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1ST CIRCUIT COURT
STATE OF HAWAII
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A. DANBARA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

v.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09 GWBC
DEFENDANT STATE OF HAWAII'S
REPLY TO PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO
DEFENDANT STATE OF HAWAII'S
MOTION FOR SUMMARY
JUDGMENT; CERTIFICATE OF
SERVICE

Date: November 13, 2018

Time: 3:00 p.m.

Judge: Honorable Gary W.B. Chang

DEFENDANT STATE OF HAWAII'S **REPLY**
TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANT STATE OF HAWAII'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs' Memorandum in Opposition notwithstanding, Defendant

State of Hawai'i (the "State") is entitled to summary judgment because:

- A. Senate Bill (“S.B.”) No. 2858 did not require three readings in the Senate after the Conference Committee inserted the hurricane-related provision;
 - B. The title, “A Bill for an Act Relating to Public Safety” is not unconstitutionally overbroad;
 - C. The separation of powers doctrine does preclude this court from deciding whether S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, met the three readings requirement of Article III, Section 15 of the Hawai‘i Constitution; and
 - D. Plaintiffs misconstrue the State’s need for legislative flexibility to address unanticipated events and needs without having to call a special session or extend a session.
- I. S.B. No. 2858 Did Not Require Three Readings in the Senate after the Conference Committee Inserted the Hurricane-related Provisions

Plaintiffs contend that S.B. No. 2858 did not pass three readings in the Senate as required by Article III, section 15 of the Hawai‘i Constitution.¹

See Memo. Opp. at 4, 6, 8. Plaintiffs’ contention is without merit.

S.B. No. 2858, as it was originally introduced in the Senate (requiring annual reports on released prisoners), passed three readings² in the

¹ Plaintiffs mistakenly refer to “Act 84” as not having passed three readings. See, e.g., Memo. Opp. at 4, 8. Article III, Section 15 of the Hawai‘i Constitution provides that “[n]o **bill** shall become law until it shall pass three readings in each house on separate days.” (Emphasis added). Accordingly, S.B. No. 2858 required three readings; Act 84 did not.

² “A reading of a bill by title is considered a reading of the bill unless it is specifically required by the constitution that a bill be read at length or in full.” *Mason’s Manual of Legislative Procedure* (“*Mason’s Manual*”), Sec. 720., ¶ 4. at 493 (2010 ed.). The Hawai‘i Constitution does not include such a requirement and the Senate and House Rules provide for a reading by title only. See Rules 49 and 50, Rules of the Senate 2017-2018 at 22, Rules 34, 36.1, 36.2, Rules of the House of Representatives 2017-2018 at 33-34.

Unlike the treatises on which Plaintiffs rely, both the Senate and the House have adopted *Mason’s Manual of Legislative Procedure* (2010 ed.) as their

Senate before it was transmitted to the House. See Measure Status for S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, Ex. "E" to the Chun Dec. attached to the Memo. Supp. After S.B. No. 2858, S.D. 2, was transmitted to the House and passed first reading, the House Committee on Public Safety amended the bill by deleting its contents and inserting a hurricane-related provision. See Measure Status for S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, Ex. "E" to the Chun Dec. attached to the Memo. Supp. S.B. No. 2858 S.D. 2, H.D. 1, was referred to conference committee where it was amended (S.B. No. 2858 S.D. 2, H.D. 1, C.D. 1). S.B. No. 2858 S.D. 2, H.D. 1, C.D. 1 passed final reading in both houses on May 1, 2018. *Id.*

That S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, with the language that the Conference Committee substituted in the bill (requiring that hurricane safety criteria be considered in the design and construction of new public schools), passed only a final reading in the Senate does not violate the three readings requirement in Article III, Section 15. See *Mason's Manual*, Sec. 722., ¶ 3 (2010 ed.) ("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"). The bill, S.B. No. 2858, passed three readings in the Senate before it was transmitted to the House and it passed a final reading in the Senate after it was amended in Conference Committee. Additional readings in the Senate were not required. *Id.*

governing authority. See Rule 88, 2017-2018 Rules of the Senate, Rule 59, 2017-2018 Rules of the House of Representatives.

Plaintiffs rely on *Taomae v. Lingle*, 108 Hawai'i 245, 118 P.3d 1188 (2005) as support for their claim that S.B. No. 2858 failed to satisfy the three readings requirement. See Memo. Opp. at 6. Plaintiffs' reliance on *Taomae* is misplaced.

In *Taomae*, the court held that a bill proposing a constitutional amendment was not constitutionally adopted in part because it did not pass the three readings requirement in both houses. However, throughout the decision, the Hawai'i Supreme Court distinguishes legislation proposing a constitutional amendment from "ordinary" legislation like S.B. No. 2858. See *Taomae* at 255, 118 P.3d at 1197 ("critical distinctions between 'enacting' ordinary legislation pursuant to article III, section 14 and 'proposing' a constitution amendment under article XVII are exemplified by the fact that constitutional amendments are governed by a separate article"). According to the court,

Schwab is distinguishable from the case at bar. In *Schwab*, this court considered the requirements embodied in article III alone, *id.* at 30-39, 564 P.2d at 139-44; in this case, we construe the requirements of article III as incorporated in the specific and separate provisions of article XVII. There was no constitutional amendment at issue in *Schwab*; therefore, it is not dispositive in the case at bar.

Id. at 254, 118 P.3d at 1197. In this case, like *Schwab*, the requirements of Article III are at issue, not the provisions of Article XVII as in *Taomae*.

Plaintiffs acknowledge that *Taomae* "concerned a proposed constitutional amendment" but attempt to dismiss that distinction because the

court “construed the three readings requirement in article III, section 15 because the same standards apply.” See Memo. Opp. n. 2 at 6. Given the distinctions the court makes, Plaintiffs’ effort to dismiss those critical differences fails. There is no constitutional amendment at issue here and *Taomae* does not apply.

II. The Title “A Bill for an Act Relating to Public Safety” is not
Unconstitutionally Overbroad

Plaintiffs argue at length that the title, “A Bill for an Act Relating to Public Safety” is unconstitutionally overbroad. See Memo. Opp. at 8-11. Plaintiffs reach this conclusion even though the Hawai‘i Constitution does not specify the detail required for a title or define what is overbroad and they ignore the supreme court’s instruction to apply a liberal construction to the Article III, Section 14 requirement (see *Schwab*, 58 Haw. at 35, 564 P.2d at 141).

The Hawai‘i Supreme Court has made clear that it is not necessary that the title inform the reader of the specific contents of the bill. *Id.* Further, “[i]f no portion of the bill is foreign to the subject of the legislation as indicated by the title, however general the latter may be, it is in harmony with the constitutional mandate.” *Id.*

The title “Relating to Public Safety” is not unconstitutionally overbroad for legislation. S.B. No. 2858, as passed and enacted as Act 84, Session Laws of Hawaii 2018, amended section 107-27, Hawaii Revised Statutes, which sets out the requirements for the design of state buildings to include a new subsection (c). Subsection (c) provides that “The State shall

consider hurricane resistant criteria when designing and constructing new public schools for the capability of providing shelter refuge.” This statutory subsection plainly falls within the general subject of “public safety”.

III. The Separation of Powers Doctrine Does Preclude this Court from Deciding Whether S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, Met the Three Readings Requirement of Article III, Section 15 of the Hawai‘i Constitution

Claiming the State has misread *Schwab*, Plaintiffs contend that “[n]o Hawai‘i case has ever held that a challenge to legislation based on the three readings or title requirements of the Hawai‘i Constitution was nonjusticiable.” See Memo. Opp. at 12. Plaintiffs’ argument is without merit; *Schwab* holds that a challenge to the three readings requirement in Article III, Section 15 is nonjusticiable.

Plaintiffs argue that “[t]his case only concerns the constitutional requirements of article III, sections 14 and 15” and unlike the plaintiffs in *Schwab*, they do not allege that the legislature failed to comply with its own rules. See Memo. Opp. at 13. That distinction fails to make a difference.

Plaintiffs’ claim that S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, failed to pass three readings as required by Article III, Section 15 necessarily implicates the legislature’s rules. Article III, Section 15 provides that “No bill shall become law unless it shall pass three readings in each house on separate days” but the Hawai‘i Constitution does not define or explain the term “reading”. It is therefore necessary to refer to the Legislative Glossary and the rules for both houses to determine whether the Article III, Section 15 requirement was met.

As defined, a reading is a “vote by the entire House or Senate on a bill or resolution.” See Legislative Glossary, Ex. “K” to the Chun Dec. attached to the Memo. Supp. The rules for both Houses permit a bill to be read by title alone or by its entire text. See, e.g., Rule 35, Rules of the House of Representatives (“a bill may be read by title only, or, on motion, read throughout”). Calling for a vote by bill number and title expedites the floor proceedings but debate prior to the vote is not limited and the entire text of the bill is subject to debate. Pursuant to the rules of the House and the Senate, S.B. No. 2858 was introduced, hearings were held, amendments were made, readings on the floors of the houses were held and the bill was sent to the Governor.

Determining how the three-reading requirement in Article III, Section 15 is met in each of the houses would require that this court inquire into the legislature’s compliance with its procedural rules and is not therefore justiciable. See *Schwab* at 38, 564 P.2d at 143 (“the procedure by which the result is obtained in each house is to be determined by its own rules of proceedings.”) (citation omitted). That Plaintiffs do not expressly challenge the legislature’s compliance with its own rules does not render *Schwab* inapposite.

Plaintiffs also contend that “Unlike *Hussey*, for example, here, there is no ‘textually demonstrative constitutional commitment of the issue to a coordinate political department.’” See Memo. Opp. at 13 (citation omitted). Plaintiffs have ignored the unambiguous language of Article III, Section 12.

Article III, Section 12 of the Hawai'i Constitution provides in relevant part that "Each house shall choose its own officers, **determine the rules of its proceedings** and keep a journal." (Emphasis added). Thus, the Hawai'i Constitution expressly commits or assigns to each house the authority to determine and necessarily, enforce its own procedural rules. Based on the plain and unambiguous language of Article III, Section 12 and the court's decision in *Hussey v. Say*, 139 Hawai'i 181, 384 P.3d 1282, each house of the legislature has exclusive authority to determine its procedural rules and this court may not interfere.

IV. Plaintiffs Misconstrue the State's Need for Legislative Flexibility

According to Plaintiffs, the "State argues that the Hawai'i Constitution unfairly limits the Legislature's ability to deal with emergencies" and the "Hawai'i Constitution makes it impossible for the Legislature to address emergencies". See Memo. Opp. at 14. Plaintiffs have misconstrued the State's need for flexibility.

The State did not argue, and does not contend, that the Hawai'i Constitution "unfairly limits" its ability to deal with emergencies or that the Hawai'i Constitution "makes it impossible" for the legislature to deal with emergencies. Rather, the State simply stated that the "Legislature's rules and proceedings for adopting bills reflect a legislative reality, which is that during the course of a legislative session, priorities change, funding amounts are often not determined until late in a session and emergencies may give rise to immediate, unanticipated needs." See Memo. Supp. at 14. The State further

explained that the deletion and substitution of the contents of bills during a session gives the Legislature the needed flexibility to address unanticipated events and needs without having to call a special session or extend a session.

Id.

Plaintiffs also contend that the State's need for flexibility lacks merit because the legislature could introduce a bill in the middle of a legislative session and pass it as law within a week. See Memo. Opp. at 14. Plaintiffs' simplistic generalization overlooks Article III, Section 12 of the Hawai'i Constitution.

Article III, Section 12 provides in relevant part:

By rule of its proceedings, applicable to both houses, each house shall provide for the date by which all bills to be considered in a regular session shall be introduced.

Thus, the Hawai'i Constitution mandates that each house shall set a deadline by which all bills must be introduced and recognizes the need for a schedule and a bill introduction cut-off. Depending on the schedule and bill cut-off date, Plaintiffs' claim that the legislature could introduce and pass a bill in week is simply wrong.

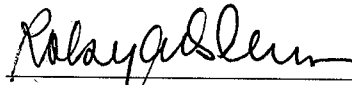
The State's need for legislative flexibility is not "irrelevant" as Plaintiffs claim. *Id.* The need for flexibility reflects the reality of legislation and the need to respond to changing priorities and unanticipated emergencies.

V. Conclusion

For the foregoing reasons as well as, those set forth in the Memorandum in Support, the State respectfully urges the court to grant summary judgment in favor of the State and to dismiss Plaintiffs' claims. There is no genuine issue of material fact and the State is entitled to judgment as a matter of law.

DATED: Honolulu, Hawai'i, November 7, 2018.

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CERTIFICATE OF SERVICE

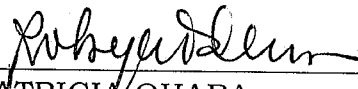
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I hereby certify that on this date a true and correct copy of the
forgoing document was duly served by U.S. Mail, postage prepaid, to the
following party listed below:

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DATED: Honolulu, Hawai'i, November 7, 2018.



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