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FIRST CIRCUIT COURT
STATE OF HAWAII
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and Common Cause*

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

LEAGUE OF WOMEN VOTERS
OF HONOLULU and COMMON
CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant,

CIVIL NO. 18-1-1376-09 GWBC
(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

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

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

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

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



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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 HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE

Plaintiffs,

vs.

STATE OF HAWAII,

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

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**

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 *Carmille*
3. League of Women Voters of Hawaii; Beppie Shapiro, President
4. Citizen Voice
5. Choon James, Country Talk Story *Choon James*
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

<u>Name</u>	<u>City</u>
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

<u>Name</u>	<u>City</u>
10. Carlton York	Weaverville, NC
<i>please stop the pldc in all its many permutations, allow public land to remain truly public!</i>	
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
<i>If the bills can't pass muster on their own w/o 'tactics' maybe they shouldn't be considered. Make sense?</i>	
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
<i>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.</i>	
39. Kerri Marks	Hilo, HI

<u>Name</u>	<u>City</u>
40. Kerry Hubbell	Pahoa, HI
41. Larry Geller	Honolulu, HI
<i>I ask the Legislature to act democratically and to abandon practices which mislead the public</i>	
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
<i>Make government more transparent and accountable to the people.</i>	
47. Mary Kohman	Ninole, HI
48. Mary Lacques	Haleiwa, HI
<i>Transparency, accountability and honorable practices are what we elected you to uphold. Ban these disingenuous practices.</i>	
49. Mary Oyama	Ewa Beach, HI
50. Melanie Pendleton	Honolulu, HI
<i>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.</i>	
51. Michael Daly	Honolulu, HI
<i>Gun regulations save innocent lives.</i>	
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>I support this!!!</i>	
61. Robert McCoy	Hilo, HI
<i>I am a Hawaii Resident, and I agree with this petition.</i>	
62. Scott Foster	Honolulu, HI
<i>I too am a Hawaii Resident and voter and I agree with this petition.</i>	

<u>Name</u>	<u>City</u>
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*

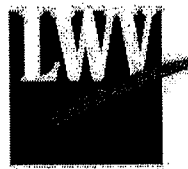
and Common Cause Hawaii and has testified at the state Legislature on good government and other issues on behalf of these organizations for the past several years.

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.

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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

When we mobilize,
We the People have
an enormous amount
of power.

We are gearing up to continue our
work towards an open, honest, and
accountable government in 2019.

Democracy starts with each of us --
and the biggest impact you can

\$50	\$100
\$150	\$250
\$500	...or chip in another amount

**If you've saved your
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Hawaii

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 do nothing. Maybe a Constitutional 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/

The 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 <http://www.lwv-hawaii.com/index.htm>

Our Work

Create Ethical & Open Government
Reduce Money's Influence
Expand Voting Rights & Election
Integrity

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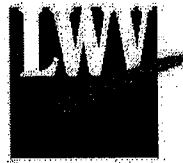


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GOOD GOVERNMENT GROUPS ANNOUNCE 2015 "RUSTY SCAPEL" WINNER

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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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.

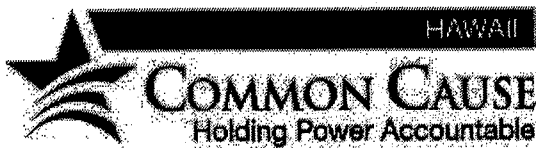
The Hawaii Constitution sets procedures for enactment of new laws. The purpose of these procedures is to facilitate public participation and to discourage "fraud" and "logrolling". Article III, Section 14 provides "Each law shall embrace but one subject which shall be expressed in its title." In plain 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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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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Hawaii

DISCLOSURE & TRANSPARENCY ABUSE OF POWER

SB2858 Fails to Meet Constitutional Requirement

05.22.2018 / 7:32 PM

Media Contact

For Immediate Release

May 22, 2018

Contact: Corie Tanida

808.275.6275

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.

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, please visit hi.commoncause.org.

The 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-hawaii.com.

###

Our Work

Create Ethical & Open Government
Reduce Money's Influence
Expand Voting Rights & Election Integrity

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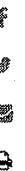
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Common Cause Hawaii
307A Kamanī St.
Honolulu, HI 96813
808.275.6275



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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.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC
(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 grassroots 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

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LEAGUE OF WOMEN VOTERS OF
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Plaintiffs,

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STATE OF HAWAII,

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:

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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*