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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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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:

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