear or know the representations of fact or arguments presented to the signers. The proponents are not interested in giving both sides of the controversy or, in many cases, even in truthfully stating the facts and arguments in favor of their proposal. They are interested only in making such representations and using such arguments and blandishments, possibly even threats, as will yield the requisite number of signatures.

The general public is unable to evaluate the representations made at the time signatures are obtained. This is be-

ployment from being elected to or from taking or holding a seat in the legislature, the difference being that the proposed section applies to persons holding public positions or employment as well as public offices. It is not to be construed, however, to prevent a member of the legislature from being re-elected or to prevent a member of either house from being elected to the other.

Section 9. Privileges of members. Section 9 sets forth the privileges of members of the legislature. The immunity from liability of members of the legislature has been enlarged to include "any statement made or action taken" in the exercise of legislative functions, as compared to section 28 of the Organic Act, which limits the immunity to "words uttered." The proposed section is intended to cover written as well as oral statements and any action taken in the exercise of legislative functions, in the broadest sense. The provision for exemption from arrest is the same as contained in section 29 of the Organic Act, except that the ten-day limitation on going to and returning from sessions has been omitted.

Section 10. Disqualification of members. Section 10 disqualifies members of the legislature (1) from holding any other public office, position or employment of profit while holding their legislative office and (2) during the term for which they are elected or appointed, from being elected or appointed to any public office, position or employment of profit which is created, or the emoluments whereof are increased, by legislative act during such term. The first disqualification corresponds to a similar disqualification in the judiciary article. The second disqualification is derived from section 16 of the Organic Act but the Organic Act disqualification applies only to "any office of the Territory." The provision under consideration is different in that (1) the disqualification of a member applies to a position or employment, as well as an office, of profit of the State or any local government or any agency thereof, but (2) on the other hand, it will apply only to an office, position or employment of profit that has been created, or the emoluments whereof increased, by the legislature during the term for which such member was elected or appointed.

Section 11. Salary of members. Section 11 fixes the salary of members of the legislature as follows: $1,500 for each general session, $1,000 for each budget session and $750 for each special session of the legislature. No salary is to be payable when the senate alone is convened in special session. The salaries are to be payable in such installments as may be prescribed by law. The term "salary" has been used advisedly. While the legislature will have no authority to change the amount of the salaries fixed in this section, it is not intended to preclude the legislature from providing for the payment of per diem allowances and allowances for or reimbursement of travel and other expenses.

Section 12. Sessions of legislature. Section 12 provides for regular sessions to be held annually, as well as special sessions of the legislature or of the senate alone. As briefly stated above, the annual sessions are to be "general sessions" and "budget sessions" in alternate years. The budget sessions are to be limited to the consideration and enactment of the general appropriations bill for the succeeding fiscal year and bills to authorize proposed capital expenditures, revenue bills necessary therefor, urgency measures deemed necessary in the public interest, bills calling elections, proposed constitutional amendments and bills to provide for the expenses of such session. Special limitations are imposed with respect to urgency measures, first, that each urgency measure must contain in a separate section a statement of the facts constituting the urgency, and, second, that no such measure may be considered by either house until such section is first approved by each house. Furthermore, in the approval of such section and upon the final passage of the measure in each house, a two-thirds vote of all the members to which such house is entitled is required. The term "approval," as used in this respect, is not intended to require anything more than a single reading and vote, as distinguished from the passage of the measure itself, which will require three readings. The time for the commencement of regular sessions has been fixed at 10:00 o'clock a.m., on the third Wednesday in February, the date being the same as provided in section 41 of the Organic Act. General sessions are limited to 60 days, while budget sessions and special sessions are limited to 30 days, but the governor is authorized to extend any session for not more than 30 days. Sundays and holidays do not count in computing the number of days in any session.

Section 13. Adjournments. Section 13, which is substantially the same as section 42 of the Organic Act, simply provides that neither house may adjourn for more than three days, or sine die, without the consent of the other.

Section 14. Organization; seating and punishment of members; officers; rules; journal; record of vote. Section 14 includes a number of provisions contained in several sections of the Organic Act. The provision that each house shall be the judge of the elections, returns and qualifications of its own members is the same as section 15 of the Organic Act. The provision that each house shall have power to punish any member for misconduct, disorderly behavior, or neglect of duty is derived from section 27 of the Organic Act. The grounds for punishment have been enlarged to include misconduct, which term is to be taken in its broadest sense. Punishment may be by censure or by suspension or expulsion, but a two-thirds vote of all the members to which the house is entitled is required for suspension or expulsion. The provision that each house shall choose its own officers, determine the rules of its proceedings and keep a journal is substantially the same as section 20 of the Organic Act. The provision that the vote on any question shall be entered upon the journal at the request of one-fifth of the members present is the same as section 21 of the Organic Act.

Section 15. Quorum; number required to act; compulsory attendance. Section 15 is also taken from several sections of the Organic Act. The requirement of a majority of the number of members to which each house is entitled for a quorum for the conduct of ordinary business, that of a majority of such quorum for action on ordinary business, and the requirement of a majority vote of all the members to which each house is entitled for the final passage of a bill are the same as in section 22 of the Organic Act. The provision for the taking of the vote by ayes and noes and the entry thereof in the journal upon the final passage of a bill is taken from section 46 of the Organic Act. The provision that a smaller number than a quorum may adjourn from day to day and may compel the attendance of absent members is the same as section 23 of the Organic Act.

Section 16. Bills; enactment by bill; subject and title; enacting clause. Section 16 contains one new provision, to wit, that no law shall be passed except by bill. This provision would eliminate the practice of legislating by joint resolutions. This section further requires that each law shall embrace but one subject, which is required to be expressed in its title, as is provided by section 45 of the Organic Act. The description of the enacting clause of laws

is substantially the same as that specified in section 44 of the Organic Act.

Section 17. Passage of bills. Section 17 sets forth the requirement of passage on three readings in each house on separate days for any bill to become law, as is provided in section 46 of the Organic Act. The provision for certification of bills from one house to the other upon passage is the same as in section 47 of the Organic Act.

Section 18. Action by governor; approval; veto; failure to approve or veto. Section 18 is derived from sections 49 and 51 of the Organic Act, both of which relate to action on a bill by the governor after passage by the legislature and certification and presentation thereof to him. A bill becomes law upon approval by the governor, which is indicated by his signing the same. A bill is vetoed by the governor if he returns it, with his objections, to the legislature. The veto power, in the case of any bill appropriating money for specific purposes, is applicable to any specific item or items and may be exercised by striking out or reducing the same, but as to other bills the veto must be of the bill as a whole. Such provisions are the same as the provisions of the Organic Act, except the provision for reduction of specific items as stated above. If any bill is neither signed nor returned by the governor within ten days, Sundays and holidays excepted, after it has been presented to him, it becomes law unless the legislature by adjournment prevents its return, in which case it does not become law. This provision is in substance the same as the second paragraph of section 51 of the Organic Act, except that holidays as well as Sundays are to be excluded in computing the ten day period.

Section 19. Procedure upon veto. Section 19 sets forth the procedure upon veto and is substantially the same as section 50 of the Organic Act. The requirement of a two-thirds vote of all the members to which each house is entitled for the over-riding of the governor's veto is retained.

Section 20. Punishment of persons not members. Section 20 provides for the summary punishment of persons not members of the legislature for contempt of either house or any committee thereof, the punishment therefor being limited to a fine of not more than $100 or imprisonment for not more than 30 days. The parallel section in the Organic Act is section 25, but there are substantial differences. The proposed section is intended as a declaration of the inherent power of the legislature to punish for contempt, but is not intended to prevent the legislature from enacting legislation to provide for judicial proceedings as an alternative method of vindicating the authority of the legislature, with such penalties as may be provided by such law.

Section 21. Impeachment of elective executive officers. Section 21 provides for the impeachment of the governor and other elective officers of the executive department of the State, as distinguished from the judicial and the legislative branches. Grounds for impeachment are limited to treason, bribery and other high crimes and misdemeanors. The power to impeach is vested in the house of representatives but the power to try all impeachments is vested in the senate. The chief justice presides in case the governor is being tried. Conviction requires concurrence of two-thirds of the members present and judgments upon conviction are limited to removal from office and disqualification from holding office. Conviction upon impeachment, however, does not preclude further prosecution and punishment according to law. The foregoing provisions are patterned after the provisions of the Federal Constitution on this subject.

Section 22. Legislative council; duties; salary. Section 22 establishes a legislative council, to be composed of such members of the legislature as may be provided by law. The duties of the council are to collect information concerning the government and general welfare of the State and to report thereon to the legislature, to study and report on such measures for proposed legislation as may be submitted to it and such other duties as may be assigned by law. The council is authorized to recommend such legislation as in its opinion the welfare of the State may require. Members of the council may receive, in addition to their salary as legislators, such salary as may be provided by law.

In conclusion, your Committee believes that this proposal provides a suitable structure for the legislative branch of the State government that has been, in the main, proved by our experience under the Organic Act. Your Committee therefore recommends that this Committee proposal pass on second reading, subject, however to such amendments as may be made thereto.—*June 23, 1950*

Wm. H. Heen, Chairman
E. B. Holroyde, Vice-Chairman
Edward C. Bryan
Randolph Crossley
Hiram L. Fong
Flora K. Hayes
Frederick Ohrt
Thos. T. Sakakihara
Arthur D. Woolaway

Herbert K. H. Lee and Wm. H. Heen—We do not concur as to those portions of Sections 2 and 3 of the proposal which fix the total membership of the senate and house of representatives, and, unless such membership is reduced, we do not concur in the provision for annual sessions contained in Section 12.

Elizabeth R. Kellerman and Cable A. Wirtz—We do not concur with sections 2 and 3.

Toshio Serizawa—I do not concur with section 2.

Peter Kawahara—I do not concur with sections 2 and 3.

COMMITTEE PROPOSAL NO. 29

RELATING TO LEGISLATIVE POWERS AND FUNCTIONS.

RESOLVED, that the following be agreed upon as part of the State Constitution:

ARTICLE ____.

SECTION 1. Legislative power. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the constitution of the United States.

SECTION 2. Senate; senatorial districts; number of members. The senate shall be composed of 25 members, who shall be elected by the qualified voters of the respective senatorial districts. The districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, seven.

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, five;

Third senatorial district: that portion of the island of Oahu, lying east and south of Nuuanu Street and Pali Road and the upper ridge of the Koolau range from the Nuuanu Pali to Makapuu Point, five;

Fourth senatorial district: that portion of the island of Oahu, lying west and north of the third senatorial district, five; and

Fifth senatorial district: the islands of Kauai and Niihau, three.

HEEN: It came out of the Model Constitution that --

TAVARES: Which?

HEEN: The first sentence, "No laws shall be passed except by bill."

TAVARES: That answers my question. On the other side, I should like to point out that although we have used joint resolutions in this territory, we have always held that they had to be passed three times, the same way as a bill, and that they have to have a title, the same way as a bill, so that I guess in general effect, they were probably the same except we used joint resolutions more for temporary purposes, as a rule.

HEEN: I might state it's been used usually for the purpose of requesting Congress to enact certain legislation by way of amending the Organic Act. That's always been done by joint resolution. As I recall it, there is no language in the Organic Act about any joint resolution at all, but joint resolutions have been enacted to become law and it has to have the enacting clause, "Be it enacted by the legislature," and also it required three readings, the same as a bill.

PORTEUS: I think the senator and delegate is quite correct, and one of the reasons that a joint resolution was used in respect to Congress or any other body was that, not only did it have a deliberative process accorded a bill for three separate readings and on three separate days in one house and the same procedure in the other, but it also required the consent of the governor, and consequently it seemed to carry very much more weight than a joint resolution -- I mean a resolution of both houses, or a House resolution or a Senate resolution alone. It also let the executive authority have a say so in the matter and it had, I thought, been a useful device and possibly one we would want to preserve. As I understand the committee report you would eliminate the use of a joint resolution.

CHAIRMAN: Committee report says "legislating" by that device. I don't know whether that's any different or not. Is it, Delegate Porteus?

HEEN: Those joint resolutions directed to Congress which required the approval of the governor required three readings. It can very well be passed by a bill. Call it a bill.

PORTEUS: I suppose that procedure could be followed. As a matter of fact we've also used the joint resolution to deal with other matters of a temporary nature. If I'm not mistaken, Keehi Lagoon, the authorization of the proceedings in respect to the acquisition of that property came through in part at least on a joint resolution.

HEEN: I might state, Mr. Chairman, that all these joint resolutions which have been passed after three readings and approved by the governor have been written into the session laws, and when they become functus, of course, they don't get into the Revised Laws. So I see no problem there, Mr. Chairman. Instead of calling them joint resolutions, call them bills.

CHAIRMAN: Ready for the question?

SAKAKIHARA: I beg to differ with the chairman of the committee that no appropriation has been made by joint resolution. When we made an enactment, a certain act by joint resolution, such as the Statehood Commission to go to Washington, the joint resolution also appropriated funds for the commission and it was held by the Attorney General's Department that the legislature was authorized to appropriate funds by means of joint resolution.

HEEN: After all it's just a matter of style, whether you are going to term one legislative act a joint resolution and another one a bill. They're all bills; they become law any way. You can call them all joint resolutions, and if you go through the procedure of three readings and the approval of the governor, they become legislative acts.

SAKAKIHARA: I don't, therefore, see why we should set off enactment by joint resolution and confine it simply to a bill.

CHAIRMAN: Will the chairman of the committee give us the language under which legislation is now being enacted under the Organic Act? What is the language?

HEEN: There is no language with reference to joint resolutions.

CHAIRMAN: Doesn't that answer your question, Delegate Sakakihara? In other words you can still pass them, I suppose.

SAKAKIHARA: But under Section 16, as proposed by the committee proposal, they were outlawed, they were prohibiting legislation by joint resolution.

SHIMAMURA: Although the Organic Act is silent as to resolutions -- joint resolutions, it also does not have any mandatory provisions that the enactment shall be by bill. Therefore, under the present system, under the Organic Act, a law might well be passed by resolution or joint resolution.

CROSSLEY: It appears to be controversial, I move we defer it.

SAKAKIHARA: Second.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried. Till Wednesday, the understanding is the deferment is until Wednesday.

CROSSLEY: Yes. I move the adoption of Section 17, passage of bills.

WOOLAWAY: I'll second that motion.

TAVARES: I hate to appear an obstructionist. I really am not trying to obstruct, but it is my recollection, my understanding, that Congress is not bound by any three-day requirement and that many states are not bound, that under certain types of emergencies they can act without acting on separate days, and I wonder if the chairman would give us how many states require absolutely this three-day provision.

CHAIRMAN: Delegate Heen.

HEEN: The committee didn't go into that phase of the problem, simply adopted what appears now in the Organic Act.

TAVARES: Well, I'm just wondering if we are going to become a state, whether there may not be some cases where it will be to the urgent benefit of the state to act in less than five days or in less than three days. As I understand it, even under this provision, by passing a bill in both houses simultaneously and then switching one for the other in one of the houses you can still pass legislation in three days; but I have some feeling that as a state, which is a rather permanent status, there might be a situation where we might want to pass it sooner. As I recall it some states do have a provision that under certain emergency conditions and by

certain large majorities, bills can be passed more than once on the same day.

CHAIRMAN: Did you have an amendment, Delegate Tavares?

HEEN: It would seem to me that if you have a very important measure, that measure should at least require three days' deliberation and not less.

TAVARES: I am in sympathy with that for general legislation, but I can imagine a case where, if we were at war and wanted to mobilize quickly, that there would be a little advantage in being able to pass a bill in one day to raise a national guard or state guard or something a little higher.

CHAIRMAN: Are you ready for the question?

SAKAKIHARA: I believe this Section 17 deserves further study, according with the remarks of Delegate Tavares. I have had some experience of ten sessions in the legislature. We have found some difficulty under the present system of requiring bills to - -

CHAIRMAN: Your move is to defer it?

SAKAKIHARA: Defer, yes.

CHAIRMAN: Is there a second?

SAKAKIHARA: Till Wednesday.

ST. SURE: I second the motion.

CHAIRMAN: It has been moved and seconded that we defer action until Wednesday on this section. All in favor signify by saying "aye." Contrary. I think the motion is lost. The Chair will call for a show of hands on the motion. All in favor of deferring this section until Wednesday. Against. Motion is carried. Deferred until Wednesday.

WOOLAWAY: I move for the adoption of Section 18.

CROSSLEY: Second the motion.

FUKUSHIMA: I have a very long amendment on Section 18 concerning the pocket veto, and I believe after I had put it in it will be very controversial, so I move at this time that this section here and Section 19 be deferred until Wednesday.

CROSSLEY: Second the motion.

CHAIRMAN: Section 18 and 19 both be deferred until Wednesday?

FUKUSHIMA: That is correct.

CHAIRMAN: Is that seconded?

CROSSLEY: I seconded the motion.

CHAIRMAN: All in favor signify by saying "aye." Contrary. Carried. Sections 18 and 19 are deferred until Wednesday.

WOOLAWAY: I now move for the adoption of Section 20.

CROSSLEY: Second the motion.

ROBERTS: I have an amendment to Section 20. It may not be controversial. I would like to offer it.

CHAIRMAN: Has it been printed?

ROBERTS: No, it has not. It's a simple amendment I'd like to offer. In the fourth line, the words "who shall be guilty of contempt," I'd like to change that to "who have been convicted of contempt." We had previous discussion on the floor on the question of "who shall be guilty" and I think we adopted the language "who have been convicted," "found to have been guilty." I'd like to move that as an amendment, Mr. Chairman.

SAKAKIHARA: Only guilty persons are convicted of contempt, you don't convict innocent persons.

CHAIRMAN: I didn't get the question. Is there a second to this?

DELEGATE: I second the motion.

CHAIRMAN: It has been moved and seconded.

SAKAKIHARA: I rise to a point, Mr. Chairman. I beg to differ with the delegate from the fourth district. I see no harm in the language as used by the committee, only guilty persons are convicted.

HEEN: The use of the term "convicted" might imply conviction by court and this is a summary action on the part of the legislature itself. The legislature, a body of that kind, has power to punish for contempt on the part of any person who might interfere with the functions of the legislature.

ROBERTS: Do I understand that answer to mean that he may not be guilty and therefore can still be kept out?

CHAIRMAN: The question is that your amendment would imply, as it does to the mind of the Chair, that conviction means conviction not before the body but means in a court. Of course it doesn't mean that. The legislature has got the power of punishment for contempt without regards to what the courts may do.

HEEN: And as pointed out in the report, this will not prevent the legislature from enacting legislation for punishment of these persons in the criminal courts. That's being done now by the Congress where they have contempt of Congress or any committee of Congress. Then they have legislation whereby these persons who are - - may be proceeded against in the courts of law and punished there.

ROBERTS: I gather this is controversial.

CHAIRMAN: I don't think so.

TAVARES: Frankly, I think that the fears of the delegate who made the motion are not well founded. Before each house can punish they'll have to find the man guilty and I don't think the word "conviction" adds anything to it. But I do feel this, that there may be a more substantial defect from my point of view in this. I don't know why each house shouldn't be able to put one of its own members in jail if his action is contemptuous enough. Why should it be just an outside member? Under another section just deferred, they can suspend or remove him, but maybe they don't want to do either or it might be easier to slap him with a little fine and if it gets bad enough it might be proper to punish him like you would anybody else, as long as the house does it itself.

CHAIRMAN: Maybe the Republicans can put all the Democrats in the clink then under your amendment.

PORTEUS: Did I understand the chairman of the committee to advocate that as a desirable piece of legislation in the future?

SHIMAMURA: Section 20 in my humble opinion is very broad. It's a very substantial enlargement of the powers of the legislature contained in our present Organic Act. In the first place, it provides for summary punishment, and although the learned gentleman from the fourth district said that certainly there'll be a hearing, when you have summary punishment it's a question of whether or not you'll have a

WIRTZ: I understood the motion to defer went to the entire section, not only the amendment.

CHAIRMAN: That wasn't the Chair's understanding.

KING: Mr. Rice made the motion to defer action on the section.

PORTEUS: Section 11.

CHAIRMAN: The Chair will reverse itself then.

WOOLAWAY: I believe Section 13 has been adopted, so I now move for the adoption of Section 14.

NODA: I second the motion.

HEEN: I don't know what the status of Section 13 is?

CHAIRMAN: Has been adopted, on July 1, 1950.

ASHFORD: May I ask a question of the chairman of the committee in regard to Section 14? Inasmuch as there is a provision in another section for the judging of elections, would the chairman of the committee feel that this is desirable to say, "Not withstanding any other provision of the Constitution"?

HEEN: I believe what the delegate just stated refers to some provision in the article on suffrage and elections which provides for contested elections by a court of competent jurisdiction. Mr. Chairman, I must state that that provision there gave the Committee on Style some concern and maybe that provision should be eliminated altogether. But, if it is going to be there, remain there, then the suggestion made by Delegate Ashford I think is in order. "Notwithstanding any other provision in this Constitution, each house shall be the judge of elections and returns and qualifications of its own members."

CHAIRMAN: With the understanding that the Style Committee will reconcile any difference, will that be satisfactory to Delegate Ashford?

ASHFORD: Yes. In my opinion perhaps the exception -- two exceptions should be written into the article on suffrage and elections, that is, with the exception of any constitutional convention or the legislature.

BRYAN: The last time that this question came up, I pointed out that it may not have been exactly pertinent. This covers cases where there is no contest. Judges of elections in the other case, covered under the article on suffrage and elections, there would have to be a contest before it could be determined.

CHAIRMAN: This only applies to the legislature; it does not apply to the executive officers of government that may be elected. Any further discussion? If not, the Chair will put the question.

ROBERTS: I'm not quite clear as to the disposition you are making of this. In Committee Proposal No. 8 on suffrage and elections, there is a sentence which reads, "Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law." Unless you are going to make some exception in the case of constitutional convention elections and elections involving members of the legislature, those two sections are in conflict. I think that the Committee on Style should be directed by this committee to resolve the conflict in some specific way, either change the article on suffrage and elections or make some provision in the present article with regard to that.

CHAIRMAN: This language is a common provision, that each house shall be the judge of the election returns and qualifications of its members. The section to which you have reference has to do with the contested election, which is a very different problem.

ROBERTS: Well, there may be a contest of election in connection with the legislature.

CHAIRMAN: Then the legislature is the sole judge.

ROBERTS: Well, unless you construe Section 5 to apply only to those areas other than the legislature and the constitutional convention elections, otherwise there is a conflict.

CORBETT: I don't see how you can make the legislature judge in a contested election of its own members. It seems to me that the point in putting that section in suffrage and elections was to have a body entirely objective in its approach to the problem. You have a group of people sitting in judgment on each other, and it is going to make a very difficult situation. In a contested election where there are facts to go on, it is quite a different story.

CHAIRMAN: That's a provision contained in our constitutional history from its very beginning. Whether or not a person is qualified to sit in the legislature each house determines; it's a political question with which the courts cannot interfere.

Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

TAVARES: I now move that it is the sense of this Convention that any conflict in the article on suffrage and elections should be controlled insofar as inconsistent with the sections just adopted by this section.

CHAIRMAN: Is there a second?

C. RICE: I second the motion.

CHAIRMAN: You heard the motion. All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: Section 15 having been adopted, I now move for the adoption of Section 16.

NODA: I second the motion.

CHAIRMAN: Any discussion? If not, the Chair will put the question. All in favor signify by saying "aye." Contrary. It's adopted.

WOOLAWAY: I now move for the adoption of Section 17.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 17 be adopted. Any discussion? Chair will put the question, all those in favor --

TAVARES: I just wanted to refresh the memories of those present. I am not going to argue too much one way or the other. There is a possibility of a need sometimes for faster action than one reading on each day. However, I am not going to labor the point. If the delegation still feels that as we have operated for 50 years we can safely operate in the future, why that's all right. There are some constitutions that allow by a two-thirds vote or some other special manner, the legislature or each house of the legislature can waive that separate reading on each day for emergency measures.

CHAIRMAN: Chair will put the question? All those in favor --

BRYAN: I'd like to put Delegate Tavares at ease. If the legislature were to pass a bill [by] three readings in one day, the only objection could be on the grounds of unconsti-

tutionality. While that was being labored in the courts they could repass the same law and take three days to do it.

CHAIRMAN: That doesn't make him too happy.

ROBERTS: I don't think that statement should be left in our record uncontested. I think the intention of this section is quite clear. The purpose is to see to it that no legislation is passed hurriedly and without due and careful consideration by the legislature. The intention is to provide three separate readings. I for one would not suggest that we look aside at this thing and say make it a constitutional section and violate our Constitution. I think the language is clear and ought to stay that way.

CHAIRMAN: The language is perfectly clear. Are you ready for the question? All those in favor signify by saying "aye." Contrary. Carried.

WOOLAWAY: I now move for the adoption of Section 18.

NODA: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 18 be adopted.

FUKUSHIMA: I have an amendment to offer to the second paragraph of Section 18. The amendment has been distributed to the delegates. At this time I would like to move the adoption of this amendment. Amend the second paragraph of Section 18 to read as follows:

> If any bill is neither signed nor returned by the governor within ten days, Sundays and holidays excepted, after having been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature by its adjournment prevents its return. If on the tenth day the legislature is in adjournment sine die, the bill shall become a law if the governor shall sign it within twenty days, Sundays and holidays excepted, after such adjournment. On the said twentieth day the bill shall become a law, notwithstanding the failure of the governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the governor. A bill reconsidered at such special session, if approved upon reconsideration by two-thirds of all the members of each house, shall become a law.
>
> No salary shall be payable when the legislature is convened for this purpose.

CHAIRMAN: Does this relate to the second paragraph only?

FUKUSHIMA: Yes, it does.

J. TRASK: I second the motion.

FUKUSHIMA: This amendment has to do with the subject matter of the pocket veto. We have in this Convention set up an executive with very strong powers. Here, as proposed in Committee Proposal No. 29, the governor has the power to veto bills when the legislature adjourns sine die, without signing the bill certified to the governor. My amendment permits the legislature to reconvene for the purpose of reconsidering bills that are not passed by the governor. If he should fail to sign a bill within 20 days from the date of adjournment the bill automatically becomes law, unless he shall return the bill to the legislature for reconsideration. This will take away some of the powers which the governor now has. I feel that the governor's power to pocket veto a bill is a very strong power. He possesses legislative powers as well as executive powers. Many a time we have a bill passed after much deliberation in both houses, passed unanimously; and then the bill is certified to the governor, the legislature adjourns sine die, the governor doesn't do a thing within ten days and the bill is killed. This will prevent that and I think much of that power we have given to the governor may now be taken away from him as far as legislative matters are concerned.

CHAIRMAN: How would the legislature reconvene under your amendment, Delegate Fukushima, just automatically or by proclamation?

FUKUSHIMA: Automatically, Mr. Chairman.

CHAIRMAN: I don't think you've said enough in here to do that.

FUKUSHIMA: This follows the New Jersey Constitution and I believe that is done automatically in New Jersey. It says without petition or call, 20 days from the date of adjournment sine die.

CROSSLEY: I would like to speak in favor of the amendment. I think it is a good amendment and serves a very useful purpose. There has been a lot said here about giving the governor too much power and I think this is one way in which we can take what would very well be a legislative power away from him. It accomplishes one more thing in that it makes everyone take a position on every piece of legislation that has been passed by the legislature, and I think that is worthwhile and I would be in favor of this amendment.

TAVARES: Mr. Chairman, may I ask a question of the experienced legislators here? This sets an absolute time of 20 days after adjournment within which the governor must consider all bills. At the present time, the requirement is that the governor has ten working days or ten days exclusive of certain days, like Sundays and so forth, in which to consider a bill after he receives it. Experience has shown that sometimes at the end of a session the legislature passes say 100 or 150 bills or more and some of them are very long and it takes them quite a number of days to even write those up and engross them, so that the time of ten days doesn't start running until the governor receives them. This will require that your clerks engross all of those bills and get them up to the governor in that 20 day period. The query in my mind is, will that 20 days be sufficient to give the typists and so forth in the houses of the legislature time to engross the bills and at the same time give the governor adequate time to consider them? From my recollection those bills come dribbling into the Secretary's office now at the rate of a few a day, and it sometimes goes on for ten or 15 days before the last bill is received by the Secretary's office and transmitted to the governor.

FUKUSHIMA: The Constitution of New Jersey provides 45 days. I thought perhaps 45 days was a little too long. Therefore, after consultation with some of the delegates, we changed it to 20 days.

CHAIRMAN: Delegate Fukushima, are you referring to the executive article on page 14 of the New Jersey Constitution?

FUKUSHIMA: That is correct.

CHAIRMAN: The delegates have that before them.

FUKUSHIMA: If the period of 20 days is too short, I feel that the New Jersey language of 45 days could be sub-

Exhibit 32

in computing the number of days of any session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session be held at some other place."

The amendment proposes annual general sessions, thus eliminating alternating budget sessions. The present scheme of alternating a 60-day general session with a 30-day budget session was meant to serve several purposes. Generally speaking, restricting alternate sessions to budgetary and fiscal matters evolved out of the problems encountered in the regular biennial session arrangement where appropriation bills often necessitated the call for a special session or were the key log in the end-of-session "logjam." It provided a satisfactory solution to the growing realization on the part of those directly involved in the legislative process that the fiscal operations of government and effective financial planning required annual attention, whereas general legislation could be adequately dealt with on a biennial basis. Such circumstances then, contributed to the establishment of alternating budget sessions.

Your Committee is of the opinion that the State of Hawaii has arrived at that point in its social, economic, and political development, where the need for annual general sessions now exists. The action of other states indicates a trend toward eliminating alternating budget sessions. Since 1964, three states (Maryland, California and Kansas) have dropped restrictions limiting alternating sessions to fiscal matters, bringing the total number of states with annual general legislative sessions to fourteen. Your Committee feels that although the line between fiscal and nonfiscal matters may have been easily discernible in the past, such a distinction is extremely difficult to make today. In fact, much time is wasted during a budget session in debating what is fiscal and what is not, or when a measure is "urgent," i.e., necessary to the public interest, and when it is not. Moreover the spirit of the Constitution requiring a measure to be urgent for budget session consideration has been honored more in the breach than in the observance simply by marshalling sufficient votes to label any measure "urgent." Further, your Committee feels that the growth of the State is reflected in the growing volume of general problems presented to the legislature, and these deserve legislative attention annually rather than biennially.

In addition to maximizing legislative sensitivity to the needs of the community and keeping the legislature in pace with social change, your Committee also accepts and supports the view that the legislature should play a positive and definitive role in state government. Such a role requires that the policy-review, planning and revision process of the legislature be on-going rather than interrupted in alternate years by a budget session. The conclusions achieved through oversight of the administrative process can then be more rapidly incorporated in revised legislation.

In order to strengthen and maximize legislative flexibility and to permit wider legislative accommodation of the changing demands of our growing State, your Committee recommends that the present alternating 30-day budget session be eliminated and annual 60-day general sessions be incorporated.

Your Committee also recognizes the need for strengthening the legislative branch *vis-a-vis* the executive branch. To this end your Committee recommends that the legislature be granted the power to extend any session for fifteen days by a two-thirds vote of each house of the legislature and, commensurately, that the governor's power to extend for thirty days be adjusted to fifteen days, it being the intent of your Committee that the aggregate number of days that a session may be extended by the governor and/or the legislature is fifteen days. Thus the governor cannot, for example, extend a session an additional fifteen days after the legislature had extended it for fifteen days. The legislature is also granted the power to convene itself into special session by a two-thirds vote of each house of the legislature. Presently only the governor has the power to extend any legislative session, and the legislature may convene itself only at or before noon on the forty-fifth day in special session without call, for the sole purpose of acting on any bill returned by the governor.

In accordance with all of the above-stated legislative objectives, it is further recommended that the legislature may, by a majority vote of each house, recess at will without the days of recess being computed into the number of days of any session; that Saturdays, as well as Sundays and holidays, be excluded in computing the number of days of any session to allow legislators more time to do their homework and reflect upon their activities; and that the legislature convene on the third Wednesday of January rather than the third Wednesday in February to allow the session, expanded by the adjustments proposed, to end in sufficient time before the commencement of the next fiscal year.

Sections 12, 13, 14 and 15 relating to adjournment, organization, quorum, and title and subject of laws passed by bill, respectively, have been retained without amendment. No proposal sought to amend these sections. Your Committee, after review, is satisfied that these sections need no amendment.

Section 16 of Article III has been amended to read as follows:

"Section 16. 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. Every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

"Any bill pending at the final adjournment of a regular session in an odd-numbered year shall carry over with the same status to the next regular

session and, at the latter session, shall pass at least one reading in the house in which the bill originated."

Your Committee has included the twenty-four hour rule as a requirement for the passage of bills. The purpose of this rule is to assure members of the legislature an opportunity to take informed action on the final contents of proposed legislation. This is accomplished by requiring the printing and availability of each bill in the "form to be passed" to the members of a house and a twenty-four hour delay between such printing and availability before final reading in each house. "Form to be passed" means the form in which a bill is passed on third reading in each house, concurrence of one house to amendments made by the other, and the form in which a bill is passed by both houses after conference on a bill. The twenty-four hour rule not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage.

In the course of hearings held on this matter, a respectable case was made in opposition to establishing the twenty-four hour rule in the Constitution. The possibility of litigation which might result in striking down sound and necessary legislation on merely technical grounds is certainly increased. The costs in terms of the rigidity and delay in handling legislative business, particularly in light of the fact that a majority of the bills which pass in most states, pass without recorded opposition, may outweigh the benefits derived under this rule. The twenty-four hour delay can, on the one hand, retard legislative progress by encouraging amendments or, during rush periods, stifle necessary changes in order to meet deadlines. The rule suffers from the same enforcement deficiencies as other procedural safeguards. Since the courts usually will not look beyond the legislative journal for procedural violations, the practical effect is that the rule can be suspended simply by failing to record procedural shortcomings. Hence, the rule will have effect only when supported by a strong legislative conviction of its wisdom and necessity. Finally, whether the rule will significantly promote informed action by the general citizenry or merely increase the influence of already strong and skillful lobbies is open to question.

The arguments raised in favor of the twenty-four hour rule were made with equal force. The complexity of modern legislation, particularly with the development of omnibus bills in such broad fields as the budget, tax reform, administrative organization, workmen's compensation and others, frequently causes amendments to such bills to be highly technical in nature yet far-reaching in effect. Without the specific language before him, these circumstances may compel the legislator to vote on numerous bills whose purposes seem unclear and whose details seem beyond comprehension. Under the twenty-four hour rule the legislator is provided with the basic information he requires, and if the subject matter proves too technical to be understood just by reading, time is available for consulting colleagues, the bill's sponsors or legislative staff services. The importance of interest groups and their representatives to the legislative process as sources of information and barometers of public support for proposed legislation is unquestioned. By giving notice that a measure is coming up for final reading and by providing an opportunity to study the measure in its final form, the twenty-four hour rule enhances the functions served by these groups. Moreover, the delay better enables those concerned to marshal their forces in favor or against the matter under consideration.

In deliberating on the merits and demerits of the twenty-four hour rule, your Committee was guided by the belief that any change in procedure must be evaluated in terms of its contribution to the two principal legislative functions of representing people, groups and communities and of rendering decisions which can be accepted as carefully weighed and fairly made. It is our considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of proposed legislation decisively overrides the possible problems latent in its adoption.

The carry-over of bills permits those measures introduced in regular sessions held in odd-numbered years, but neither rejected nor adopted at such session to have life through the following regular session until finally acted upon. This provision is directed at improving the efficiency of the legislative process. Under present procedures, a large proportion of the bills introduced which fail to become law are reintroduced at the following session. The legislative machinery is considerably slowed down by the necessity of disposing of the same bills over and over again. Bills with a two-year life span would result in savings of time and the costs of reprinting reintroduced measures. A New Jersey study reports savings of about $60,000 in reprinting costs for that state. Moreover, the carry-over of bills blunts the restrictive effects of limited sessions by preserving legislative progress which did not reach the bill-passing stage in the prior session. The major weakness of the bill carry-over procedure is its vulnerability to abuse when measures are carried over to the following session on third reading. In this instance, bills might be abruptly passed before the members of a house had time to review the contents of the bill and determine the course of action to be taken upon it. However, your Committee is of the opinion that adequate safeguard has been made against this possibility by the proviso which requires that a carry-over bill shall receive at least one reading in the house in which the bill originated. Two situations readily come to mind with respect to this requirement. First, a bill originating in the senate passes the senate and passes two readings in the house before adjournment of the session in an odd-numbered year. With the carry-over status, the bill, at the next session, passes third reading in the house which must return it to the senate for the one reading pursuant to the requirement. In the second situation, a bill originating in the senate passes two readings in the senate before adjournment in an odd-numbered year. At the next session, the bill carried over receives the third reading and is transmitted to the house which then proceeds to pass the bill on three readings. The house is not required thereafter to return it to the senate for

another reading because the senate had already met the one reading requirement by its passage of the bill on third reading in the second session. To keep the above illustrations simple, it was assumed in both situations that the bill went through each house without amendment.

Sections 17 and 18 relating to approval, veto and procedures upon veto, Section 19 relating to punishment of non-members and Section 20 relating to impeachment were considered and having received no testimony thereon, your Committee does not recommend any amendments.

Section 17 of Article XVI relates to the salary of the members of the legislature. Your Committee considered this matter in connection with Section 10 of Article III hereinbefore mentioned. Section 17 was amended to read as follows:

"Section 17. Until otherwise provided by law in accordance with Section 10 of Article III, the salary of members of the legislature shall be [as follows: the sum of two thousand five hundred dollars for each general session, the sum of one thousand five hundred dollars for each budget session and the sum of seven hundred and fifty dollars for each special session.] twelve thousand dollars per annum."

An annual salary of $12,000 is not only reasonable but readily justifiable. No witness denied that the existing salary for a general session of $2,500 is too low and that a salary increase is in order. The existing salary was established for conditions prevailing in 1950—eighteen years ago. Not only were salary scales and cost of living lower then, but also the problems of the State were less complex and demanding of a legislator's ability and time. The qualified candidate, which the public deserves, must be attracted to serve as legislator. The Citizens Committee to Advise the Senate on Legislative Processes recommended an annual salary of $12,000 for a year-round legislator which your Committee has supported. The Citizens Committee's recommendation was made in contemplation of a ninety *calendar* day general session beginning in mid-February and ending in mid-May. Your Committee proposed a sixty *working* day session, legislature's power to extend for an additional fifteen working days, and the excluding of Saturdays from computation of the working days. All this would be substantial equivalence of or longer than ninety *calendar* days. Indeed, the existing sixty working day general session alone lasts from mid-February to end of April. It is also common knowledge that extensive pre-session work is done at every legislative session. Although the legislator is not restricted from another job, your Committee assumes that the legislator is available for service whenever required throughout the year. Your Committee firmly believes that this increased salary will attract and produce the kind of legislator who will spend more time in educating and informing his community and constituents of the legislative processes and issues.

It is assumed by your Committee that the proposed actual annual compensation of $12,000 would make unnecessary the use of a "deemed" salary for the purpose of determining the legislator's average final compensation under section 6-38 of the Revised Laws of Hawaii 1955. It is your Committee's intent that the annual compensation of a legislator not be deemed to be multiples of $12,000 in computing his retirement, and it is expected that the legislature shall effect the necessary amendments to the retirement statute consistent with the intent herein expressed.

Your Committee recommends (1) that the above-numbered proposals referred to your Committee be filed; (2) that Sections 1, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19 and 20 of Article III be retained without amendment; and (3) that Committee Proposal No. 7 pass first reading in the form attached hereto.

Signed by all members of the Committee. Delegates Fasi and Larson did not concur in part.

COMMITTEE PROPOSAL NO. 7

RELATING TO THE LEGISLATURE.

Resolved, That the following be agreed upon as amending Sections 10, 11 and 16 of Article III of the State Constitution:

Section 10. The members of the legislature shall receive allowances reasonably related to expenses and a salary, as prescribed by law. Any change in salary shall not apply to the legislature which enacted the same.

There shall be a commission on legislative salary, the members of which shall be appointed by the governor on or before June 1, 1971 and every four years thereafter. Within sixty days after its appointment, the commission shall submit to the legislature recommendations for a salary plan for members of the legislature, and then dissolve.

Section 11. The legislature shall convene annually in regular session at 10:00 o'clock a.m. on the third Wednesday in January and shall be convened at other times in special session, at the written request of a two-thirds majority of the members in each house, by the presiding officers of both houses. The governor may convene both houses or the senate alone in special session. Regular sessions shall be limited to a period of sixty days, and special sessions shall be limited to a period of thirty days. Any session shall be extended not more than fifteen days by the presiding officers of both houses at the written request of a two-thirds majority of the members in each house or by the governor. Any session shall be recessed by the presiding officers of both houses at the written request of a majority of the members in each house. Sundays, Saturdays, holidays and any days in recess shall be excluded in computing the number of days of any session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session be held at some other place.

Section 16. No bill shall become law unless it shall

CHAIRMAN: Delegate Kauhane, would you like to answer the question?

DELEGATE KAUHANE: My question involves the entire section, but I would take it piecemeal.

CHAIRMAN: Delegate Ching, the question addressed to you refers to paragraph one as clarified by Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, will we get back to the proper section we're dealing on, Section 16?

CHAIRMAN: The question before you is Section 16 of Committee Proposal No. 7, the first paragraph dealing with the 24-hour rule only.

DELEGATE HUNG WO CHING: Yes, I'm coming to that, Mr. Chairman.

May I read the rest of my statement because it refers to—

CHAIRMAN: Delegate Ching, proceed.

DELEGATE HUNG WO CHING: All right. 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.

CHAIRMAN: Is there any discussion?

DELEGATE KAUHANE: Mr. Chairman, my question is—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: My question is directed to the chairman of the committee.

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 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 having been read completely throughout?

DELEGATE HUNG WO CHING: May I yield to Delegate Miyake?

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: The constitutional provision as proposed by the committee on Section 16 does not state that the bill has to be read throughout. Therefore, it would be permissive for the legislative bodies provide the requirements as to how final reading will be interpreted in its own house or senate rules.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo is recognized.

DELEGATE GEORGE LOO: Will the chairman of the Legislative Powers Committee yield to a question?

DELEGATE HUNG WO CHING: I will.

CHAIRMAN: Delegate Ching. State your question to the Chair.

DELEGATE GEORGE LOO: Does this mean that there can be no amendment of the final bill? For example, let's—assuming there is a 24-hour delay for printing and that it's on the floor of the house or senate, that there can be no amendment of that bill?

DELEGATE HUNG WO CHING: If an amendment is made, it still has to go back to the original house for final passage, which is equivalent to a fourth reading.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: May I attempt to answer the question? In relation to the last question, the committee did discuss this procedure at length and what would happen if the passage of this amendment to the Constitution would mean to legislative processes would be that the 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. However, if the house or any member thereof should propose another amendment, it can be done on third reading. But upon the adoption of that amendment it will mean that the bill will lay over for another 24 hours before it can be acted upon on third and final reading. Now, if it comes back from conference we have no problem there. This is only on third reading in either house.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

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 question, 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?

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, the chairman of the committee will yield the question to me.

This proposed amendment will not change the present procedure as far as conference committees are concerned.

DELEGATE KAUHANE: I rise to a point of order, Mr. Chairman. This does not give a true answer to the question I raised.

DELEGATE DONALD CHING: Mr. Chairman, if the questioner will allow me to finish my answer perhaps he will get his full answer.

CHAIRMAN: Proceed.

DELEGATE DONALD CHING: I think the proponent of the question knows the answer to this without my having to answer. But since the question has been raised, I will answer it this way. 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 be made available to the members and the public for 24 hours before either house can act on it. That's the only change. As to what is substituted or what will happen in there, there will be no change as from the present procedure.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: Will the delegate from the 10th District yield to a question?

CHAIRMAN: State your question to the Chair.

DELEGATE BEPPU: Mr. Delegate, what if in the first paragraph, second sentence, if he had deleted, "in the form to be passed."

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, this is a matter of style. The committee spent many minutes, perhaps hours, on the language we finally arrived at. Now, if the Committee on Style decides to change the language, I don't think the committee or the body should have any objections to it just as long as we carry the intent of the committee. Now, we've had about at least half a dozen proposals as to how the intent of the committee should be worded. It's a difficult passage. I realize that the language itself is very cumbersome, but this is in the consensus of all of the "experts" who worked on this language. This is the consensus that was arrived at finally.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I request a short recess.

CHAIRMAN: A short recess is granted.

At 10:10 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:30 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come back to order.

Delegate Kauhane, did you wish to have the floor?

DELEGATE KAUHANE: Yes, Mr. Chairman.

Mr. Chairman, I respectfully recommend and move that action on the consideration of Section 16 be temporarily suspended until the amendments are prepared and distributed by the sergeant-at-arms and prepared by the attorneys.

CHAIRMAN: Delegate Kauhane, would you be willing to amend that to say the first paragraph of Section 16?

DELEGATE KAUHANE: I will do that, sir.

I will accept the instructions of the Chairman. The amendment will refer to the section of the paragraph that was mentioned by the Chairman.

CHAIRMAN: Without the necessity of going to vote, I think if there are no objections, we will permit the amendment to be drafted up and we will proceed to the second paragraph—

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: Your suggestion is welcomed but I think we should continue this discussion and before you go to part two of that Section 16, I would like to come back to part one of that Section 16.

be lost by the defeat of Section 17.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I regret that Delegate Mizuha has not had some more time to review the history of the salary increases by the legislature of the State of Hawaii, or the Territory of Hawaii. If he can point out to me one instance where raises were granted, I shall shut up for the rest of the Convention.

Now, it's great to think what fine people there are down at the legislature, but there are people who are opposed to pay raises who are legislators and somehow people seem to assume that all people, all legislators are for pay raises. But it is my very frank opinion that there are legislators who are vigorously and violently opposed to pay raises so that the pay will remain low as it has been all through history. And so that the best talent available in Hawaii, who don't run merely because they cannot become financially secure or at least financially provide for their families, are prevented from seeking public office, especially the legislature.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: In response to the statement of the robust delegate from Kauai, I must say that the effect of the defeat of Section 17 by the voters would not be to allow the legislature to set salary levels for the 1969 session or for the 1970 session, because we would then have as applicable Section 17 of the original Constitution which reads, "Until otherwise provided by law in accordance with Section 10 of Article III. . ."; so that Section 10 of Article III as amended here, which would be in the new Constitution, the commission procedures would be followed and would become effective as the commission was appointed, and as the commission recommended, and as the legislature acted, in no case earlier than the session of 1971.

CHAIRMAN: Ready for the question? We are voting on the main motion for Section 10, Committee Proposal No. 7.

All those in favor, signify by saying "aye." All those opposed, "nay." The motion is carried.

The Chair will declare about a five-minute recess and then we will proceed to Section 16.

At 3:03 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:15 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

The Chair will now ask the committee to return to paragraph 1 of Section 16 of Committee Proposal No. 7 which we were discussing this morning when an amendment was being printed by Delegate Kauhane.

Delegate Kauhane, do you wish to make a motion? Delegate Kauhane is recognized.

DELEGATE KAUHANE: I was looking around first, Mr. Chairman, if all members are here because I need someone to second this. Mr. Chairman, the Amendment III (8) which reads:

> "Section 16 of Article III as it appears in Committee Proposal No. 7 is hereby amended by deleting the words 'twenty-four' from the second sentence and substituting 'forty-eight' therefor"

has been printed and distributed and I am certain all members have a copy. I therefore move for the adoption of the amendment.

CHAIRMAN: Delegate Shiigi is recognized.

DELEGATE SHIIGI: Mr. Chairman, for the purpose of discussion I second the motion.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I'm happy to have someone in my class get up and second the motion for the purpose of discussion. Mr. Chairman, and member delegates, in offering the amendment, I am not trying to waste a lot of your time. But I feel that the amendment has some merit and should be given serious consideration by all of you. I'm talking about bills that require three readings. I'm for the principle of a bill having been reported out of the committee on third reading lay on the table for 24 hours. I am in full agreement of that, but beyond that agreement to lay it on the table for 24 hours, I am concerned with this factor—and those of you who have not served in the legislature should—I do hope you can lend me your ears and pay some strict attention to this procedure that I am about to illustrate for the reasons why I am offering this amendment.

As a compromise to all the objections that I would raise on the matter of third reading of bills, what I am about to say is familiar to all members that served in the legislature. In the first instance, a bill having been introduced by a sponsor, it is the practice on first reading that the bill be read by title, be ordered to print so it conforms with the first act of passing on first reading. Later, after the bill having been printed, lay before all of the legislators. Next, on second reading it would be referred to committee. The bill is still in its original form as when introduced. It has been the practice in the past and my experience in having served with the predominant legislature of one political party and then by another political party—it has been the practice that the chairman of a committee would report out the bill in its original form on the floor, requesting that the bill be voted upon with the recommendation that the bill pass second reading when no committee

meetings have been held, no amendments made to the bill and that the same bill be recommitted back to the same committee. The committee handling the action having been approved to pass the bill on second reading goes to the committee for its consideration and any amendments that they can make to the particular bill.

Now in the first instance, the bill complies with the rule that the bill having had to be read on three separate days, first and second reading. The most important thing comes to third reading of the bill. When the bill comes out of the committee, we send an elephant into the committee in the first instance. The committee reports the bill entirely new in concept, not the changing of one figure when appropriation of dollars are needed, but a whole complete change with the contents in which the bill was originally introduced may contain one page. That bill comes out either 14 or 10 pages, different than the original. The committee recommends that the bill pass third reading in its amended form. You may have intended to request consideration of the matter of the caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill. I dare ask whether this has passed the required procedures of the bill having passed three readings on three separate days.

In past practices where the committee has recommended that the bill, as amended, pass third reading in the amended form, I have experienced the practice where in voting for the adoption of the committee report with its recommendations, no one has the opportunity to amend the bill. Some of the legislators who have served in those sessions say to me, "Well, we had an opportunity." But once the recommendation to the committee has been adopted you had no opportunity. I am trying to prevent this type of thing from happening. I am trying to prevent any citizen from going into court to test the constitutionality of the legality of the passage of this bill on third reading in this disguised form.

I know that the learned representatives or senators, whatever the case may be, may come out with the famous terminology "notwithstanding"—"notwithstanding" the bill shall pass third reading. But then did the bill really pass third reading? Did the bill really pass and meet the criteria that the bill has been read in three different days? And because of this consultation that I had during—early in the recess amongst those that I have the highest esteem for on the knowledge of legislative proceedings, we entered into an agreement that extended—extended the 24-hour waiting period to 48 hours. There has been before the committee other jurisdiction which carries over to 72 hours. So they came up with a happy compromise of all to extend to 24. I asked one of the attorneys of the Constitutional Convention during the lunch hour recess whether or not this legally constituted passing the bill on three separate readings. There is a question, he says, that this legal question has never been raised yet. I am concerned about the future attempt of the possibility of the legal question being raised. Not necessarily by any citizen, but it may be by one of the legislators, that in order to plug that loophole and to make sure that all of these actions undertaken by the legislature are legal and beyond any question of doubt have met the conditions under which those are to be considered, first, second and third reading.

Mr. Chairman, because of that reason and for your indulgence I thank you very much for permitting me the opportunity to seek out a compromise. As I said to you I have other areas to question the bill on the three readings from other jurisdictions. I have not as yet completed but I am willing to end the pursuit of further questioning on the procedure and ask that this delegation after I had consulted with the chairman of the committee on the agreement of the extension from 24 to 48-hour layover. This will take care of some of the problems that I am very much concerned with and I do hope as expressed by some of the legislators of their concern of this matter. Again, thank you very much for your kind courtesy, Mr. Chairman. I ask the members of this Convention to vote for the approval of this amendment.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I speak against the amendment. I think our experience in this session here in the Constitutional Convention of 1968 proves that some of the provisions that we have in the rules are archaic, are not workable. About the middle of the session we found some concern about the delaying tactics employed during the floor action here. In fact, it went so far as to change the rules to drop four days to two days. I think this kind of provision of 24 hours is adequate to any legislative operation. To increase this to 48 hours is going to be a little hindrance to legislative operations and to have something in the Constitution which is very inflexible is going to work at a disadvantage to the legislators. For these reasons, Mr. Chairman, I ask for a "no" vote.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I, too, rise to speak against the amendment. First of all, I would like to point out that the practice that the proponent of this amendment speaks of has not prevailed in the legislature—well, I can safely say since the coming of statehood. And secondly, that—

DELEGATE KAUHANE: Mr. Chairman, I rise on a point of order.

CHAIRMAN: State your point of order, delegate.

DELEGATE KAUHANE: —and I know that in some area, unwillingly and unintentionally, this continued practice is still going on.

DELEGATE DONALD CHING: May I have a ruling on the point of order so I might continue with my discussion of the subject. If he wants to rebut he can

rebut.

CHAIRMAN: You may proceed.

DELEGATE DONALD CHING: Mr. Chairman, I would like to reiterate again that in my experience, I would like to state that the practice that has been mentioned here has not prevailed in the legislature since the advent of Statehood. And secondly, that this amendment, even if this practice were prevailing in the legislature at the present time, the amendment that is suggested here would not cure that practice.

CHAIRMAN: Are you ready for the question?

The motion before us appears on the yellow sheet of paper designated Number III (8). The motion is to amend Section 16 of Article III of Committee Proposal No. 7, the first paragraph by deleting the word "twenty-four" from the second sentence and substituting "forty-eight" therefor.

DELEGATE KAGEYAMA: Mr. Chairman, I would like to raise one question before you put the question to a vote.

CHAIRMAN: State your question.

DELEGATE KAGEYAMA: The question before the house is to amend the "twenty-four" to "forty-eight." What the point of question here is at what stage this twenty-four hours take place or forty-eight hours, as amended, before the bill becomes law whether it's—let's say the bill originates in the house, passes three readings, goes to the senate and passes as you might say, the fifth reading of the total of the six. At that stage, would that "twenty-four" hours apply, or before the house acts on the final reading and go before the senate or vice versa?

CHAIRMAN: Delegate Donald Ching.

DELEGATE DONALD CHING: Mr. Chairman, if I might try to clarify the point. And I think in the discussion earlier this morning, it was already pointed out that the 24-hour provision or the 48-hour provision would take place before the final reading in either of the two houses, whatever the final reading is. This might be on third reading in the case of a bill which in the house in which it originates or if it comes back amended, this would be on the final reading after it's come back from the second house amended. So I think this was already discussed in the discussion this morning and it is also very well discussed in the committee report. I think the examples are very clear and very self-explanatory.

DELEGATE KAGEYAMA: If that's what it is, Mr. Chairman, I couldn't understand the committee report probably in my study of that wording by the committee is far beyond my education.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye"; all those who are opposed, signify by saying "nay." The noes have it.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: On the section before the body, Mr. Chairman, I pose a question and you can direct the question to the chairman, that the reading of a bill by title conforms with the bill having been read on third reading.

CHAIRMAN: Delegate, are you referring to the first or second paragraph of Section 16?

DELEGATE KAUHANE: On the section before the body, Mr. Chairman, I pose a question and you can direct the question to the chairman, that the reading of a bill by title conforms with the bill having been read on third reading.

CHAIRMAN: Delegate, are you referring to the first or second paragraph of Section 16?

DELEGATE KAUHANE: I started out this morning on the first, on the matter on which the bills to be reported out. Then in the interim, during the recess, Mr. Chairman, through your direction and my meeting with you personally, I arrived at the media in which no further questions can be submitted by me that I asked if we can get into some agreement and which agreement was entered into so that the chairman of the committee asked that I go into—that he was willing to accept the change from "twenty-four" to "forty-eight." I went along with this agreement. Now that the agreement has been voted down, I'm back to the first paragraph of Section 16 where we originally started from.

CHAIRMAN: At this point, that is correct. At this point, we have a motion before us to vote for Section 16, the first paragraph as presented in Committee Proposal No. 7. Are you ready for the question? All those—

DELEGATE KAUHANE: Is this the time, Mr. Chairman, that I can ask a question?

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, my question to you which will be directed to the chairman of the committee or any expert that the committee chairman may have to answer—does the reading of a bill by title after it has come out from the committee recommending passage on third reading, does this constitute that the bill has had three readings?

DELEGATE HUNG WO CHING: Mr. Chairman, I yield to Delegate Miyake.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, it has been the procedure in the legislature that the motion for the passage on third reading includes the words "bill having been read throughout pass third reading." Now the words, or the phrase "having been read throughout" is

used since we have now the modern technique of photostating our bills unlike in the past when we did not have the time to have the bills retyped and copies made for every member of the house or the senate. Because of modern technical machinery, each bill on final reading, on third reading is on the desk of each legislator. Therefore, we go through the form of using the words "the bill having been read throughout pass third reading" or "pass final reading." And according to the interpretation by the Attorney General in the past, the inclusion of these words, "having been read throughout" is sufficient to meet the requirement of having the bill read.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, this is what I started to say in the support of the amendment that I offered. The famous terminology "notwithstanding" or the famous usage of the words "the bill having been read throughout"; it's documented. The bill having been read throughout passes third reading and yet the bill having been read throughout at the command, having been read throughout pass third reading is not the bill that was originally introduced and then came back on the floor on second reading, on second reading and asked that it be recommitted to the committee having been voted upon on passage on second reading. These are the type of bills that I am trying to prevent so that these bills will be legal when it's amended, whether it is in its entirety. I am concerned about the bills so that the words—

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka is recognized.

DELEGATE UEOKA: Point of order.

CHAIRMAN: State your point of order.

DELEGATE UEOKA: I believe that the committee has reported our stating that there shall be three readings, and I don't believe that it's for this body at this time to determine as to how the legislature will comply with the mandates of the Constitution, assuming that it's adopted. I think it's clear that it calls for three readings. And I don't think we should at this point argue about what the legislature will do.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane, are you speaking for or against the amendment or merely raising questions?

DELEGATE KAUHANE: I am raising questions. I recognize the practice. I recognize that the practice is an erroneous one. I recognize that because it is erroneous, it is illegal to begin with—

CHAIRMAN: Delegate, would you—

DELEGATE KAUHANE: —that should we continue to have an illegal practice or should we have a constitutional provision to protect this.

CHAIRMAN: Would you phrase this in a question if you wish to raise a question to one of the committee members?

DELEGATE KAUHANE: I have already raised the question.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: May I attempt to add to the answer given to Delegate Kauhane here?

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: In actuality, from my experience, whenever even a very small minority demands a reading of a bill on third reading throughout, it is read word for word, comma, every period in the bill. And therefore, there is an actual and real protection and a safeguard.

DELEGATE KAUHANE: That still doesn't answer—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: —the way the bill has gone through the procedure, Mr. Chairman. After the bill has come out in a disguised form from the original intent and purposes that this bill has met the requirements of the amended bill in the disguised form has passed three readings from three separate days. There is a legal question, I think, involved in here, but I am willing to accept the practices today that have been continuing as the format. Lo and behold, that in the event this is questioned later, I can safely say that I had an opportunity to provide the loophole through a constitutional provision as provided before by other jurisdiction that face the same kind of problem that I am raising. But if the learned members of this delegation—

CHAIRMAN: Delegate—

DELEGATE KAUHANE: —those who have served are willing to accept the practices, I am willing to go along.

CHAIRMAN: Are you ready for the question? The motion before us is the adoption of the first paragraph of Section 16, Committee Proposal No. 7; and all those in favor signify by saying "aye." All those that oppose by saying "nay." The motion is carried.

Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of the second paragraph of Section 16 relating to the carry-over of bills.

CHAIRMAN: Delegate Miyake is recognized.

Exhibit 33

of the public treasure. Your Committee is well aware that the salary is only part of the total compensation to which a legislator is entitled. In this respect, your Committee urges and expects the legislative salary commission to hold public hearings in its deliberation on the salary plan and to consider the other benefits, direct or indirect, made to legislators by way of allowance, per diem, reimbursement, health benefits and retirement benefits in the evaluation of a legislator's basic salary.

Section 11 of Article III, relating to legislative sessions, has been amended to provide for a mandatory recess of not less than 5 days at some period between the 20th and 40th days of the regular session. Both houses shall agree on the dates of recess, which shall be excluded in computing the number of days in any session.

The purpose of this amendment is to provide both legislators and the public an opportunity to review during the recess all bills that have been introduced in both houses, and an opportunity for legislators and constituents to communicate on matters before the legislature at about the midpoint of the session. The practice of the legislature has been to impose a bill-introduction deadline at or about the 20th session day. Your Committee believes that the recess will also afford the public an opportunity to become acquainted with and follow the bills through the legislature more intelligently.

Section 13 of Article III has been amended by adding thereto the following:

"Every meeting of a committee in either house or of a committee comprised of member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public.

"Each house shall provide by rule of its proceedings for a date, applicable to both houses but no sooner than the twentieth day of the session, by which date all bills to be considered in a regular session shall be introduced; provided that such date shall precede the commencement of the mandatory recess of not less than five days under Section ."

The amendment to Section 13 requires that all decision-making meetings of a legislative committee shall be open to the public. While your Committee is informed that such is the current practice of both houses of the state legislature by their respective rules, it finds that the public's right to know what their legislators are deciding is deserving of constitutional protection. This amendment, however, is not intended to require that certain kinds of meetings, including organizational meetings, partisan caucuses and certain hearings involving the invasion of a person's right to privacy if made public, shall be open to the public.

The amendment to Section 13 also requires both houses of the legislature to establish by rules a cutoff date for introduction of bills, which shall precede the commencement of the mandatory recess by not less than 5 days. This is to allow the public the use of the mandatory 5-day recess to review every bill that will ever be introduced in that legislative session.

Section 16 of Article III relating to passage of bills has been amended in only one respect. The sentence containing the twenty-four hour rule has been amended to read:

"No bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least [twenty-four] forty-eight hours."

In view of the increasing numbers of bills being introduced in the legislature and the public concern expressed on the difficulty of following the many bills through the legislature in the closing days of the session, your Committee believes that the enlargement of time from 24 hours to 48 hours, during which a legislator or a constituent could review a bill before third or final reading, would help both legislator and constituent to avoid hasty decisions and surprises regarding the bill.

Because of the removal of Section 4 from Article III, the sections numbered 5 to 20, inclusive, of Article III are renumbered to read sections 4 to 19 inclusive, respectively.

As stated earlier, your Committee has removed Section 4 of Article III relating to

This is contrary to the opinion that a less costly, more efficient system of legislature is better. It must be reasonably argued that expediency and efficiency are not necessarily the measures of effectual and beneficial legislation. Any political system is a system of people. It must therefore be accepted that one's particular preference among systems may be only as worthy as those persons who participate within it.

Your Committee could not substantively accept the unicameral concept. Hawaii has experienced its share of legislative problems; however, such a drastic change appears unwarranted at this time in view of the relatively successful track record our present legislative system has attained.

Amendments to sections 2 and 3 of Article III relate to utilization of the reapportionment commission plan in determining state senatorial and representative districting. This amendment deletes the language referring to the Schedule found in Section 1 of Article XVI, which has been rendered obsolete since the reapportionment of 1973. Also relating to reapportionment, Section 4 has been placed within a new article. This action was necessitated by the provision empowering the reapportionment commission to redraw congressional districts as well as reapportioning the state legislative districts.

The committee chose to amend Section 10 of Article III by adding specific language dealing with the salary of legislators. The amendment provides for a salary plan by the legislative salary commission, to be submitted to both houses of the legislature and to the governor no later than the 40th day of the legislative session. The plan is to become effective unless disapproved by either the legislature or the governor. Any change in salary does not affect the legislature that reviews the plan.

It was felt by the committee that legislators should not be placed in the dilemma of having to vote on their own salary increase. Governor's disapproval authority was decided upon as a further scrutiny of the process. Furthermore, the salary review by the commission will take place every 8 years instead of the present 4-year interval. Your Committee wishes to express its expectation that the salary commission hold public hearings and consider other applicable legislative benefits in its deliberation.

The amendment to Section 11 of Article III calls for a mandatory recess in the legislative session of not less than five days, to fall anytime between the 20th and 40th days of the session. This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input.

Two substantial amendments have been offered to Section 13 of Article III. The first relates to a form of "sunshine" protection of the public's right to know what takes place at decision-making meetings of the legislature. It was felt that this right should be constitutionally protected rather than left to the discretion of the house or the senate.

The second amendment to Section 13 involves an attempt to control bill-introduction procedures through the device of a bill-introduction cutoff date, no sooner than the 20th day of the legislative session. This basically provides for a limitation, not necessarily in number but in time, of the bills to be introduced. In conjunction with the recess, this amendment should further aid the public in its attempts to actively follow and participate in the legislative process.

Section 16 of Article III adds a full day to the bill-review period prior to final reading. The increase is from 24 to 48 hours. It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills.

Section 2 of Article XVI has been amended to provide for the staggering of terms in the senate commencing with the coming election. Under the proposed system, senators would continue to serve a 4-year term, with half of the membership up for reelection every 2 years. In order to establish the cycle, initially 13 of the 25 senators would serve 2-year terms while the remaining 12 would serve full 4-year terms. The method of selection to determine which class a senator will hold, whether the 4- or 2-year term, will be based on the number of votes received in the district. Support of the staggered term concept is based upon having a more accountable and perhaps a more responsive senate.

Mr. Chairman, these are the major issues which have been raised before the Committee

on Legislature, and the results of your Committee's deliberations are reflected in Committee Proposal No. 8. I would like to thank the members of my committee for their hard work and earnest efforts in putting this proposal together. I'd like to conclude by recommending that standing Committee Proposal No. 8 be seriously considered and voted on favorably by this Committee of the Whole. Thank you.

CHAIRMAN: Thank you, Delegate Nishimoto. Now we have three minority reports, two offered by Delegate Cabral, and if the delegate would care to speak on either or both at this time--

DELEGATE CABRAL: Yes, thank you, Mr. Chairman. Minority Report No. 6 on Committee Proposal No. 8 and Minority Report No. 7, also on Committee Proposal No. 8, were submitted by a minority of the Committee on Legislature which does not concur with parts of Standing Committee Report No. 46 and Committee Proposal No. 8, which recommend retention of the bicameral system and rejection of the unicameral. In the committee report, the majority committee states that it was not convinced that a unicameral system would be more effective than the bicameral and that proponents of unicameralism failed in their burden of proof to present favorable arguments.

The minority committee also disagrees with the part of Standing Committee Report No. 46 which recommends certain changes in the setting of legislative salaries and retention of the annual legislative session. In this regard, the minority committee has submitted amendments to Committee Proposal No. 8 addressing these topics. I would at this time ask that these two minority reports be submitted to the chief clerk for inclusion in the journal. I will address in depth the arguments that will be submitted on the proposed amendments when I introduce the amendments. Thank you.

CHAIRMAN: Thank you, Delegate Cabral. Delegate Barr is the prime signer of Minority Report No. 8--so, Delegate Barr.

DELEGATE BARR: Mr. Chairman, your delegate from up-country Maui, who is grateful to God that he saw home and family yesterday, begs leave to discuss this minority report at the time the amendment comes up.

CHAIRMAN: Thank you, Delegate Barr.

DELEGATE SHON: Mr. Chairman.

CHAIRMAN: Delegate Shon.

DELEGATE SHON: Yes, just very briefly I would like to speak generally in favor of the committee's work. First of all I'd like to say that I was one of those who did express reservations about the effect of the resolution on future work of the committee and other committees. I'd like to say now that was unfounded.

Secondly, I'd like to say that I found that the chairman and the leadership were open, cooperative and willing to work with all members of the committee, and I think this was excellent decision-making. And third I think that there are several features of this which really go a long way in improving the legislative process and they have been outlined by the chairman. They include the 5-day recess, which I think is a big plus, not only for legislators but for the public to review the various bills that have been introduced; the open meeting provision, which I think reaffirms our commitment to open government; and the change in the 24-hour rule to 48 hours, which is a significant doubling of the time in which legislators and the public can review final drafts. This particularly addresses one of the problems dealing with the conference committee. Now there would be twice as much time to review what the conference committee comes out with, and this was really one of the key problems in the past--that there wasn't enough time.

So in summary, Mr. Chairman, I think that the work of the committee will make the legislature more deliberative, more cautious, more informed, and more accessible to the public.

CHAIRMAN: Thank you, Delegate Shon. I think that was--well, perhaps a slight bending of the rules, but I'm sure the committee chairman and all the members appreciate that very much.

Exhibit 34

Your Committee also notes the decision of the Hawaii State Supreme Court in State v. Lo, Sup. Ct. Haw. (No. 8741,1983) in addressing the area of consensual monitoring. The court stated that the language of section 803-42(b)(3) plainly outlaws the "bugging" of any private place unless the parties entitled to privacy therein have consented. This Committee affirms the court's statutory construction of the provision.

Your Committee has further amended the bill by deleting the sunset provision terminating the wiretap law in recognition of the indispensable and invaluable tool the law is for our State's law enforcement agencies.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 1980-84, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1980-84, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 417-84 Judiciary on H.B. No. 1947-84

The purpose of this bill is to bring before the electorate of this State a proposed amendment to Article III, Section 12, of the Constitution of the State of Hawaii to allow the Legislature to establish the deadline for introducing bills to be considered in the regular session prior to the twentieth day of the session.

Currently, Article III, Section 12, of the Constitution of the State of Hawaii provides that the deadline for introducing bills to be considered in the regular session shall be after the nineteenth day of the session and shall precede the commencement of the mandatory recess.

The amendment proposed by this bill, if ratified by the electorate, will allow the Legislature to provide for an earlier cut-off date for the introduction of bills and would be combined with a greater reliance on "prefiling" of bills, prior to the convening of the Legislature.

The combined effect of prefiling of bills and an earlier cut-off for bill introduction would be a substantial improvement in legislative operations. To illustrate some of the potential benefits of this approach, your Committee offers the following hypothetical scenario for the 1985 legislative session:

(1) Bill introduction begins on the first Wednesday in January, two weeks before the Legislature convenes.

(2) Bills are printed, numbered, and made available to the general public beginning on the second Wednesday in January, one week before the Legislature convenes. This allows the public to familiarize itself with legislation, prepare testimony, and consult with legislators, before the legislators' time is taken up by committee meetings. It allows the public more time to research the issues and prepare more detailed and thoughtful testimony. The Speaker will be able to review the bills before the Legislature convenes and decide on referrals.

(3) The Legislature convenes on the third Wednesday in January. Non-essential legislative business is deferred, according to custom and tradition, to allow for the opening day festivities.

(4) The first week of the session would see the Legislature in full-swing. Committee Chairmen would be holding hearings. This would be in contrast to the current "slow period" at the beginning of each session which results from the relative dearth of legislation.

(5) Bill introductions would be cut-off sometime after the first week, but before the end of the second week of session. The result of this approach is to spread the workload more evenly over the 60-day session. The principal benefits of this would be:

(a) More time would be available for hearings by the Committees. Thus, shorter agendas would be possible. Shorter agendas would result in more deliberative hearings, shorter waiting periods for persons wishing to testify, and

would allow Legislators to stay for the entire hearing without having to leave periodically to take care of other matters.

(b) Committee Chairmen could more easily group bills which deal with the same or related subject matters onto a single agenda. This would be a great convenience to people who wish to testify; including members of the public, lobbyists, and department personnel.

(c) There would be less pressure to hold hearings during the legislative recess or during late evening hours which are inconvenient to the general public.

(d) It would be possible to provide more timely notice of hearings to the general public.

(e) The second committee, when there is a double referral, would have more time in which to work on bills.

While there are many significant advantages to an earlier cut-off date for bill introductions, it will require adjustments that will increase the workload of legislators and their staff. A part of the printshop staff will need to begin working approximately two weeks earlier. The Speaker will need to begin working on bill referrals two weeks earlier. Members will need to begin working with their constituents and staffs somewhat earlier.

While this will require the staff and legislators to begin working earlier, it should not result in any significant cost increase in the operations of the Legislature. The Legislature will find that there are partially offsetting savings. The workload will be more evenly apportioned and the "peak load", to which staffing is geared, will have been reduced.

The consequences of the ratification of this proposed constitutional amendment will be to allow for a more deliberative, open, and rational legislative process. The result should be better legislation.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 1947-84 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 418-84 Judiciary on H.B. No. 1629-84

The purpose of this bill is to amend Part VII of Chapter 286, Hawaii Revised Statutes, by adding two new sections which authorize and set minimum standards for the establishment of intoxication control roadblock programs.

The bill provides that:

(1) Police departments of each county are authorized to establish intoxication control roadblock programs;

(2) Any county establishing an intoxication control roadblock program shall specify by rule procedures to be followed, subject to minimum standards set by statute;

(3) Either all motor vehicles approaching a roadblock shall be stopped, or vehicles shall be stopped in a specified random numerical sequence;

(4) Raodblocks shall be scheduled only between set hours when expected traffic is light;

(5) Roadblocks shall be located at fixed points, rather than be roving in nature;

(6) Minimum safety precautions shall be provided at every roadblock;

(7) The length of time of any delay shall be limited; and

(8) Speedy compliance with purpose of the roadblock and a minimum of inconvenience shall be assured.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC (Other Civil Action) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, R. Brian Black, certify that on January 11, 2019, I will serve a copy of the foregoing Plaintiffs' Response to Memorandum of the Hawai`i State Legislature as *Amicus Curiae*; Declaration of R. Brian Black; and Exhibits 29-34 on the following parties by U.S. mail, postage prepaid:

Robyn B. Chun
Department of the Attorney General
425 Queen Street
Honolulu, Hawai`i 96813
Attorneys for Defendant State of Hawai`i

Colleen Hanabusa
3660 Waokanaka Street
Honolulu, Hawai`i 96817
Attorney for Amicus Curiae
Hawai`i State Legislature

DATED: Honolulu, Hawai`i, January 11, 2019

ROBERT BRIAN BLACK
Attorney for League of Women Voters of Honolulu and Common Cause

PKN

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 HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAI`I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

REPLY MEMORANDUM OF BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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; DECLARATION OF COLLEEN HANABUSA; EXHIBIT "B" and "C"; CERTIFICATE OF SERVICE

HEARING:
Date: January 24, 2019
Time: 2:00 PM
Judge: The Honorable Gary W. B. Chang

Trial Date: None

REPLY MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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

Under the doctrine of the separation of powers, the enactments of the Legislature are presumed to be constitutional; and Plaintiffs have the heavy burden of showing unconstitutionality "beyond a reasonable doubt." ***Schwab v. Ariyoshi,*** 58 Hawai`i, 25, 31, 564 P.2d 135,139 (1977). "The infraction should be plain, clear, manifest and unmistakable.' ***UPW v. Yogi,*** 101 Hawai`i 46, 50, 62 P.3d 189, 193 (2002) (citing ***State v. Bates,*** 84 Hawai`i 211,220, 933 P.2d48, 57 (1997)). Moreover as a co-equal branches of government, the courts are "not to intrude into areas committed to the other branches of government." ***OHA v. Yamasaki,*** 69 Hawai`i 154, 168, 737 P.2d 446, 455 (1987). Areas committed to the legislative branch of government are "nonjusticiable" for the courts because they raise a political question. Thus, Plaintiffs have failed to meet their burden and show how their challenge is "justiciable."[1]

It is important to note that the ***Constitution of the State of Hawai`i*** ("***Constitution***") provides a period of sixty (60) days in which to conduct legislative business. To accomplish this task, the ***Constitution*** granted to each house of the Legislature, the right to determine its rules of proceedings, Section 12, article III. Article III of the ***Constitution*** is entitled, the Legislature. The reference therein to when the public must be permitted to attend is for decision making in committees, Section 12, article III.[2] In the 1968 ***Constitution***, the

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[1] It is also important to note that Plaintiffs claim that the Hawai`i State Legislature are repeating its arguments. Plaintiffs forget that this Court has made clear that it has not read prior to the hearing on the Motion for Leave, the proposed *Amicus* Brief. This Court informed the Hawai`i State Legislature that it could "tweek" its Memorandum. Ironically if the *Amicus* Brief could be additive to the proposed Exhibit "A," then the Hawai`i State Legislature would have been given forty (40) pages. As generous as that outcome would be, it was not the intent of the Court; and Plaintiffs should rethink their argument. The Hawai`i State Legislature is assuming that this Court is reading its *Amicus* Brief for the first time with its filing on December 27, 2018.

[2] Though the Hawai`i State Legislature may agree with Plaintiffs' statement that government should be "open, transparent, and allows for public input," that is not the issue before this Court.

provision in Section 16, article III which provided for a Bill in the form to be passed to lay for 24 hours was intended to provide the Legislators and the public with notice of what will be voted on at third or final reading.[3] The State of Hawai`i, like the United States of America is a democracy, in a **representative form** of government.

The following is the Hawai`i State Legislature's ("Legislature") reply to Plaintiffs' responses filed to their *Amicus* Brief.

I. THE ORGANIC ACT REPEALED ALL PRIOR CONSTITUTIONS.

Plaintiffs reference Constitutions of the Kingdom of Hawai`i and the Republic of Hawai`i in support of their arguments as to how this Court should interpret Section 14 and 15 of Article III. What Plaintiffs fail to acknowledge is that Hawai`i was annexed and established as the Territory of the United States of America, by way of the Organic Act, effective June 14, 1900.[4] Simply because a version similar to Section 14 is found does not mean that that those provisions stood for the proposition that it has "protected the people of Hawai`i continually since 1852." [5] Plaintiffs' Response at 3-4.

The Organic Act in Section 7 provides, "[t]hat the constitution of the Republic of Hawaii and of the laws of Hawaii, . . . are hereby repealed." Notwithstanding provisions similar

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The ***Constitution*** does not so state in Article III. This is therefore not the standard in assessing whether the Legislature complied with the ***Constitution.***

[3] It is the 1978 ***Constitution*** which amended the 24 hour laying of a bill to 48 hours.

[4] The actual transfer of the sovereignty of the Kingdom of Hawai`i took place on July 7, 1898 by way of the Joint Resolution of Annexation.

[5] For example the Constitution of 1894 is of the Republic of Hawai`i, clearly enacted after the illegal overthrow of the Queen and was objected to by many of her subjects. The Constitutions of the Kingdom of Hawai`i were enacted with the approval of the Kings and their inner cabinets. Constitutions were cancelled and then subsequently enacted without public input. To argue that these provisions protected the people is incorrect.

to Sections 14 and 15, article III are found in the Organic Act but are not interpreted as Plaintiffs contend, and are applied consistent with the Constitutional Convention Debates which are referenced in the *Amicus* Brief. It remains the Legislature's contention that decisions interpreting the constitution after Statehood is what is relevant; however the following is set forth in response to Plaintiffs continued reliance on the Organic Act.

Section 45 of the Organic Act provides, "[t]hat each law shall embrace but one subject, which shall be expressed in its title." Over the years, this provision has caused the Supreme Court to adopt a very liberal interpretation of the requirement and have consistently erred in favor of an Act (law) not being deemed void due to a violation of this provision. ***Schwab v. Ariyoshi,*** 58 Hawai`i 25, 34, 564 P.2d 135, 141 (1977); ***Gallas v. Sanchez,*** 48 Hawai`i 370, 376, 405 P.2d 772, 776 (1965). As stated in the *Amicus* Brief, this provision speaks to the law or Act. In other words compliance with this section is determined by what has become law and not what may be proposed as a bill. Plaintiffs fail to see this distinction.

> It is a basic tenant of statutory construction that:
>
> > [t]he fundamental principle in construing a constitutional provision is to give effect to the intention of the framers and the people adopting it, This intent is to be found in the instrument itself. When the text of a constitutional provision is not ambiguous, the court, in construing it, is not at liberty to search for its meaning beyond the instrument.

State v. Kahlbaun, 64 Hawai'i 197, 201, 638 P.2d 309, 314 (1982); ***Malahoff v. Saito,*** 111 Hawai`i 168, 181, 140 P.3d 401, 414 (2006). As such, the word **law** is unambiguous and its plain meaning is when a bill becomes "law." It does not mean when a bill is making its way through the legislative process.[6] What further supports this argument is that the Section begins with,

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[6] It should be noted that the cases challenging legislative acts under Section 45 of the Organic Act stood for proposition that subject matter and title requirements were to be liberally construed. The case of ***Jensen v. Turner,*** 40 Hawai`i 604, 614 (1954) is an example of the

"[n]o law shall be passed except by bill." Section 14, article III. Clearly if the Framers intended this section to apply to bills and not to the final law, it would have been amended Section 14 to read "[e]ach bill shall embrace but one subject . . ."

The Supreme Court interpreted the Section 45 and 46 of the Organic Act in the case of ***Smithies v. Conkling,*** 20 Hawai`i 600 (1911). In response to the challenge under Section 45, the court said:

> Unless the language of the statute is so positive and clear as not to permit of construction, it is our duty in order to save the act from invalidity, to resort to every reasonable view which may be taken on the language used and if it is capable of a restricted construction which would avoid conflict with the Organic Act that construction must be adopted. The presumption is that the legislature intended to do with it had a right do and that it did not intend to do which it could not legally do. . . .
>
> Construing the body of act as we hold it should be construed, there is no variance or inconsistency between body and title. The subject of the act is what the titled expresses.

Id., at 604-605.[7]

Section 46 of the Organic act provides, "[t]hat a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, . . ."

Plaintiffs chose to ignore the lengthy Constitutional Convention Debates of 1968 cited by the

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courts belief in legislative discretion and its inability to interfere. In ***Jensen***, the court did not void a law because it contained a subject which was not included in the title, the court simply voided that part of the law and held valid the remainder.

[7] It is also of interest that the court made note that:

> the title of a statue and its preamble are not, strictly speaking, parts of the statute, and though neither may be used to extend, restrain or control positive provisions in the body of the act, they may be resorted to where the language of the enactment is ambitious and the intent doubtful.

Id., at 604-605.

Legislature to explain how the Framers of the Constitution explained the requirement to conduct three readings of a bill and discussed at length how the legislative process operates. Plaintiffs refuse to recognize that the amendments to and substitutions of the contents of a bill do not give rise to the requirement to again comply with three readings. Instead, Plaintiffs argue that the Framers did not change the language of requiring three reading. There was no need to change the language because the Framers understood the process and what the practice was[8] During the time of the Organic Act, the Legislature also changed titles during the Session. The ***Smithies*** court said the following on three reading requirements.

> The next point urged is that act in question did not pass three readings in each branch of the legislature. This point is based on the contention that the original bill having passed the house of representatives, the title was amended in the senate without vote or action by the senate itself, and that after its amendment it was not read three times in house upon its return there. . . . After the amendment of the bill and its return to the house, the amendments have been concurred in, it was not necessary to read the bill as so amended three times.

Id., at 605-606. The position of the Supreme Court in 1911 is almost identical to the delegates of the 1968 Constitutional Convention. The case of ***In re Tom Pong,*** 17 Hawai`i 566 (1906) addressed the constitutionality of enacting "Revised Laws" by reference and not with its contents in the bill. The Supreme Court found that the Organic Act was complied with and stated:

> [o]ne attack made upon the adopting act is that it does not contain in its body any of the various provisions of the law which it seeks to declare of force, and that under the constitutional provision above cited it was necessary that these provisions should have been embodied in the act and should have been read three times before their passage. If this contention be correct, then a large body of our laws, many of which have been enforced for a century, are unconstitutional and void.

Id., at 572.

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[8] Plaintiffs did reference Delegate Kauhane's statements but he was clearly in the minority and out voted by his fellow delegates.

II. THE LEGISLATURE'S PROCEDURES KEEPS THE PUBLIC INFORMED.

The Legislature does not disagree with Plaintiffs' position that provisions were added to the ***Constitution*** to give the legislators and the public the opportunity to know what is being voted upon. The major amendments to Section 15, article III in 1968 and 1978 was to include the printing of the bill in the form to be passed and to lay it for 24 (then 48 in 1978) hours before the vote on third or final reading can take place. Notwithstanding the provision of the ***Constitution*** at issue here is Article III which is entitled the Legislature. This article does contain requirements as to public notification, however it is primarily focused on how the Legislature is to function, including the qualifications of its membership.

Plaintiffs have at various points in their arguments, diminished the significance of the role of technology and how it assists the public in its participation and in transparency in the process. Attached as Exhibit "B" is the December 7, 2007, Memo to Senators and staff on the Senate Paperless Initiative. Of relevance is the "Increased Public Access to the Legislative Process" found at 3-4 of Exhibit "B."[9] The Public is made aware of how to access documents and information on matters, including bills before the Legislature. See Declaration of Colleen Hanabusa. Plaintiffs' arguments as to the significance of the title in tracking a bill pales in comparison to the use of the website, registering for notification and the ability to do keyword searches. Note that Exhibit "C" and "D" to Defendant State of Hawai`i's Motion for Summary Judgment, contain descriptions of the Bill. It clearly states and informs the public that the bill

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[9] This Memo is available on the Legislature's Website, by clicking on to the Senate and the Archives at the bottom of the page. All steps of the initiative are accessible. The House of Representatives followed the Senate a few years later. The practice which the Senate established in 2007 is now common practice and most individuals who follow bills in the Legislature are able to receive notices of when the bills will be heard. The website is interactive and members of the public are able to do keyword searches, etc.

has been amended. With the electronic technology available, this information would be immediately known to those who are interested, especially if they have availed themselves of the Real Simple Syndication ("RSS") which is attached hereto as Exhibit "C."[10]

III. PLAINTIFFS' COMPLAINT RAISES A NONJUSTICIABLE ISSUE.

Plaintiffs in their 10th footnote at 19 of their Response references the case of ***Bevin v. Commonwealth ex rel. Beshear,*** ___ S.W.3d ____ (2018 WL 6575518) on justiciability. They represent ***Bevins*** as requiring that "every bill shall be read at length on three different days in each House," The facts of ***Bevins*** can be distinguished. The State of Kentucky was faced with the inadequate funding of the public employees' pension fund. To make the changes to the law, the Legislature took a bill entitled, "An ACT relating to the local provision of wastewater services." ***Id.*** at 13. The bill was read by title. The Kentucky Supreme Court found it did not comply with the Constitution because the title read was regarding wastewater services. The Kentucky Supreme Court also said:

> [w]e emphasize now that this opinion does not challenge the legislative process used here. We have no quarrel with the use of a committee substitute to change the language of the legislation as it navigates the legislative process. **The procedure itself is a matter beyond our sphere of authority.**

Id. at14. The Supreme Court of Kentucky relied then upon the debates of their Constitutional Convention as to the intent of their Section 46.[11] The prior case of ***Philpot v. Haviland,*** 880

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[10] The Legislature incorporates Delegate Miyake's statement found at 11 in their *Amicus* Brief. It is very clear that "modern technology" which included "photostating" of bills affected how the Framers looked to the requirements of the ***Constitution.*** This is why Article III leaves to the Legislature the establishment of its owns rules and procedures.

[11] The Legislature points to the fact that the Constitution Convention Debates of 1968 are most instructive as to the intent of the Framers as to the three reading of the bills and the requirement of the bill in the "form to be passed" and the laying over for 24 hours. The intent is to have the Legislators and the public be aware of what is being voted on in final/third reading.

S.W.2d 550 (Kentucky 1994) was faced with what is a "reasonable time" in order to recall a bill from a committee. The Kentucky Supreme Court said to define a reasonable time is for the legislature to determine and if the court intervened it would "result with judiciary usurping the power of the Senate." ***Id.*** at 553. Interestingly, in following the United States Supreme Court in ***Coleman v. Miller,*** 307 U.S. 433, 453-454, 59 S.Ct. 972, 982 (1939), the Kentucky court stated that the decision should be left to the Senate (as to what is reasonable time) because it has "full knowledge and appreciation ascribed to the . . . legislature of the political, social and economic conditions which have prevailed since the legislation was introduced."

The Legislature contends that Plaintiffs' Complaint challenges its process which the ***Constitution*** mandated to it. Clearly what is three readings is for the Legislature to determine. This Court cannot establish a criteria in light of the intent of the Framers. It therefore raises a political question and is non justiciable.

Finally, the discussion on what is a political question requires that the standard adopted by almost all courts in ***Baker v. Carr,*** 369 U.S. 186, 217, 82 S.Ct. 691, 710 (1962) be set forth:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; **or** a lack of judicially discoverable and manageable standards for resolving it**; or** the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; **or** the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; **or** an unusual need for unquestioning adherence to a political decision already made; **or** the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
>
> Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence.

(emphasis added). Any one of the six criteria listed above would require dismissal because the complaint is non-justiciable. It is the Legislature's contention that that its process is being challenged and that is clearly committed to it and the debates of the constitutional conventions have made clear requires an adherence to the political decisions made by the Framers and the voters. Though this Court has stated that it has only this case before it, the Legislature respectfully ask that this Court consider that a decision in favor of Plaintiffs' Complaint would impact other Acts of the 2018 Legislature which this Court is without discoverable or manageable standards for their resolution.

IV. CONCLUSION

For the foregoing reasons, the Hawai`i State Legislature respectfully request that this Court consider the arguments set forth in the *Amicus* Brief and Reply and 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, January 18, 2019

COLLEEN HANABUSA
Attorney for the HAWAI`I STATE LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC **DECLARATION OF COLLEEN HANABUSA** Judge: The Honorable Gary W. B. Chang Trial Date: None

DECLARATION OF COLLEEN HANABUSA

I, COLLEEN HANABUSA, hereby declare pursuant to Rule 7(g), Rules of the Circuit Court of the State of Hawai`i that:

1. I am an attorney duly licensed in the State of Hawai`i; and I am counsel for Movant, the Hawai`i State Legislature.

2. I make this declaration based on my personal knowledge and am competent to testify as to matters set forth herein.

3. Attached hereto as Exhibit "B" is a true and correct copy of a Memo sent to "All Senators and Staff," dated December 7, 2007, by then Senate President Colleen Hanabusa which set forth the Senate Paperless Initiative.

4. The purpose of this initiative was twofold: First to reduce waste and increase efficiency of the Senators and their Staff. Second to increase public access to the Legislative Process.

4. Attached hereto as Exhibit "C" is a true and correct copy of "Accessing Legislative Documents and Information from the Hawaii Legislature's Website." This assists the public in navigating through the Capitol and how to receive updates. The Really Simple Syndication ("RSS") is the easy and efficient way to receive updates and notification on bill status. Also it informs the public as to how to subscribe for email notification.

5. Both documents are available on the Hawai`i State Legislature website. Clink on to Senate and scroll down to Archives. Under 2009 there is the Paperless Initiative. These documents are located there.

6. To the best of my knowledge, the process mentioned in both documents remain available to and are utilized by the public.

I, COLLEEN HANBUSA, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai`i, January 18, 2019.

COLLEEN HANABUSA

The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

December 7, 2007

TO: All Senators and Staff

FROM: Senator Colleen Hanabusa
Senate President

Subject: Senate Paperless Initiative

As you may be aware, a staff working group was formed during the interim to discuss information technology issues to improve the efficiency of Senate operations. Under the leadership of Senator David Ige and after several months of meetings, one of the group's major recommendations is to take immediate steps to use technology tools to significantly reduce the volume of paper produced and consumed in the Senate and the community. The "Paperless Working Group" concluded that:

- Too much paper is used and wasted every year, especially during each legislative session. During the 2007 session, the Senate generated more than 4.375 million copies at a cost of about $31,000. Paper usage for office printers and copying of nonsession documents account for an additional 3 million+ copies.
- Technology is available to reduce the dependency on paper.
- The cost of paper has been increasing.
- Office storage space for documents is limited.
- We need to be more environmentally friendly.

Therefore, beginning with the upcoming 2008 session, the Senate will be implementing a paper reduction initiative to limit the use of paper, improve internal operations and efficiency, and increase public access to the legislative process. A copy of the press release announcing the initiative will be distributed to the media this morning and is attached for your information. Highlights of the effort are outlined below; detailed internal procedures are being finalized and will be distributed as soon as they become available.

Internal Distribution of Legislative and Administrative Documents.

- Hard copies of all Senate legislative documents (bills, resolutions, Governor's messages and other communications, committee reports, hearing notices, Orders of the Day, referral sheets, etc.) will no longer be distributed to Senate offices automatically. Electronic access to all of the documents are available on the Capitol website (www.capitol.hawaii.gov) and in the Legislature's internal information system, Eclipse.

Documents are posted electronically and available as soon as the Clerk's office processes them. The documents are available internally in HTML, pdf, and Word formats and are generally accessible before hard copies are printed.

If, after reviewing all of the available information on this initiative, you would like to receive a hard copy of legislative documents during the 2008 session, you may make a request by sending an email to sclerk and indicating which documents you would like to receive.

- Laptop computers will be issued to all Senators and a limited number of staff with access the internal legislative network (Eclipse and shared files) in all areas of the Capitol, including Senate offices, conference rooms, and the chamber, through a secured wireless network.

- Beginning January 2008, all Senate offices are encouraged to transmit internal correspondence by scanning, emailing, and filing documents electronically to reduce printing and distribution of hard copies. Improved scanning capability and centralized storage of electronic documents will be available shortly. Instructions to scan documents, create useful and standard naming conventions, and file these documents, as well as necessary training, will be available shortly.

Operational Improvements to Increase Efficiency and Reduce Waste.

- Committees will reduce the number of hearing folders produced and public testimony will be printed and collated at the Senate Print Shop. This initiative will significantly reduce both the amount of paper generated and committee staff time needed to manually collate testimony and make copies for members of the public. As we did during the Second Special Session this interim, committees will now only require one copy of testimony to be submitted by interested parties. Committee staff will organize and scan one master set of testimony and transmit it electronically to the Print Shop, where the appropriate number of copies will be printed. Scanned testimony will be available on the Capitol website at the start of the hearing; late testimony will be made available after the hearing. The number of folders will be reduced significantly since immediate access to the testimony will be available electronically.

- The chairs of the Senate committees on Ways and Means and Health have agreed to pilot "paperless hearings" during the upcoming session. All members and committee staff will use laptop computers to access the agenda, measures, committee reports, and testimony during the hearing. Mark-up software will be available on the laptops, enabling members to highlight and make handwritten notes directly on the electronic documents as if using a hard copy. Notes can be stored and retrieved electronically.

  Please note: Training on the laptops is tentatively planned for the week of December 17, pending delivery and set up of the computers. The staff working group is also planning a

mock hearing during the same week to demonstrate, gather input, and fine tune the entire committee hearing process, including creating the hearing notice, processing testimony, and conducting the hearing. More information will be available soon.

- Electrical power and data access is available at each desk in the Senate chamber. Members and staff will be able to access email, legislative documents, and the internal network during floor sessions. All information needed for floor votes will be available online, eliminating the need for Third Reading binders.

- All members of the Senate and staff are encouraged to recycle paper, cans, bottles, and other recyclable materials. Receptacles are located at the basement loading dock. Guidelines for collecting and handling recyclables will be issued shortly.

Increased Public Access to the Legislative Process.

- The Legislature recently expanded the wireless capability in the Capitol building to include all Senate and House offices, conference rooms, and chambers. Legislators, staff, and members of the public will be able to access the Internet in most locations throughout the building.

- Senate committee hearing notices and Orders of the Day will include links to the bills, resolutions, messages, committee reports, and testimony. Anyone attending a Senate committee hearing or floor session with a laptop computer will be able to access the agenda on the Internet and retrieve relevant documents with a click of the mouse.

- Public testimony submitted to Senate committees will be scanned and posted online. Senators, staff, and the public will be able to access committee testimony at the start of each hearing.

- Members of the public will be required to submit only one hard copy of testimony to the committees. Previously, individuals interested in testifying were required to submit from 15-45 copies of their testimony and committee staff members were required to collate all of the testimony for the committee folders. The Sergeant-at-Arms staff will continue to receive and deliver faxed testimony and the Public Access Room will process email testimony.

- The Senate will be eliminating the print shop subscriber boxes in the Print Shop, which allowed members of the public to receive a hard copy of every legislative document printed during the session. In lieu of hard copies, the Senate will provide CDs of all bills and resolutions introduced to print shop box subscribers and members of the public. We are working to provide the information in a text-searchable format and updated CDs will be available daily. Members of the public will be able to get a limited number of hard copies each day. A copy of the notice to be sent to print shop box subscribers is attached.

- A daily digest, in both hard copy and electronic formats, of all bills introduced will be available. The digest will include the bill number, title, description, and introducer(s) and will be available in hard copy at the Senate Print Shop and online at the Capitol website.

As you can imagine, an initiative of this magnitude and complexity will require cooperation from everyone and I ask for your support and patience during this transition. As mentioned earlier, detailed information and training will be provided as soon as possible so you can prepare appropriately.

If you have any questions, please contact Rod Tanonaka of my office or Carol Taniguchi of the Clerk's office. Thank you.

ACCESSING LEGISLATIVE DOCUMENTS AND INFORMATION
FROM THE HAWAI'I LEGISLATURE'S WEBSITE

www.capitol.hawaii.gov

Aloha! In conjunction with the Hawai'i State Senate's paperless process initiative, we are offering the following list of resources that you can consult on accessing legislative documents and information from the Hawai'i legislature's website.

If you are visiting the State Capitol, there are several places to go for assistance:

The **Public Access Room (PAR)** is located on the fourth floor at Room 401. The PAR staff are trained experts in assisting and educating the public about how to participate in the legislative process, both on-line and at the State Capitol. Contact them in January at 808-587-0478 to learn about their training sessions.

The **Legislative Reference Bureau Library (LRB)** located at Room 005 in the chamber level (basement) on the Senate side of the building. The LRB Library staff includes librarians and library techs who offer information assistance to both legislators, legislative staff, and the public.

Your **Senator's office** located on the 2nd floor of the state capitol or the **Senate Clerk's office** located at Room 010 in the chamber level (basement) on the Senate side of the building. If you are visiting your Senator and need information about a specific issue or measure, your Senator's staff or the Senate Clerk's office staff can provide this information. If you need more in-depth training to learn how to use the state legislature's website, the **PAR** and **LRB Library** have more readily available resources.

If you are already using our website, here's two ways to receive updates:

Subscribe to **Really Simple Syndication** (RSS). RSS feeds are an easy and efficient way to receive notification when new information is available in a specific area of interest. RSS feeds save time, allowing users to receive notification only when new content is available. Website visitors choose the information they wish to subscribe to and can unsubscribe from any feed at any point. The Hawai'i legislature currently provides RSS feeds for individual bill status. To view the feeds or learn how to subscribe, please visit:

http://www.capitol.hawaii.gov/site1/docs/rss_help.asp.

Subscribe to **E-mail Notification** to receive electronic notices when committees schedule public hearings on measures you are tracking. The Hawai'i legislature's website offers users the opportunity to select the committees from which you will receive electronic hearing notices. To subscribe, please visit:

http://www.capitol.hawaii.gov/site1/docs/hearing/email1.asp

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, vs. STATE OF HAWAI`I, 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

DATED: Honolulu, Hawai`i, January 18, 2019.

COLLEEN HANABUSA

Attorney for the HAWAI`I STATE LEGISLATURE

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 HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAI`I,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC

ORDER GRANTING MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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: December 19, 2018
Time: 3:00 PM
Judge: The Honorable Gary W. B. Chang

Trial Date: None

ORDER GRANTING MOTION FOR LEAVE TO FILE A MEMORANDUM ON BEHALF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STATE OF HAWAI`I'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

PLEASE NOTE CHANGES

FIRST JUDICIAL CIRCUIT
STATE OF HAWAII
14TH DIVISION

2019 ~~MAR 15~~ JAN 4 AM 11: ~~47~~ 11

The Hawai`i State Legislature's Motion for Leave to File a Memorandum on behalf of the Hawai`i State Legislature as *Amicus Curiae* in Support of Defendant State of Hawai`i'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 ("Motion for Leave"), came on for hearing before the Honorable Gary W. B. Chang on December 19, 2018 at 3:00 P.M. Robert Brian Black and Lisa Engebretsen appeared for Plaintiffs League of Women Voters of Honolulu and Common Cause; Robyn B. Chun appeared for Defendant State of Hawai`i; and Colleen Hanabusa appeared for Movant Hawai`i State Legislature.

The Court having reviewed the Motion for Leave, the memoranda filed in support and in opposition, the arguments of counsel and the records and files herein, and having considered the arguments of counsel, determined that the granting of the Motion for Leave to file *Amicus Curiae* would be helpful to the Court in that it will provide the Court with the experience of the Legislature, the actual end user of the Constitution. The Court noted that it has not served in the Legislature or worked therein and believes the information to be provided may be beneficial. The Court also emphasized that it will be focused on Act 84 in his decision, assuming the Complaint is appropriately crafted.

The Court instructs the *Amicus Curiae* and the Defendant State of Hawai`i that it will not entertain duplicative information or argument, and warns that the Court may not consider any duplicative information or argument submitted.

IT IS HEREBY ORDERED that the Motion for Leave is granted with the following briefing schedule and instructions. The Hawai`i State Legislature may file its Memorandum as *Amicus Curiae* in Support of Defendant State of Hawai`i's Motion for Summary Judgment filed on October 9, 2018 and in Opposition to Plaintiffs' Cross-Motion for

Summary Judgment file on October 25, 2018, by December 27, 2018 with a 20 page limit. The Plaintiffs League of Women Voters of Honolulu and Common Cause may file their Response to *Amicus Curiae's* Memorandum by January 11, 2019 with a 20 page limit. The Defendant State of Hawai`i is not permitted to file a Response. The Hawai`i State Legislature may file a Reply Brief to Plaintiffs' Response by January 18, 2019 with a 10 page limit.

The Hearing on the Defendant State of Hawai`i's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment is set for January 24, 2019 at ~~10 A.M.~~ 2:00 p.m. before the Honorable Gary W. B. Chang. The Court does not impose time limits on arguments; however, if the Defendant State of Hawai`i agrees to share its time with *Amicus Curiae* Hawai`i State Legislature, their time in total will not exceed that which Plaintiffs consumed in their argument.

DATED: Honolulu, Hawai`i, MAR 14 2019.

Gary WB Chang
THE HONORABLE GARY W. B. CHANG

APPROVED AS TO FORM:

ROBERT BRIAN BLACK
LISA ENGEBRETSEN

Attorneys for Plaintiffs

ROBYN B. CHUN

Attorney for Defendant

PLEASE NOTE CHANGES

PKN

No. CAAP-19-_____

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs-Appellants, vs. STATE OF HAWAI`I, Defendant-Appellee.	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

NOTICE OF APPEAL

EXHIBIT 1

CERTIFICATE OF SERVICE

Robert Brian Black 7659
Lisa Emily Engebretsen 10952
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
(808) 531-4000
brian@civilbeatlawcenter.org
Attorneys for Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause

No. CAAP-19-_____

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs-Appellants, vs. STATE OF HAWAI`I, Defendant-Appellee.	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

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause, by and through their attorney, R. Brian Black, pursuant to sections 641-1, Hawai`i Revised Statutes, and Rules 3 and 4 of the Hawai`i Rules of Appellate Procedure, appeal to the Intermediate Court of Appeals of the State of Hawai`i from the final judgment, filed herein on April 3, 2019, and attached hereto as Exhibit 1.

Dated: Honolulu, Hawai`i, May 2, 2019

Respectfully submitted,

/s/ Robert Brian Black

ROBERT BRIAN BLACK
Attorney for Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause

PKN

EXHIBIT 1

FINAL JUDGMENT, FILED APRIL 3, 2019

ORDER GRANTING DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 9, 2018, FILED APRIL 3, 2019

ORDER DENYING PLAINTIFFS LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE'S CROSS-MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018, FILED APRIL 3, 2019

CLARE E. CONNORS 7936
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, v. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC FINAL JUDGMENT

FINAL JUDGMENT

In accordance with Rule 58, Hawaii Rules of Civil Procedure and pursuant to: (1) the Order Granting Defendant State of Hawaii's Motion for Summary Judgment; and (2) Order Denying Plaintiffs League of Women Voters of Honolulu and Common Cause's Cross-Motion for Summary Judgment both of which were filed herein on ~~February~~ APR - 3, 2019;

PLEASE NOTE CHANGES

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Final Judgment is entered in favor of Defendant State of Hawai'i and against Plaintiffs League of Women Voters of Honolulu and Common Cause.

Each party shall be responsible for its/their own attorneys' fees and costs. There are no remaining claims, parties or issues in this action.

DATED: Honolulu, Hawai'i, APR - 3 2019.

Any and all remaining claims, if any, are dismissed with prejudice.

Gary Won Bae Chang

The Honorable Gary W. B. Chang

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

Approved as to form:

R. Brian Black, Esq.
Attorney for Plaintiffs
League of Women Voters of
Honolulu and Common Cause

Colleen Hanabusa, Esq.
Attorney for Amicus Curiae
Hawai'i State Legislature

CLARE E. CONNORS 7936
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General,
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, v. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC ORDER GRANTING DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 9, 2018 Date: January 24, 2019 Time: 2:00 p.m. Judge: Honorable Gary W.B. Chang

ORDER GRANTING DEFENDANT STATE OF HAWAII'S
MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 9, 2018

Defendant State of Hawaii's Motion for Summary Judgment filed herein on October 9, 2018 came on for hearing on January 24, 2019 at 2:00 p.m. before the Honorable Gary W.B. Chang. R. Brian Black, Esq. and Lisa Family Engebretsen, Esq. appeared on behalf of Plaintiffs League of Women Voters of Honolulu and Common Cause; Robyn B. Chun, Deputy Attorney General, appeared on behalf of Defendant

avb 4/15

PLEASE NOTE CHANGES

State of Hawai'i; and Colleen Hanabusa, Esq. appeared on behalf of amicus curiae Hawai'i State Legislature.

The Court, having reviewed the motion, memoranda, including the memoranda filed by amicus curiae Hawai'i State Legislature, declarations and exhibits, having heard the argument of counsel and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there are no genuine issues of material fact and this case is ripe for decision by summary judgment as there are only questions of law remaining:

1. There was no violation of the Hawai'i Constitution with respect to the three readings. Based on sections 617 and 722 of *Mason's Manual of Legislative Procedure* (2010 rev. ed.), the procedure of the legislature is such that if a replaced and substituted bill is adopted, then the legislature is not required to conduct three more readings because they have already had the three readings in each House and that suffices to meet the requirements of the constitutional mandate.

2. On the question of the title of the bill, the change from recidivism to hurricane preparedness was germane to the title and the subject of the original Senate Bill No. 2858. There was no constitutional violation based on the title. When the legislature in the case at bar changed the topic of the bill or the language of the bill from recidivism to hurricane readiness, that was still within the ambit of public safety. The court found no legal authority to overrule that process and conclude that that was an unconstitutional change.

3. The court has no issue regarding Plaintiffs' standing. They are organizations that are dedicated to ensure integrity in the legislative process, and that is what this case is about.

4. Defendant State of Hawaii's separation of powers argument is rejected. The court has the power to adjudicate the constitutional validity of statutory enactments.

Defendant State of Hawai'i met its burden to show that: (a) there is no genuine issue of material fact; and (b) it is entitled to judgment as a matter of law as to all claims asserted in the Complaint filed herein on September 5, 2018 by Plaintiffs League of Women Voters of Honolulu and Common Cause. Defendant's Motion for Summary Judgment is therefore granted.

DATED: Honolulu, Hawai'i, APR - 3 2019

Gary Won Bae Chang

The Honorable Gary W. B. Chang

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

Approved as to Form:

R. Brian Black, Esq.
Attorney for Plaintiffs
League of Women Voters of Honolulu
and Common Cause

Colleen Hanabusa, Esq.
Attorney for Amicus Curiae
Hawai'i State Legislature

CLARE E. CONNORS 7936
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, v. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC ORDER DENYING PLAINTIFFS LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE'S CROSS- MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018 Date: January 24, 2019 Time: 2:00 p.m. Judge: Honorable Gary W.B. Chang

ORDER DENYING PLAINTIFFS LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE'S CROSS-MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 25, 2018

Plaintiffs League of Women Voters of Honolulu and Common Cause's Cross-Motion for Summary Judgment filed herein on October 25, 2018 came on for hearing on January 24, 2019 at 2:00 p.m. before the Honorable Gary W.B. Chang. R. Brian Black, Esq. and Lisa Emily Engebretsen, Esq. appeared on behalf of Plaintiffs League of Women Voters of Honolulu and Common Cause, Robyn B. Chun, Deputy

PLEASE NOTE CHANGES

Attorney General, appeared on behalf of Defendant State of Hawai'i and Colleen Hanabusa, Esq. appeared on behalf of amicus curiae the Hawai'i State Legislature.

The Court, having reviewed the cross-motion, memoranda, including the memoranda filed by amicus curiae, Hawai'i State Legislature, declarations and exhibits and having heard the argument of counsel and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that it was Plaintiffs League of Women Voters of Honolulu and Common Cause's burden to show that either there are genuine issues of material fact or that they are entitled to judgment as a matter of law. Plaintiffs failed to meet their burden; their Cross-Motion for Summary Judgment is therefore denied.

DATED: Honolulu, Hawai'i, APR - 3 2019

Gary Won Bae Chang

The Honorable Gary W. B. Chang

Approved as to Form:

R. Brian Black, Esq.
Attorney for Plaintiffs
League of Women Voters of Honolulu
and Common Cause

Colleen Hanabusa, Esq.
Attorney for Amicus Curiae
Hawaii State Legislature

PKA

No. CAAP-19-0000372

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs-Appellants, vs. STATE OF HAWAI`I, Defendant-Appellee.	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

I, Robert Brian Black, certify that on May 2, 2019, I served the foregoing Civil Appeal Docketing Statement and Exhibit 1 on the following parties through JEFS:

Robyn Chun
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
Attorneys for Defendant-Appellee

Dated: Honolulu, Hawai`i, May 2, 2019

Respectfully submitted,

/s/ Robert Brian Black
ROBERT BRIAN BLACK
Attorney for Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause

PKN

IN THE
Circuit Court of the First Circuit
(Court or Agency From Which Appeal is Taken)

CIVIL APPEAL DOCKETING STATEMENT
(For Use By The Appellate Mediation Program)

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

THIS SPACE FOR OFFICE USE ONLY
Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000372
02-MAY-2019
06:16 PM

TITLE	Trial Court/Agency Docket Number: **Civil No. 18-1-1376-09 GWBC**
League of Women Voters of Honolulu and Common Cause, Plaintiffs-Appellants, v. State of Hawai`i, Defendant-Appellee.	Is this a Cross-Appeal? ☐ Yes ☑ No Has this matter previously been before the Hawai`i Appellate Courts? ☐ Yes ☑ No If yes, state when: Case Name: Docket Number:

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED
2019 MAY -3 AM 6:35
A. HAYASHIDO
CLERK

CHECK AS MANY AS APPLICABLE

TRIAL COURT/AGENCY DISPOSITION

1. STAGE OF PROCEEDINGS	2. RELIEF
☑ Pre-Trial	☐ Damages: Amount Sought: $_____ Amount Granted: $_____
☐ During Trial	
☐ After Trial	☑ Other (Specify)

DESCRIPTION OF NATURE OF ACTION AND RESULT IN THE TRIAL COURT OR AGENCY:
Plaintiffs filed this action to declare the legislative process for enacting Act 84 (2018) unconstitutional and the resulting act void. Plaintiffs alleged that Act 84's title "Relating to Public Safety" failed to comply with article III, section 14 of the Hawai`i Constitution and that the bill did not pass three readings in the Senate after non-germane amendments in violation of article III, section 15 of the Hawai`i Constitution. Defendant State of Hawai`i and amicus curiae Hawai`i State Legislature argued that the circuit court lacked jurisdiction, that Plaintiffs lacked standing, and that Act 84 met the constitutional requirements.

On cross-motions for summary judgment, the circuit court held that the court had jurisdiction and Plaintiffs had standing. But the court granted the State's motion for summary judgment after concluding that Act 84 was constitutional.

ANTICIPATED ISSUES PROPOSED TO BE RAISED ON APPEAL:

Whether the title "Relating to Public Safety" for Act 84 (2018) complied with the requirement that the subject of a law "be expressed in its title" under article III, section 14 of the Hawai`i Constitution.

Whether Act 84 (2018) complied with the requirement that "No bill shall become law unless it shall pass three readings in each house on separate days" under article III, section 15 of the Hawai`i Constitution when the bill had only one reading in the Senate after non-germane amendments by the House.

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

- ☐ Likelihood of a motion to expedite the appeal.
- ☐ Likelihood of motions to stay appeal pending resolution of a related case. Identify case name, docket number, and court or agency:
- ☐ Other procedural complexities. If so, please identify them:

Appellants' Names: League of Women Voters of Honolulu; Common Cause

COUNSEL FOR APPELLANTS:	TRIAL COUNSEL FOR APPELLANT(S) (If different from appeal counsel)
NAME: Robert Brian Black ADDRESS: 700 Bishop Street, Suite 1701 Honolulu, HI 96813	NAME: ADDRESS:
TELEPHONE (80) 531-4000 EMAIL: brian@civilbeatlawcenter.org	TELEPHONE ( ) EMAIL:

I CERTIFY THAT A COPY OF THIS CIVIL APPEAL DOCKETING STATEMENT WAS SERVED ON EACH PARTY/COUNSEL SHOWN ON THE ATTACHED SERVICE LIST.

/s/ Robert Brian Black — Signature

May 2, 2019 — Date

REMEMBER TO ATTACH COPIES OF:

(1) THE ORDER/JUDGMENT APPEALED FROM;

(2) ANY WRITTEN OPINION OR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE ORDER/JUDGMENT; AND

(3) PROOF OF SERVICE ON ALL OTHER PARTIES TO THE TRIAL COURT OR AGENCY PROCEEDINGS (WITH TELEPHONE NUMBERS AND EMAIL ADDRESSES)

PKN

EXHIBIT 1

FINAL JUDGMENT, FILED APRIL 3, 2019

CLARE E. CONNORS 7936
Attorney General

PATRICIA OHARA 3124
ROBYN B. CHUN 3661
Deputy Attorneys General
Department of the Attorney General
State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618
Facsimile: (808) 586-1372
Email: robyn.b.chun@hawaii.gov

Attorneys for Defendant
STATE OF HAWAI'I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs, v. STATE OF HAWAI'I, Defendant.	CIVIL NO. 18-1-1376-09 GWBC FINAL JUDGMENT

FINAL JUDGMENT

In accordance with Rule 58, Hawaii Rules of Civil Procedure and pursuant to: (1) the Order Granting Defendant State of Hawaii's Motion for Summary Judgment; and (2) Order Denying Plaintiffs League of Women Voters of Honolulu and Common Cause's Cross-Motion for Summary Judgment both of which were filed herein on ~~February~~ APR - 3, 2019;

PLEASE NOTE CHANGES

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Final Judgment is entered in favor of Defendant State of Hawai'i and against Plaintiffs League of Women Voters of Honolulu and Common Cause.

Each party shall be responsible for its/their own attorneys' fees and costs. There are no remaining claims, parties or issues in this action.

DATED: Honolulu, Hawai'i, APR - 3 2019.

Any and all remaining claims, if any, are dismissed with prejudice.

Gary Won Bae Chang
The Honorable Gary W. B. Chang

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

Approved as to form:

R. Brian Black, Esq.
Attorney for Plaintiffs
League of Women Voters of
Honolulu and Common Cause

Colleen Hanabusa, Esq.
Attorney for Amicus Curiae
Hawai'i State Legislature

PLEASE NOTE CHANGES

PKN

No. CAAP-19-_____

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs-Appellants, vs. STATE OF HAWAI`I, Defendant-Appellee.	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

I, Robert Brian Black, certify that on May 2, 2019, I served the foregoing Notice of Appeal and Exhibit 1 on the following parties through JEFS:

Robyn Chun
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
Attorneys for Defendant-Appellee

Dated: Honolulu, Hawai`i, May 2, 2019

Respectfully submitted,

/s/ Robert Brian Black
ROBERT BRIAN BLACK
Attorney for Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause

DAVID Y. IGE
GOVERNOR

CLARE E. CONNORS
ATTORNEY GENERAL

DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

May 13, 2019

Office of the Clerk
Supreme Court of Hawai'i
417 S. King Street
Honolulu, Hawai'i 96813

Colleen Hanabusa, Esq.
3660 Waokanaka Street
Honolulu, Hawai'i 96817

Attorney for Amicus Curiae Hawai'i State Legislature

Robert Brian Black. Esq.
Civil Beat Law Center for Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'I 96813

Counsel for Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause

Re: League of Women Voters of Honolulu and Common Cause v. State of Hawai'i
CAAP-19-0000372
Appearance of Counsel

Dear Clerk of the Court and Counsel:

Solicitor General Clyde J. Wadsworth and First Deputy Solicitor General Kimberly Tsumoto Guidry notice their appearance, through this letter, as counsel for Defendant-Appellee State of Hawai'i in *League of Women Voters of Honolulu and Common Cause v. State of Hawai'i*, CAAP-19-0000372.

Thank you for your attention to this matter.

Sincerely,

/s/ Clyde J. Wadsworth
CLYDE J. WADSWORTH
Solicitor General

/s/ Kimberly Tsumoto Guidry
KIMBERLY TSUMOTO GUIDRY
First Deputy Solicitor General

Counsel for Defendant-Appellee
State of Hawai'i

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF HONOLULU AND COMMON CAUSE, Plaintiffs-Appellants, vs STATE OF HAWAII, Defendant-Appellee.	)	CIVIL NO. 18-1-1376

CIRCUIT COURT CLERK'S CERTIFICATE

I, K. Uemura, Clerk of the Circuit Court of the First Circuit, State of Hawaii, do hereby certify that all images in this Record On Appeal are of originals thereof as listed and entered of record (except where noted) in Civil No. 18-1-1376, First Circuit Court, and that they are attached hereto and made a part hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Court, this 24th day of June, 2019.

BY /s/ K. UEMURA
Clerk of the Court
Circuit Court, First Circuit
State of Hawaii