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Attorneys for Movant
PUBLIC FIRST LAW CENTER

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

SPECIAL PROCEEDING TO UNSEAL
ADOPTION RECORDS

1FFM-24-0000018

DECLARATION OF COUNSEL;
EXHIBITS "4" - "5"

DECLARATION OF COUNSEL

1. I, Benjamin M. Creps, am a staff attorney for Movant Public First Law Center (Public First) and submit this declaration based on personal knowledge, except as otherwise provided.

2. Attached as **Exhibit 4** is a compilation I prepared of true and correct copies of the following records, retrieved from the Hawai'i Legislature's website:

- a. Act 338, Session Laws of Hawaii (1990);
- b. House Standing Committee Report No. 632-90 (1990);
- c. Senate Standing Committee Report No. 3056 (1990); and
- d. Conference Committee Report No. 97 (1990).

Continued on next page

3. Attached as **Exhibit 5** is a true and correct copy of *Wilson v. Board of Dental Examiners*, No. 28399, 2009 Haw. App. LEXIS 252 (2009) (unpublished) that I retrieved from LexisNexis.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawai'i, April 19, 2024

/s/ Benjamin M. Creps
BENJAMIN M. CREPS

EXHIBIT “4”

ACT 338

H.B. NO. 2089

A Bill for an Act Relating to Adoption.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$100,000.00, or 0.0039 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. Section 338-20, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [Such] The sealed documents[, except for the information form provided for in section 578-14.5,] may be opened by the department only by an order of a court of record[.] or when requested in accordance with section 578-

14.5 or 578-15. Upon receipt of a certified copy of a court order setting aside a decree of adoption, the department shall restore the original certificate to its original place in the files.”

SECTION 3. Section 338-20.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) After preparation of the new certificate of birth in the new name of the adopted person, the department of health shall seal and file the certified copy of the adoptive decree, the investigatory report and recommendation of the director of [social] human services if any, the report constituting the original certificate of birth, and the request for a new certificate of birth. [Such] The sealed documents may be opened by the department only by an order of a court of record[.] or when requested in accordance with section 578-14.5 or 578-15. The new certificate of birth shall show the true or probable foreign country of birth, and that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.”

SECTION 4. Section 578-14, Hawaii Revised Statutes, is amended to read as follows:

“**§578-14 Record of adoption.** (a) A certified copy of the decree of adoption, or a certified abstract thereof on a form approved by the department of health [shall], after [such] the decree has become effective, shall be sent to the department. The department shall cause to be made a new record of the birth in the name of the individual, as fixed or changed by the decree, with the names of the adoptive parents[,] and, upon request of both adoptive parents, or the sole adoptive parent if there is only one, that the name or names of either or both of the natural parents appear on the certificate, with the name of a natural parent who consents to be named on the certificate[, and shall then cause to be].

(b) If a new birth certificate is issued, the original birth certificate shall be sealed and filed [the original birth certificate of the individual] with the decree or the abstract thereof, and [such] the sealed package shall be opened only [by order of a court of record.] as provided in section 578-15(b).

(c) If the birth of the individual occurred outside of the State[,] and a record of [such] birth exists, the certified copy of the decree or the abstract thereof, shall be transmitted by the department of health to the birth registration authorities of the place of the individual’s birth with a request that [such] those authorities take appropriate action with respect to the record of the individual’s birth. If the birth of the individual occurred outside of the State, or if the birth of an individual born in the State has not been registered with the department of health, or if other good cause exists, the clerk of the court [shall], upon request, and with the approval of the family court, upon the finding of the court that [such] the action is for the best interests of the individual involved, shall furnish to the adoptive parents, or to the individual, or to any proper person acting in their behalf, a certified copy or abstract of the decree of adoption[, or a certificate of adoption in [such] a form [as is] approved by the court. If the parental rights of a parent or the parents of a minor child have been judicially terminated under chapter 571 prior to the entry of the decree, a certified copy of the decree shall be filed in the termination proceeding.”

SECTION 5. Section 578-15, Hawaii Revised Statutes, is amended to read as follows:

“§578-15 Secrecy of proceedings and records. (a) The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of human services or the director’s agent, or by any proper person on a showing of good cause therefor, upon order of the court. Except in the case of an individual being adopted by a person married to the legal father or mother of [such] the individual[,] or unless authorized by the court, no petition for adoption shall set forth the name of the individual sought to be adopted or the name of either of the parents of the individual; provided that the legal name of the individual and the name of each of the individual’s legal parents may be added to the petition by amendment during the course of the hearing thereof and shall be included in the decree. The hearing of the petition shall be in chambers and shall not be open to the public.

(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that [such] the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except [upon]:

(1) Upon order of the family court[,] upon a showing of good cause;

(2) For adoptions which occurred prior to January 1, 1991, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents in accordance with the following:

(A) Within thirty calendar days after receipt of a request for inspection, the family court, by registered mail with return receipt requested, shall mail to the last known address of each natural parent a notice of the request for inspection of adoption records, a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents filed in support of the request. The notice shall inform the natural parent that unless an affidavit signed by the natural parent requesting confidentiality is received by the family court within sixty calendar days of the date of the notice, the natural parent will be deemed to have waived any rights of confidentiality and the records shall be subject to inspection by the adopted individual or the adoptive parent who filed the request. The notice shall also inform the natural parent that an affidavit requesting confidentiality for a period of ten years may be filed. An affidavit to be completed and signed by the natural parent to request confidentiality shall be mailed with the notice;

(B) If the family court has received a return receipt for the notice sent but an affidavit requesting confidentiality is not received by the family court within sixty calendar days of the date of the notice, the family court shall allow inspection under this section;

(C) If a notice by registered mail is undeliverable to a natural parent, the family court shall designate an agent or agency to conduct a good faith and diligent search to locate the natural parent and to provide the notice and all other documents required under subparagraph (A). The search shall extend over a period of one hundred twenty calendar days. Contacts

with natural parents by a designated agent or agency under this section shall be personal and confidential and shall not be made by mail. The family court shall provide the designated agent or agency with a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents filed in support of the request, and the designated agent or agency shall present the copies to the natural parent when contacted. The family court and the designated agent or agency shall ensure that no person other than a natural parent or the agent or agency through which a natural parent obtained assistance for the adoption is informed of the adoptive individual's existence and the relationship to the natural parent;

- (D) If a natural parent cannot be located after the search conducted under subparagraph (C), the family court shall allow inspection under this section;
- (E) If an affidavit requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice provided under subparagraph (A) or (C), the family court shall not allow inspection during the effective period of the affidavit;
- (F) If a ten-year affidavit is filed under subparagraph (E), the natural parent may refile affidavits every ten years thereafter to maintain confidentiality, or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits subsequent to the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit. If there is no effective affidavit on file with the family court at the time a request for inspection is received by the court, the court shall allow inspection under this paragraph;
- (G) An affidavit requesting confidentiality shall be effective until the last day of the period for which the affidavit was filed, until the natural parent revokes the affidavit, or until the natural parent is deceased, whichever occurs sooner; and
- (H) Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;
- (3) For adoptions occurring after December 31, 1990, in accordance with the following:
 - (A) At the time of the placement of the adopted individual for adoption, the family court shall inform each natural parent of the procedures required under this paragraph if the natural parent desires to maintain confidentiality after the adopted individual attains the age of eighteen;
 - (B) Within ninety calendar days before the adopted individual attains the age of eighteen a natural parent may file an affidavit with the family court to request confidentiality and the natural parent may refile affidavits every ten years thereafter to maintain confidentiality or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits after the initial affidavit may be filed

within ninety calendar days before the last effective day of the initial affidavit;

- (C) If a natural parent declines or fails to file an affidavit under subparagraph (B), the family court shall allow inspection of the record by the adopted individual or the adoptive parents at any time after the adopted individual has attained the age of eighteen; and
- (D) Where two natural parents are involved and confidentiality is waived under this paragraph by only one parent, the inspection of the records shall not include any identifying information concerning the other natural parent;
- (4) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by a natural parent; provided that the adopted individual shall have the same rights and obligations applicable to natural parents under paragraph (2), including rights of notice and opportunity to file affidavits requesting confidentiality.
- (5) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission of an affidavit by a natural parent consenting to the inspection of records by the adoptee or an affidavit submitted by an adoptee consenting to the inspection of records by the natural parents; provided that where only one natural parent files an affidavit for consent, the inspection of records shall not include any identifying information concerning the other natural parent;
- (6) Upon request by the adopted individual or the adoptive parents for information contained in the records concerning ethnic background and necessary medical information, notwithstanding any affidavit requesting confidentiality; or
- (7) Upon request by a natural parent for a copy of the original birth certificate.

(c) The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court."

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000.00 or so much thereof as may be necessary for fiscal year 1990-1991, for the purposes of this Act. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 1991.

(Approved July 9, 1990.)

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2872, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2872, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Hayes.

SCRep. 629-90 Judiciary on H.B. No. 2022

The purpose of this bill is to promote the prompt appointment of persons to fill vacancies in the state Senate and House of Representatives by providing a time frame in which the Governor must make the appointments.

Your Committee is in agreement with the purpose of this bill and believes that prompt appointments will serve to maintain public confidence in representative government.

Your Committee has amended this bill by changing the forty-five day period, exclusive of Saturdays, Sundays, and holidays, to a sixty calendar day period, to simplify computation of the period. Your Committee has also amended this bill by dividing Section 17-3, Hawaii Revised Statutes, into subsections (a), (b) and (c) for purposes of style and clarity.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2022, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2022, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Amaral and Andrews.

SCRep. 630-90 Judiciary on H.B. No. 1699

The purpose of this bill is to allow awards of attorneys' fees in any action that results in the enforcement of an important right affecting the public interest and in the conferring of a significant benefit upon the general public or a large class of persons. It provides incentive to private individuals to assume the role of "law enforcement officer" with respect to bringing certain legal issues such as those relating to the environment, the constitution, or medical and mental health, to the attention of the courts.

Your Committee heard testimony from the State Attorney General in opposition to this measure which indicated concern that the language of this bill was overbroad.

While your Committee is in agreement with the intent of this bill, your Committee has, upon further consideration, amended it by narrowing its scope to actions arising under chapter 342, Hawaii Revised Statutes, relating to environmental quality. Additionally, a new subsection (b) is incorporated which specifically provides for immunity to the state and counties.

Your Committee has also made technical, nonsubstantive amendments to the bill for the purposes of style and clarity.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 1699, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1699, H.D. 2.

Signed by all members of the Committee except Representative Andrews.

SCRep. 631-90 Judiciary on H.B. No. 2201 (Majority)

The purpose of this bill is to amend the election laws by providing a certain and expeditious means for resolving a tie in the number of votes cast for two or more candidates in an election.

Under current law a resulting tie in an election between two or more candidates is settled by lot under the supervision of the Chief Election Officer or County Clerk.

Your Committee believes that this law is vague and lacks specificity in form and content. Your Committee also believes that a procedure that is form specific as to a method of tie breaking must be adopted to avoid confusion and thereby allowing the public the opportunity to fully participate in our election process.

Your Committee has amended this bill by deleting sections included in other proposed legislation.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2201, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2201, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.
(Representative Cavasso did not concur.)

SCRep. 632-90 Judiciary on H.B. No. 2089

The purpose of this bill is to allow adoptees, adoptive parents, and natural parents to inspect adoption records, including the adoption decree and the original certificate of birth, upon request.

The current law allows inspection only upon order of the court, which order is often difficult, if not impossible to obtain.

Your Committee has amended this bill by providing that upon receipt of a request for inspection, the Department of Health shall mail a notice to each natural parent, advising them of the fact that they have thirty days to file a request for confidentiality. The Department is given thirty days to send the notice to the last known address of each natural parent. The Department is not expected to undertake extensive investigation into the current addresses of the natural parents and an inspection of the adoption records will suffice.

If no request for confidentiality is received from the natural parents, the Department shall allow inspection. If the request for confidentiality is received, the Department may only release information concerning ethnic background and medical history. The burden is on the natural parents or parent to renew their requests once every five years if they wish to maintain confidentiality.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2089, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2089, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Takamine, Yoshimura and Cavasso.

SCRep. 633-90 Judiciary on H.B. No. 2053

The purpose of this bill is to add the qualifying words, "where possible" and "whenever possible" to language requiring the Reapportionment Commission to maintain legislative districts within basic island units.

This bill will help bring state constitutional language within conformity of federally mandated equal representation requirements. Because of technical requirements associated with constitutional amendments, related constitutional amendments are sought through H.B. No. 2051 and H.B. No. 2054.

Your Committee has amended this bill by adding the phrase "whenever possible" to section 2. The term "whenever possible" is intended to require the Reapportionment Commission to apportion among the basic island units when it can be accomplished in compliance with federal law. If such reapportionment cannot be accomplished, the Reapportionment Commission may apportion otherwise.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2053, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2053, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representatives Cachola, Peters, Takamine and Yoshimura.

SCRep. 634-90 Judiciary on H.B. No. 2546

The purpose of this bill is to amend Chapter 329, Hawaii Revised Statutes, to regulate the sale and transfer of precursors used in the manufacturing of methamphetamine.

Testimony was received from the Department of the Attorney General, the Prosecuting Attorney of the City and County of Honolulu, and the Honolulu Police Department.

Your Committee understands that precursor chemicals are critical to the production of illicit drugs in illegal labs and that, generally, precursor chemicals have limited legitimate uses and are traded in small quantities. In recognizing this, your Committee has amended this bill by adding ten other identifiable precursors to be regulated by this section. Conversely, because essential chemicals are not critical to the manufacture of methamphetamine and are massively produced and distributed for a variety of needs, your Committee has deleted the essential chemicals from this bill.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2546, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2546, H.D. 1.

Signed by all members of the Committee.

SCRep. 635-90 Judiciary on H.B. No. 2354 (Majority)

The purpose of this bill is to provide the Director of Corrections (Director) with the authority to furlough or parole any child committed to the Director's custody regardless of length of commitment.

Your Committee received testimony on this bill from the Judiciary, the Office of the Public Defender, the Department of Corrections, and the American Civil Liberties Union.

Your Committee understands that the Family Court presently maintains jurisdiction over juveniles on short-term commitments (up to one year).

Your Committee also notes that the thirty-day notice period is substantial, considering the period of confinement, and that the prosecuting attorneys should be notified of furloughs and paroles as well as discharges.

- (3) Does not specify that the program require a one-to-one exchange;
- (4) Does not require the screening of applicants to prevent participation by nonintravenous drug users;
- (5) Does not require compilation of data on the progress of participants in the drug abuse treatment, counseling, and education programs for which enrollment is required as a condition of participation;
- (6) Does not require, in the evaluation report, a demographic profile of the participants served; and
- (7) Does not contain specifics regarding the impacts on law enforcement and public health to be evaluated.

Your Committee has amended the bill because it believes that a mandatory program is required in order to prevent the spread of blood borne life-threatening diseases. Your Committee also believes that the strict controls, as contained in the bill as amended herein, must be delineated to ensure that the wrong message is not sent to drug users, that law enforcement agencies are not hindered in their enforcement activities, and that meaningful data will be compiled. The findings and intent of your Committee with respect to the implementation of a needle and syringe exchange pilot project have been stated at length in Senate Standing Committee Report No. 2625, and such findings and intent are hereby incorporated into this committee report.

As a final note, your Committee wishes to emphasize the importance of the oversight committee in section 3 of the bill in providing the legislature with a fair and objective evaluation of the study. Accordingly, it is the intent of your Committee that the department of health shall make a good faith effort to appoint at least one representative from the county police departments, the county prosecutor's offices, or both, to serve on the oversight committee.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2044, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2044, H.D. 2, S.D. 2.

Signed by all members of the Committee.
Senator Reed did not concur.

SCRep. 3055 Judiciary on H.B. No. 2053

The purpose of this bill is to propose an amendment to Sections 4, 5, and 6, Article IV of the Hawaii State Constitution to conform the sections to federal constitutional requirements. Your committee has incorporated H.B. 2054, H.D. 1 as part of this bill for reasons of simplicity. Both bills address the apportionment provisions of Article IV of the State Constitution.

Your Committee on Judiciary held hearings on H.B. 2053, H.D. 1 and H.B. 2054, H.D. 1 and received testimony supporting the bills from the Lieutenant Governor's Office and the League of Women Voters.

This bill proposes that the requirement in Sections 4 and 6 that apportionment be based on basic island units be amended to mandate the Reapportionment commission to maintain the use of basic island units "whenever possible." This would allow the Commission flexibility in order to comply with federally mandated requirements. Your Committee has added the language "to the maximum extent possible" to ensure that basic island units would be maintained as much as possible.

This bill also proposes that Section 5, which requires that a fractional vote formula be used for legislators from any basic island unit allocated less than a certain minimum number of seats, be repealed. The provisions of this section were struck down as unconstitutional in Burns v. Gill (D. Haw. 1970).

H.B. 2054, H.D. 1 proposed to change the base used for reapportionment from "registered voters" to "resident population." The use of a registered voters base was challenged and struck down in Travis v. King (D. Haw. 1982) because it did not produce a valid reapportionment plan. Your Committee has replaced the "resident population" language incorporated from H.B. 2054, H.D. 1 with the phrase "total population or adjusted population." This is to allow the Reapportionment Commission the flexibility to use resident population or another population base, provided that such other population base meets with federal, constitutional criteria.

Because this bill effects three separate changes in Article IV, your Committee on Judiciary has amended it to provide for three separate questions to be printed on the ballot.

Your Committee is of the opinion that, due to numerous and successful court challenges to this Article, as well as challenges to similar provisions in other jurisdictions, the probability of continued and costly legal challenges is great. Further your Committee is of the opinion that, since the Reapportionment Commission must devise another reapportionment plan by 1992, it is timely for this Legislature to offer guidelines that will withstand legal scrutiny. Your Committee feels that the one person, one vote rule, which has been consistently upheld by the Supreme Court, is the only basis by which to ensure fair and equal representation.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2053, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. 2053, H.D. 1, S.D. 1 and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 3056 Judiciary on H.B. No. 2089

The purpose of this bill is to allow the members of the adoption triad (the adoptees, adoptive parents, and natural parents) to inspect adoption records, including the adoption decree and the original certificate of birth, upon request after the adopted individual has attained the age of majority.

More specifically, the bill provides that upon receipt of a request for inspection of records by a member of the adoption triad, the department of health shall mail a notice to each natural parent, stating that unless a request for confidentiality is filed within thirty days of receipt of the notice, the adoption records shall be open to the person requesting inspection. If a request for confidentiality is received by the department, the records shall not be open to inspection and the confidentiality request shall be effective for a period of five years from the date the request is received by the department; provided the natural parent may revoke the request at any time. The bill requires the natural parent to bear the responsibility of filing additional requests to maintain confidentiality and allows the automatic opening of records when a request for inspection is made and a request for confidentiality has expired and not been renewed. Finally, the bill requires that information contained in the sealed records concerning ethnic background and necessary medical information shall be made available at any time upon request by the adopted individual or the adoptive parents.

Your Committee received extensive testimony on the issue of opening adoption records to the members of the adoption triad, most of which were in favor of the concept. While your Committee agrees that adoption records, especially with respect to ethnic background and medical history are critically important to an adopted individual, your Committee also is sensitive to the concerns of those in the triad who wish to maintain confidentiality. Your Committee believes that access to adoption records cannot be allowed without sufficient safeguards which will protect those individuals and maintain a balance in the exercise of rights by the members in the triad.

After serious deliberation on the issue of access to adoption records, your Committee finds that this bill requires amendments to ensure that the rights of all the members in the adoption triad are equally protected and that the procedure for the submission of requests for inspection of adoption records is clearly stated and easy for the triad members to comprehend and follow. Accordingly, your Committee has amended the bill as follows:

- (1) The age of the adopted individual after which inspection of records is to be allowed has been changed from the age of majority to the age of eighteen.
- (2) Language has been added to clarify that the opening of adoption records can occur upon order of the family court upon a showing of good cause. Your Committee believes this amendment is necessary to ensure that this procedure, which is currently available, will still be available in addition to the other procedures established by the bill as amended.
- (3) The procedure for the submission of a request for inspection has been changed to require a written request; to require that the notice sent to the natural parent be by registered mail, return receipt requested; to require that an affidavit to be completed and signed by the natural parent be included with the notice; to allow sixty rather than thirty days for a response from the natural parent; to delete the five-year refiling requirement to maintain confidentiality; to provide that the request for confidentiality remain in effect until revoked by the natural parent or until the natural parent is deceased; to allow the filing of another request for inspection any time after two years have elapsed since the filing of a request for confidentiality; and to apply this procedure only to adoptions occurring prior to January 1, 1991.
- (4) A new procedure has been added, for adoptions occurring after December 31, 1990, to require the family court to provide notice to the natural parents, at the time of placement, that if they wish to keep the records closed when the adopted individual is eighteen years old, they must file an affidavit with the family court within sixty days after the adopted individual is eighteen years old and every ten years thereafter.
- (5) The procedure delineated under section 578-14, which is identical to the procedure under section 578-15, has been replaced by a reference to the procedure in section 578-15 and the agency responsible for the handling of requests for inspection has been changed to the family court rather than the department of health. Your Committee believes that this amendment will provide for a less confusing and more expeditious method for the submission and processing of requests since all the records pertaining to the adoption, including the original birth certificate, are filed with the family court.
- (6) A provision has been added to require the family court to designate an agency to search for a natural parent who cannot be contacted by registered mail. The search is to be conducted during a period of not more than one hundred twenty days and contacts must be personal and confidential with assurance that only the natural parent or the agency through which the natural parent obtained assistance for the adoption shall be informed of the adoptive individual's existence and relationship to the natural parent. When contacted, the natural parent shall be presented with copies of the written request for inspection and other documents filed with the request. If a natural parent cannot be located after the search, the adoption records will be opened. Since the mailing addresses of the triad members on file in adoption records may be outdated, your Committee believes this amendment is necessary to afford the triad member whose consent is being sought a fair opportunity to request confidentiality.
- (7) A provision has been added to clarify that where only one natural parent waives confidentiality, the inspection of the records shall not include any identifying information concerning the other natural parent.
- (8) A provision has been added to provide that for adoptions occurring prior to January 1, 1991, upon submission of a written request to the family court by a natural parent after the adopted individual has attained the age of eighteen, the family court shall notify the adopted individual and shall allow the inspection of records in accordance with the process established for requests submitted by the adopted individual or adoptive parents. Your Committee believes that this amendment is necessary to protect the rights of those adopted individuals who may wish to remain anonymous to a natural parent. Your Committee notes that under the house version,

although the language indicates that a natural parent may request access to adoption records, the procedure set out only covers situations where an adopted individual or adoptive parents request access.

- (9) A provision has been added for adoptions occurring prior to January 1, 1991, to permit a natural parent or an adoptee to file an affidavit consenting to the inspection of records by the other.
- (10) A new provision has been added to allow a natural parent to obtain a copy of the original birth certificate.
- (11) Technical, nonsubstantive amendments were made for purposes of clarity and style.

Your Committee recognizes that there are compelling arguments for fully opening up adoption records; and that this bill as amended by your Committee, while it is a major step, may be just the first step to more liberal access to adoption records in the future.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2089, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2089, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 3057 Judiciary on H.B. No. 2184

The purpose of this bill is to outlaw gambling aboard ships whether it takes place on ships operated solely for that purpose or on ones which offer gambling incidental to other legitimate activities.

Your Committee received testimony in support of the bill from the Attorney General and the Department of Transportation. The Attorney General noted that the State has long taken a stand against gambling because of its traditional association with organized crime and because it tends to diminish the State's reputation as the premier tourist destination, especially for families, with a corresponding economic impact. He indicated that this bill would prevent a recent proposal to begin inter-island operation of one of these ships from becoming a reality.

The Department of Transportation expressed its support for the bill but indicated concern that the language of the bill was not sufficiently specific to exclude ships travelling to and from foreign ports and the continental United States from being placed within its ambit. These ships close down and lock their gambling equipment when they sail in State waters and, therefore, do not present the cause for concern represented by gambling ships operated locally. Accordingly, your Committee has amended the bill to make it clear that these ships are not in violation of the proposed law if they conduct gambling activity when travelling to or from foreign ports or the continental United States.

Your Committee has also amended the bill to make it clear that operators of legitimate tour ships, on which gambling is being conducted without their consent or knowledge, will not be subjected to criminal liability for gambling conducted by employees or passengers. Your Committee further amends the bill so that persons transporting passengers to and from ships on which gambling is taking place would not be covered under this new section. The final amendment made by your Committee deletes the provision which subjects persons soliciting, enticing, inducing, persuading or procuring persons from visiting gambling ships to criminal liability. Your Committee is of the opinion that these provisions raise questions of equal protection, as persons are permitted to make identical solicitations and promotions for gambling operations conducted outside of the State.

Your Committee on Judiciary is in accord with the intent and purpose of H.B. No. 2184, H.D. 1, as amended, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2184, H.D. 1, S.D. 1 and be placed on the calendar for Third Reading.

Signed by all members of the Committee.

SCRep. 3058 Judiciary on H.B. No. 2191

The purpose of this bill is to prohibit the possession of firearms, ammunition, and certain weapons in, on or within 750 feet of the real property comprising a public or private elementary or secondary school.

Testimony in support of this bill was offered by the Attorney General, the Department of Education and the Hawaii State Teachers Association. They all testified in favor of the bill, which was originally drafted to create a "weapon free zone" within 750 feet of the real property comprising a public or private school. The Attorney General recounted a series of recent events in which a teacher was shot while conducting class, students were shot in drive-by shootings, and a student was methodically stalked, shot and killed in a high school parking lot. This statement was echoed by the Department of Education which reported that in the last school year, seven firearms and 61 other weapons were taken from public school students.

Testimony in opposition to the bill was offered by the Public Defender and a number of firearm enthusiasts. The Public Defender submitted that a mandatory sentence of 20 years was too severe, particularly when compared to other serious offenses. The firearm enthusiasts were concerned by the fact that numerous legitimate firearm activities take place on school campuses, such as ROTC training, hunter safety courses and rifle matches.

While your Committee strongly agrees that our educational institutions should be places of sanctuary, we believe just as strongly that our entire community should be a safe place to live and learn and that everyone deserves to feel free from the threat of harm wherever they go. To achieve this goal, your Committee has undertaken substantial amendments to the bill. First, weapons offenses have been reclassified to reflect their severity. For example, a new subsection has been added to section 134-6, Hawaii Revised Statutes, which makes it a class A felony to possess, use or threaten to use a

Representatives Arakaki, Fukunaga, Amaral, M. Ige, Peters, Tajiri and Cavasso.
Managers on the part of the House.

Conf. Com. Rep. 95 on H.B. No. 2932

The purpose of this bill is to fund specific repricing for civil service adult corrections officer, youth corrections officer, registered professional nurse and anesthetist classes in the recommended compensation plan of the Executive Branch of the State of Hawaii.

While a substantial number of heavily populated classes were repriced during recent reviews, most departments would be unable to fund the increased payroll costs from existing appropriations without substantial delay in filling vacant positions or, conceivably, transferring funds from other program areas. Therefore, added funds are essential to avoid serious fiscal repercussions in the employing departments.

Your Committee has amended this bill as follows:

- (1) Adding a section declaring that the appropriations contained in the bill will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$2,857,732, or 0.11 per cent and that such expenditure is necessary to serve the public interest and to comply with constitutional and statutory provisions; and
- (2) Making technical, nonsubstantive amendments to the bill for the purposes of style and clarity.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2932, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2932, H.D. 1, S.D. 1, C.D. 1.

Senators Yamasaki, Nakasato and Koki.
Managers on the part of the Senate.

Representatives Takamine, Fukunaga, Cachola, Horita, Leong, Tom and Marumoto.
Managers on the part of the House.

Conf. Com. Rep. 96 on H.B. No. 2057

The purpose of this bill is to establish and attach the judiciary history center to the Office of Administrative Director of the Courts for administrative purposes.

Your Committee has amended this bill by adding a new Section 2 stating the reasons why and the amount and rate by which the appropriation contained in this bill exceeds the state spending limit to comply with constitutional and statutory requirements. Subsequent sections have been renumbered as appropriate.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2057, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2057, H.D. 1, S.D. 1, C.D. 1.

Senators Yamasaki, Menor and Koki.
Managers on the part of the Senate.

Representatives Metcalf, Taniguchi, Souki, Hagino, Hiraki and Anderson.
Managers on the part of the House.

Conf. Com. Rep. 97 on H.B. No. 2089

The purpose of this bill is to allow inspection of adoption records by adoptees, adoptive parents, and natural parents upon request and upon certain conditions.

Your Committee has amended H.B. No. 2089, H.D. 1, S.D. 1, as follows:

- (1) Adding a new SECTION 1 stating the reasons why and the amount and rate by which the appropriation contained in this bill exceeds the state spending limit to comply with constitutional and statutory requirements and renumbering subsequent sections as appropriate;
- (2) Adding a new SECTION 6 that appropriates funds necessary to serve the purposes of the Act;
- (3) Removing the option to choose lifetime confidentiality on page 6, lines 10 to 13;
- (4) Providing for the option to choose between lifetime confidentiality or ten-year confidentiality for a subsequent affidavit on page 8, lines 16 to 21;
- (5) Clarifying language that provides reciprocal rights to adoptees where natural parents request inspection of adoption records on page 9, lines 11 to 14. Your Committee does not intend to grant any rights to adoptive parents to object to inspection of records by the natural parents;
- (6) Reversing the order of subparagraphs (F) and (G) and making changes consistent with the intent to make the subparagraph on the effective period of an affidavit requesting confidentiality apply to lifetime affidavits as well as

ten-year affidavits, and the intent to end the effective period of the affidavits on the last day of the period of the affidavit, the day the natural parent revokes the affidavit, or the day the natural parent dies, whichever occurs sooner;

- (7) Changing the period to file affidavits in subparagraph (B) on page 10, lines 11 to 17, to a period of ninety calendar days before the adoptee attains the age of eighteen, instead of sixty calendar days after the adoptee reaches eighteen, and added the option of filing a subsequent affidavit requesting lifetime confidentiality; and
- (8) Renumbering paragraphs (3) and (4) on page 9 as paragraphs (4) and (5), respectively, and making each paragraph applicable to all adoptions, regardless of date of occurrence. Paragraph (5) was renumbered as paragraph (3);
- (9) Substituting the words "affidavit requesting" for "request for" on page 11, line 10, for the purposes of consistency and clarity;
- (10) Allowing the family court to designate an "agent" or agency, not only an agency, in the event the notice by registered mail is undeliverable;
- (11) Requiring the family court and the designated agent or agency to send with the notice the request for inspection and copies of any accompanying letters, photographs or other documents filed in support of the request; and
- (12) Making technical changes to page 3, lines 2-4; page 5, lines 8-9; page 7, line 15; page 8, lines 9-21; and page 9, lines 9-10, for purposes of consistency, clarity and style.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2089, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2089, H.D. 1, S.D. 1, C.D. 1.

Senators Menor, Blair, Levin and Reed.
Managers on the part of the Senate.

Senator Reed did not sign the report.

Representatives Metcalf, Amaral, Andrews, Hagino and Anderson.
Managers on the part of the House.

Conf. Com. Rep. 98 on H.B. No. 2273

The purpose of this bill is to appropriate funds to support the creation of a weekly half-hour news show produced by Hawaii Public Television focussing on issues and events in the Pacific region.

Your Committee on Conference has amended this bill by:

- (1) Deleting Section 2 which appropriated \$500,000 to be paid into the public broadcasting revolving fund and to be matched on a dollar-for-dollar basis;
- (2) Appropriating \$250,000 to be paid into the public broadcasting revolving fund;
- (3) Appropriating or authorizing the use of \$500,000 from the public broadcasting revolving fund to be used for the creation of a weekly news program and to be matched on a dollar-for-dollar basis;
- (4) Adding a new section stating the reasons why and the amount and rate by which the appropriations contained in this bill exceed the state spending limit to comply with constitutional and statutory requirements; and
- (5) Making technical, nonsubstantive revisions for purposes of style and clarity.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2273, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2273, H.D. 2, S.D. 2, C.D. 1.

Senators Yamasaki, Hagino, Fernandes Salling, Tungpalan and George.
Managers on the part of the Senate.

Representatives Taniguchi, Tom, Souki, Hirayama Jr., Horita, Ihara Jr., Takamine and Marumoto.
Managers on the part of the House.

Representatives Ihara Jr. and Marumoto did not sign the report.

Conf. Com. Rep. 99 on H.B. No. 2546

The purpose of this bill is to add a new part to Chapter 329, Hawaii Revised Statutes, relating to precursors to the manufacture of methamphetamine.

Your Committee on Conference has amended this bill by:

- (1) Changing the name of the substance on page 2, line 6 from N-methylephedrine to N-methylpseudoephedrine; and

EXHIBIT “5”

Wilson v. Bd. of Dental Examiners

Intermediate Court of Appeals of Hawai'i

May 21, 2009, Decided

NO. 28399

Reporter

2009 Haw. App. LEXIS 252 *

K. AMANDA WILSON, D.D.S., M.D.S., Petitioner-Appellant,
v. BOARD OF DENTAL EXAMINERS, Respondent-
Appellee

Notice: SUMMARY DISPOSITIONAL ORDERS OF THIS COURT DO NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED. SEE HAWAII RULES OF APPELLATE PROCEDURE FOR GUIDELINES RESTRICTING PUBLICATION AND CITATION OF SUMMARY DISPOSITIONAL ORDERS.

Subsequent History: Reported at Wilson v. Bd. of Dental Examiners, 120 Haw. 417, 209 P.3d 194, 2009 Haw. App. LEXIS 474 (Haw. Ct. App., 2009)

Prior History: [*1] APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT. Civ. No. 06-1-0959.

Case Summary

Procedural Posture

Petitioner applicant appealed a judgment of the Circuit Court of the First Circuit (Hawai'i) affirming the decision of respondent Board of Dental Examiners (Board) to deny her application for a license to practice dentistry in the State of Hawai'i.

Overview

The applicant did not receive a passing score on her dental examination. She sought licensure under an alternate pathway, pursuant to Haw. Rev. Stat. § 448-10 (Supp. 2005), which allowed a dental specialist to bypass the traditional exam and to receive a license by virtue of his or her credentials. The Board denied the application on the ground that the applicant's three-year graduate orthodontics studies did not count toward the requirement, under Haw. Rev. Stat. § 448-10(c)(3)(C)(iv), that an applicant practice dentistry for at least three years. The Board concluded that the applicant did not practice independently and outside of the academic arena. The court found that Haw. Rev. Stat. § 448-1, did not state, as the applicant argued, that practices, acts, and operations engaged in as part of a clinical graduate dental school curriculum qualified as lawfully engaging in the practice of dentistry for purposes of Haw. Rev. Stat. §

448-10(c)(3). Thus, the Board did not palpably err in concluding that the applicant did not meet the Haw. Rev. Stat. § 448-10(c)(3)(C)(iv) requirement. Haw. Rev. Stat. § 448-10(c)(3) was repealed when the Board developed a new examination.

Outcome

The court affirmed the judgment of the trial court.

Counsel:

On the briefs:

Stanley E. Levin and Susan K. Dorsey (Davis Levin Livingston Grande), for Petitioner-Appellant.

David A. Webber, Lei S. Fukumura, and Deborah Day Emerson, Deputy Attorneys General, State of Hawai'i, for Respondent-Appellee.

Judges: By: Watanabe, Acting C.J., Nakamura, and Fujise, JJ.

Opinion

SUMMARY DISPOSITION ORDER

Petitioner-Appellant K. Amanda Wilson () appeals from the "Decision and Order Affirming Board's Final Order, Filed July 7, 2006" and "Judgment" both entered by the Circuit Court of the First Circuit ¹ (circuit court) on January 3, 2007, which affirmed the decision of Respondent-Appellee Board of Dental Examiners (Board) to deny Wilson's application for license to practice dentistry in the State of Hawai'i.

Wilson originally applied for Hawai'i licensure in 2004 but did not receive a passing score on her dental examination. The following year, however, applicants had limited access to licensure via examination because the Board was in the process of adopting a new exam. To cover the interim period before the new exam was adopted, the legislature provided several [*2] alternate pathways to licensure by enacting Act 121, 2005 Haw. Sess. L. 320, which was codified as Hawaii Revised

¹ The Honorable Eden Elizabeth Hifo presided.

Statutes (HRS) § 448-10 (Supp. 2005).² Wilson actively lobbied

² At the time Wilson applied, HRS § 448-10 (Supp. 2005) stated, in part:

Examination; time. *[This section shall be repealed on the date that the board of dental examiners approves [*3] the American Board of Dental Examiners (ADEX) examination. L. 2005, c. 121, § 7. See also note below.]* (a) Except as provided in subsection (c), the board shall require all applicants to take the state written and practical examination on dentistry. . . . Two examinations shall be held each calendar year.

....

(c) If the board determines that two state written and practical examinations on dentistry will not be or have not been administered pursuant to subsection (a) during the calendar year, an applicant shall be eligible for licensure under this chapter:

(1) If the applicant takes one of the following four regional examinations given between February 1, 2004 and the date of availability of the American Board of Dental Examiners (ADEX) examination, by:

- (A) The Western Regional Examining Board;
- (B) The Central Regional Dental Testing Service, Inc.;
- (C) The Southern Regional Testing Agency, Inc.; or
- (D) The North East Regional Board of Dental Examiners, and passes it;

(2) If the applicant takes and passes the American Board of Dental Examiners (ADEX) examination approved by the board; or

(3) By credential under this paragraph if the applicant is a dental specialist and:

- (A) Has graduated from [*4] an accredited dental specialty education program in orthodontics, endodontics, pedodontics, periodontics, oral surgery, oral radiology, public health dentistry, or oral medicine/oral pathology;
- (B) Submits to the board a completed application and all required fees;
- (C) Submits to the board verification of:
 - (i) Graduation from a general dental education program . . . ;
 - (ii) Graduation from a post-graduate specialty program . . . ;
 - (iii) A current active license issued by another state that is not revoked, suspended, or otherwise restricted;
 - (iv) Having been lawfully engaged in the practice of dentistry for at least three years preceding the date of the application, with a minimum of one thousand hours of dentistry practice each year;

for Act 121. In June 2005, Wilson applied for a dental license pursuant to HRS § 448-10(c)(3) (Supp. 2005), a provision that allowed a dental specialist, such as an orthodontist, to bypass the traditional exam and receive a Hawai'i license by virtue of his or her credentials (licensure-by-credentials statute). The Board denied Wilson's application, reasoning that her three-year graduate orthodontics studies in Connecticut, which concluded in 2004, did not count towards the HRS § 448-10(c)(3)(C)(iv) requirement of "[h]aving been lawfully engaged in the practice of dentistry for at least three years preceding the date of the application[.]" The Board concluded that this provision "require[s] an applicant to be licensed, practicing independently and outside of the academic arena, bearing primary responsibility for the patient's safety."

Although the Board accepted Wilson's ten months of licensed practice as an orthodontist in California from August 2004 to June 2005, it is undisputed that Wilson would not fulfill the three-year practice-of-dentistry requirement if her graduate training was excluded. The licensure-by-credentials statute, HRS § 448-10(c)(3), was automatically repealed four months after its enactment, when the Board adopted a new dental examination in October 2005.

Wilson appealed to the circuit court, arguing that the Board erred because under the statute generally defining "[d]entistry[.]" HRS § 448-1 (1993),³ "[a] person practices dentistry, within the

(v) Completion of a minimum of thirty-two hours of continuing education in the applicant's dental specialty within the preceding two-year period;(vi) Not having been subject to disciplinary action by any jurisdiction in which the applicant is or has been previously licensed to practice dentistry . . . ;

(vii) Not having any felony convictions of any kind and having no other criminal convictions . . . ;

(viii) Registration status with the federal Drug Enforcement [*5] Administration and submits a self-query report from the National Practitioner Data Bank . . . ; and

(ix) Passage of parts I and II of the National Board Dental Examination; and

(D) Agrees to practice only as a dental specialist, within the area of the applicant's specialization.(Emphases added.)

³ At the time Wilson applied, HRS § 448-1 (1993) stated, in relevant part:

Dentistry defined; exempted practices. A person practices dentistry, within the meaning of this chapter, who represents oneself as being able to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or

meaning of this chapter" when, among other things, he or she "engages in any of the practices included in the curricula of recognized and approved dental schools or colleges." Thus, Wilson contended, when HRS §§ 448-1 and 448-10 are read together, her graduate [*6] studies in Connecticut constituted the practice of dentistry under Hawai'i law.

The circuit court affirmed, reasoning that the Board's interpretation of HRS § 448-10(c)(3)(C)(iv) was "not palpably erroneous" because the statute "does not derive meaning from HRS § 448-1 regarding the requirements of post-graduate degrees or lawful practice outside the state which are independent qualifications to meet the licensure by credentials criteria[.]"

Wilson advances the following points of error:

- (1) "The [c]ircuit [c]ourt erred by affirming the Board's final order on grounds that the statutory interpretation of HRS § 448-10 excluded [Wilson] from licensure by credential" because "as a licensed dentist in a graduate specialty, she satisfie[d] the definition of the 'practice of dentistry' for purposes of the credentialing statute";
- (2) "The circuit court erred by affirming an agency decision that contravenes the legislature's manifest purpose" (formatting altered) because "[t]hroughout the agency and circuit court proceedings below, [Wilson] contended that she wrote the bill that eventually became [*8] Act 121. As she was the source of the amendment, it is inconceivable that her situation was not expressly considered and included"; and
- (3) "The circuit court erred by affirming an agency decision that denied [Wilson's] right to due process" (formatting altered) because "the Board was not comprised of impartial adjudicators and therefore they should not have been permitted to determine

who offers or undertakes by any means or methods to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or to take impressions of the teeth or jaws; or who owns, maintains, or operates an office for the practice of dentistry; or who engages in any of the practices included in the curricula of recognized and approved dental schools or colleges. Dentistry includes that part of health care concerned with the diagnosis, prevention, and treatment of diseases of the teeth, oral cavity, and associated structures including the restoration of defective or missing teeth. The fact that a person uses any dental degree, or designation, or any card, device, directory, [*7] poster, sign, or other media whereby one represents oneself to be a dentist, shall be prima facie evidence that the person is engaged in the practice of dentistry.

(Emphases added.)

whether she should receive her dental specialist license by credential" and the circuit court "failed to recognize that 'an appearance of impropriety' is the proper standard in evaluating the record in this case."

Upon a careful review of the record and the briefs submitted by the parties, and having given due consideration to the case law and statutes relevant to the arguments advanced and the issues raised, we disagree with Wilson and resolve her points of error as follows:

A.

The circuit court did not err in affirming the Board's final order. Initially, Wilson misconstrues HRS § 448-1 (1993), which broadly defines the practices, acts, and operations that constitute "[d]entistry" over which the Board has regulatory authority and which require Hawai'i licensure. HRS § 448-2 (1993). Although HRS § 448-1 [*9] states that a person "practices dentistry" if, among other things, he or she "engages in any of the practices included in the curricula of recognized and approved dental schools or colleges[.]" HRS § 448-1, on its face, does not state, as Wilson argues, that practices, acts, and operations engaged in as part of a clinical graduate dental school curriculum qualify as "lawfully engag[ing] in the practice of dentistry" for purposes of HRS § 448-10(c)(3).

As such, the Board did not palpably err in concluding that Wilson did not meet the HRS § 448-10(c)(3)(C)(iv) requirement of "[h]aving been lawfully engaged in the practice of dentistry for at least three years preceding the date of the application[.]" *See Aio v. Hamada*, 66 Haw. 401, 407, 664 P.2d 727, 731 (1983) ("[W]here an administrative agency is charged with the responsibility of carrying out the mandate of a statute which contains words of broad and indefinite meaning, courts accord persuasive weight to administrative construction and follow the same, unless the construction is palpably erroneous.").

B.

The Board's final order does not contravene the legislature's manifest purpose. HRS § 448-10(c)(3) was not enacted to guarantee Wilson's [*10] Hawai'i licensure. Rather, the legislature enacted the licensure-by-credentials statute in June 2005, along with other options, as an interim measure to bypass the Hawai'i dental exam and provide applicants with alternate pathways to licensure until the Board approved a new exam. *See* 2005 Haw. Sess. Laws Act 121, § 7 at 323 ("[O]n the date that the board of dental examiners approves the American Board of Dental Examiners (ADEX) examination, section 448-10, [HRS], shall be repealed."); Conf. Comm. Rep. No. 42, in 2005 Senate Journal, at 997 (stating that Act 121 was enacted "to give Hawai'i's citizens greater access to appropriate dental care and to

assure that applicants for licensure as dentist are not deprived of the opportunity to take an examination for an indefinite or extended period of time").

Although Wilson may have actively lobbied for Act 121, her personal comments have no persuasive authority. See Gillan v. Gov't Employees Ins. Co., 119 Hawai'i 109, 121, 194 P.3d 1071, 1083 (2008) ("Stray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body that voted for the bill.") (internal quotation [*11] marks and brackets omitted); Dines v. Pac. Ins. Co., 78 Hawai'i 325, 332, 893 P.2d 176, 183 (1995) ("[L]egislative studies by nonmembers of the legislature do not have the probative value of committee reports or debates for purposes of establishing 'legislative intent.'").

C.

There were no deficiencies in the Board's review process. As the hearings officer for Wilson's contested case hearing concluded, "there was no evidence to substantiate [Wilson's] suggestion that the Board denied her license application in retaliation for her involvement in the passage of the law providing for licensure by credential (Act 121)." Moreover, Wilson had a full and fair opportunity to appeal the Board's decision to the circuit court and pursue a secondary appeal before this court.

Therefore, the January 3, 2007 "Decision and Order Affirming Board's Final Order, Filed July 7, 2006" and the January 3, 2007 "Judgment" are hereby affirmed.

DATED: Honolulu, Hawai'i, May 21, 2009.

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