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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

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| LEAGUE OF WOMEN VOTERS OF HAWAII,<br><br>Plaintiff,<br><br>vs.<br><br>STATE OF HAWAI`I,<br><br>Defendant. | CIVIL NO. 1CCV-25-1456 JJK<br><br>PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT |

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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This case concerns constitutional limits on the legislative process. Defendant State of Hawai`i (State) largely seeks to recycle justiciability arguments that the Hawai`i Supreme Court rejected in *League of Women Voters of Honolulu v. State* [*LWV*], 150 Hawai`i 182, 499 P.3d 382 (2021). It is the proper role of the Judiciary to interpret and enforce the Hawai`i Constitution as intended by the framers and electorate.

The process for adopting Act 290 (2025) violated article III, sections 12 (bill introduction deadline)[1] and 14 (subject-in-title requirement).[2] By disregarding these minimal safeguards, the State violated the public's constitutionally protected right to meaningfully participate in the legislative process.

Because there is no issue of fact, Plaintiff League of Women Voters of Hawaii (League) respectfully requests that the Court deny the State's motion and enter an order declaring that the process for enacting Act 290 violated article III, sections 12 and 14 of the Hawai`i Constitution and that the Act therefore is void.

## I. STANDARD FOR CONSTITUTIONAL INTERPRETATION

Constitutional interpretation follows established principles.

> Because constitutions derive their power and authority from the people who draft and adopt them, we have long recognized that the Hawai`i Constitution must be construed with due regard to the intent of the framers and the people adopting it, and the fundamental principle in interpreting a constitutional provision is to give effect to that intent. This intent is to be found in the instrument itself.
>
> [T]he general rule is that, if the words used in a constitutional provision are clear and unambiguous, they are to be construed as they are written. In this regard, the settled rule is that in the construction of a constitutional provision the words are presumed to be used in their natural sense unless the context furnishes some ground to control, qualify, or enlarge them.
>
> Moreover, a constitutional provision must be construed in connection with other provisions of the instrument, and also in the light of

[1] "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."

[2] "Each law shall embrace but one subject, which shall be expressed in its title."

> the circumstances under which it was adopted and the history which preceded it.

*LWV*, 150 Hawai`i at 189, 499 P.3d at 389.

The State places undue emphasis on various purported "plain language" interpretations of the Hawai`i Constitution. *See, e.g.*, Dkt. 17 at 13-14, 17-19, 23-24.[3] Discussing similar claims in *LWV*, the Hawai`i Supreme Court explained that the "argument ignores the principle that constitutional provisions must be construed with due regard to the intent of the framers and the people adopting it." *LWV*, 150 Hawai`i at 198-99, 499 P.3d at 398-99 (internal quotations omitted). The Court rejected the idea that constitutional language may be interpreted by purported plain language to defeat the framers' intent.

## II. "GOVERNMENT" IS AN UNCONSTITUTIONALLY BROAD TITLE.

As relevant here, the subject-in-title requirement is about *notice*. *E.g.*, *LWV*, 150 Hawai`i at 201, 499 P.3d at 401 ("the purpose behind the single subject and subject-in-title requirements is similar to the purpose of the three readings requirement in that both are directed at providing notice to legislators and the public."). The title must "fairly indicate[] to the ordinary mind the general subject of the act" and not be "calculated to mislead." *Schwab v. Ariyoshi*, 58 Haw. 25, 34, 564 P.2d 135, 141 (1977). "Relating to Government" fails this test.

### A. The Purpose of the Subject-in-Title Requirement

Relying on the treatise Cooley on Constitutional Limitations, the Hawai`i Supreme Court first construed the purpose of the title provision in 1887: "[F]irst, to prevent *hodge-podge* or *logrolling* legislation; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation; and third, to apprise the people of proposed matters of legislation." *Hyman Bros. v. Kapena*, 7 Haw. 76, 77–78 (Kingdom 1887); *accord* 1 Thomas M. Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union [Cooley], at 296 (Walter Carrington ed., 8th ed. 1927).

[3] Pinpoint "Dkt." citations reference the page of the corresponding PDF.

Critically, bill titles provide notice to legislators and the public about interests affected by proposed legislation. *LWV*, 150 Hawai`i at 201, 499 P.3d at 401 (purpose of title to provide "notice to legislators and the public."); *Schwab*, 58 Haw. at 30-31, 564 P.2d at 139 (purpose to "apprise the people of proposed matters of legislation"); *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954); 1A Shambie Singer, Sutherland on Statutes and Statutory Construction [Sutherland] § 17:2 at 7-8 (8th ed. 2025) ("[T]he provision's dominant objective simply is to provide the legislature, executive (for veto purposes), and the public with reasonable notice about a statute's purview."); Martha Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking Analysis of Original Purpose, Single Subject, and Clear Title Challenges*, 38 Harv. J. on Legis. 103, 116 (2001) [Dragich] ("The clear title rule, properly understood, safeguards openness and honesty in the legislative process and facilitates public participation."); *see also Johnson v. Walters*, 819 P.2d 694, 702 (Okla. 1991) ("[subject-in-title] was enacted not only to prevent multi-subject or log-rolling legislation, but also to enable the public and the Legislature to understand the scope and effect of pending legislation.").

A title provides sufficient notice when it "fairly indicates to the ordinary mind the general subject of the act . . . and is not calculated to mislead."[4] *Schwab*, 58 Haw. at 34, 564 P.2d at 141; *accord Territory v. Furubayashi*, 20 Haw. 559, 561 (Terr. 1911) (relying on 26 Am. & Eng. Encyc. of Law (2d ed. 1904)); *In re Goddard*, 35 Haw. 203, 208 (Terr. 1939) ("[T]he title must be such as to reasonably apprise the public of the interests that are or may be affected by the statute."); *Taomae v. Lingle*, 108 Hawai`i 245, 252, 118 P.3d 1188, 1195 (2005) ("The titles of those bills provided the public with clear notice concerning the nature and context of the legislation and, thus, alerted the citizenry to the opportunity to legislatively comment and debate those bills in a meaningful way."); 1A Sutherland § 17:2 at 11-12 ("The general test is whether a title is uncertain,

[4] By focusing only on whether "pensions" (or according to the State, "salaries") and "government" are germane to each other, the State identifies the one aspect of notice not challenged in this case—*i.e.*, whether the title is "comprehensive enough to reasonably cover all [the law's] provisions. Dkt. 17 at 11-13. A title is not constitutional simply because it is comprehensive.

misleading, or deceptive to the average reader."); 1 Cooley at 297-300 ("the title must be such as to reasonably apprise the public of the interests that are or may be affected by the statute."). A legislature need not summarize details in the title. "The crucial test of sufficiency of title is generally found in the answer to the question: Does the title tend to mislead or deceive the people or the municipal board as to the purpose or effect of the legislation, or to conceal or obscure the same?" *Territory v. Dondero*, 21 Haw. 19, 25 (Terr. 1912); *see Jensen*, 40 Haw. at 608 ("the title should not be so worded as to mislead by appearing to provide merely for the purpose and use of voting machines.").[5]

Relying solely on the nature of the particular title claims in *Schwab*, the State erroneously argues that the Hawai`i Constitution only prohibits under-inclusive titles. Dkt. 17 at 9-13. Hawai`i cases concerning the subject-in-title requirement reflect a history of restrictive (often lengthy) titles.[6] That history, however, does not contradict

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[5] Although *Dondero* concerned the City title requirement, the standard is the same. *E.g.*, *Villon v. Marriott Hotel Servs., Inc.*, 130 Hawai`i 130, 140, 306 P.3d 175, 185 (2013); *Schwab*, 58 Haw. at 33-34, 564 P.2d at 140-41; *accord LWV*, 150 Hawai`i at 200, 499 P.3d at 400.

[6] *E.g.*, *Hyman Bros.*, 7 Haw. at 77 ("An Act amendatory of Section 2 of Chapter XXVIII. of the Session Laws of 1878, relating to import duties upon wines."); *Furubayashi*, 20 Haw. at 560 ("An ordinance providing for the appointment of a plumbing inspector of the city and county of Honolulu, prescribing the powers and duties of such plumbing inspector, establishing rules and regulations for the plumbing and drainage of buildings and the construction of house sewers in the city and county of Honolulu, and prescribing penalties for the violation of the provisions of the ordinance."); *Dondero*, 21 Haw. at 24 ("An ordinance regulating moving travel and traffic upon the streets and other public places of the City and County of Honolulu, providing for the registration, identification, use and operation of motor cars, and providing penalties for any violation of the ordinance"); *Goddard*, 35 Haw. at 204 ("An Act amending Title XXVI of the Revised Laws of Hawaii, 1935, by adding thereto a new chapter numbered 254 A, providing for a department of institutions to administer the territorial hospital, the industrial schools, and Oahu prison and other territorial prisons, prescribing its powers, duties and functions, and amending chapters 41, 132 and 217 of said Revised Laws, relating respectively to the territorial hospital, industrial schools and territorial prisons, and other laws inconsistent with this act, to conform thereto"); *Jensen*, 40 Haw. at 607 ("An Act to Provide for the Use of Voting Machines in Elections, Amending Chapter 6 of the Revised Laws of Hawaii 1945, as amended, by Adding Thereto A New Subtitle Pertaining To Voting Machines and Making an Appropriation Therefor; Making Certain Acts a Misdemeanor or Felony, and Providing Penalties"); *Schwab*, 58 Haw. at 27, 564 P.2d at 137 ("A Bill for an Act Making Appropriations for Salaries and Other

the intent of the constitutional provision to ensure meaningful notice as against both overly specific **and** overly broad legislative titles. *E.g.*, 1A Sutherland § 18:9 at 55 ("The statement of the legislation's subject simply cannot be so general as to be meaningless or deceptive."); 26 Am. & Eng. Encyc. of Law at 582 (2d ed. 1904) ("But while generality is not objectionable so long as the subject of the legislation is fairly suggested, yet where the title is so very vague and general as not to furnish any intimation at all of the actual contents of the act, and is therefore calculated to mislead the legislature and the public, it will be declared unconstitutional.").

> [T]he generality of the title may prove fatal to an act: (1) the title may be so general as to fail to express any object or (2) it may be so general as to render the title deceptive because of the lack of sufficient provisions in the body of the act to accord with the general title.

Carl H. Manson, *The Drafting of Statute Titles*, 10 Ind. L.J. 155, 161-62 (1934) [Manson]; Dragich, 138 Harv. J. on Legis. at 147 ("it can be worded so broadly as to provide no meaningful notice of the bill's contents.").

Moreover, contrary to the State's position, the Hawai`i Supreme Court has entertained a challenge to a broad title. In *Gallas v. Sanchez*, the Court evaluated whether a bill titled more broadly than its actual subject violated the subject-in-title requirement. 48 Haw. 370, 376, 405 P.2d 772, 776 (1965). In *Gallas*, the law was titled: "An Act Relating to the Public Service in the Territory and the Several Counties Including Civil Service, Classification and Compensation of Public Officers and Employees and Amending Chapters 3 and 4 of the Revised Laws of Hawaii 1955."[7] 1957 Haw. Sess. Laws Act 207 at 235. Notwithstanding the broader title, the law only

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Adjustments, Including Cost Items of Collective Bargaining Agreements Covering Public Employees and Officers"); *Taomae*, 108 Hawai`i at 248, 118 P.3d at 1191 ("A Bill for an Act Relating to Sexual Assault"); *Villon*, 130 Hawai`i at 140, 306 P.3d at 185 ("A Bill for an Act Relating to Wages and Tips of Employees").

[7] The Hawai`i Supreme Court shortened the title to "public service" for purposes of its analysis. *Gallas*, 48 Haw. at 376, 405 P.2d at 776. "Public service" is synonymous with civil service employment in common usage. *E.g.*, Random House Unabridged Dictionary (2023), *available at* www.dictionary.com (defining "public service" as, among other things, "government employment; civil service").

amended provisions concerning civil service for the personnel directors of the Territory and the counties. *Id.* at 235-36; *Gallas*, 48 Haw. at 372-73, 405 P.2d at 774-75. The Court analyzed—as Plaintiff requests here—whether the title provided fair notice of the subject matter and was not misleading. *Gallas*, 48 Haw. at 376, 405 P.2d at 776.

The State also errs by emphasizing the single subject requirement. Article III, section 14 comprises two requirements that every law: (1) relate to a single subject; and (2) have that subject expressed in its title. *LWV*, 150 Hawai`i at 200, 499 P.3d at 400 (addressing single subject and subject-in-title as two different requirements under article III, section 14); *see* Dragich, 38 Harv. J. on Legis. at 114. *Schwab*'s discussion of single subject concerned the first requirement—single subject—that is not challenged here. This case concerns the latter subject-in-title requirement, not logrolling based on multiple subjects.[8] *Compare, e.g.*, Dkt. 1 at 4, *with* Dkt. 17 at 10-11; *accord Carmack v. Dir., Mo. Dep't of Agric.*, 945 S.W.2d 956, 959 (Mo. 1997) ("amorphous titles that are too broad to inform the public and the legislature of the subject of the bill present serious, but different, constitutional problems").

The Hawai`i Constitution is not powerless to protect the public from abuses of the legislative process simply because the public has not previously challenged a law with a meaninglessly broad title. The constitutional test for adequate notice, as developed over more than a century, still applies.

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[8] As State's quoted law review makes clear: "The constitutional provision embodying the one-subject rule also contains an independent requirement that each bill contain a title and that that title express the subject or object of the bill. However, these requirements have independent operation; independent historical bases; and separate purposes." Millard H. Ruud, *No Law Shall Embrace More than One Subject*, 42 Minn. L. Rev. 389, 391, 402 (1958) ("The title requirement is designed to give interested persons notice of the subject of a bill and prevent deception through use of misleading titles. . . . Two independent purposes are served by this constitutional provision, stating the two rules."). The article further disclaims any insight into the subject-in-title requirement. *Id.* at 392 n.12 ("What constitutes an adequate title for purposes of these constitutional provisions and the consequences of the title being inadequate is an independent, extensive, and troublesome subject. It is not treated here."). Instead, the author points to other sources, primarily Sutherland and Manson discussed above. *Id.*

### B. "Government" as the Identified Subject of Legislation Does Not Provide Fair Notice of Its Contents.

A title is too broad if it fails to put a reasonable person on inquiry notice when the subject affects that person's interests. *E.g.*, *Schwab*, 58 Haw. at 34, 564 P.2d at 141 ("fairly indicates to the ordinary mind the general subject of the act"); 1A Sutherland § 17:2 at 8-11 ("A law need only put anyone interested in or affected by its subject matter upon inquiry."); 26 Am. & Eng. Encyc. of Law at 580-82 ("But the title must at least give a reasonable intimation of the subject dealt with, and the courts do not hesitate to declare void an act whose title is misleading in that it does not express the real subject of the act so as to put the legislature and those persons who are to be affected thereby on inquiry into its contents."); Dragich, 38 Harv. J. on Legis. at 149-50 ("The title must call attention to the subject matter of the bill in such a way as to provoke a reading of the bill or lead to an inquiry into the body of the act.").[9]

By way of illustration, the California Supreme Court explained the type of reasonable inquiry notice that would be triggered by an appropriate legislative title.

> The title declares the act to be one for the establishment of a state reform school for juvenile offenders, and to make an appropriation therefor. It is not an act to erect a building in which a reform school is to be hereafter conducted, but it is an act to establish a *school*. There can be no school without pupils. It is not simply an act to establish a school, but a school for *juvenile offenders*. This is a clear indication of an intention to provide for an *institution* for a certain class of *criminals*, -- children who have offended against the laws of the state. No one can be condemned without a hearing. The title of the act necessarily implies, therefore, that some officer or tribunal shall hear and determine the question whether certain persons charged with crime shall be committed to a reform school, or treated as ordinary juvenile offenders are treated under the penal laws of the state. Any person of ordinary intelligence, reading the title of the act in question, would naturally be led to the inquiry, What juvenile offenders may be sent to this school? under what circumstances may they be

[9] 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 (11th ed. 2022) at 7, *at* lrb.hawaii.gov/wp-content/uploads/2022_HawaiiLegislativeDraftingManual.pdf.

> committed to this institution? and who is to determine whether or not they should be sent there?

*Ex Parte Liddell*, 29 P. 251, 252-53 (Cal. 1892). Details need not be included in a title because those are "necessary incidents" of the declared subject. *Id.* at 252; *accord Atwood v. Willacy Cty. Navigation Dist.*, 284 S.W.2d 275, 278 (Tex. Civ. App. 1955) ("immediately gives rise to the inquiry: What are the additional powers? Upon such notice, the body of the bill may then be examined").

"Government" is so expansive that it encompasses every branch, agency, officer, power, and function of the state. Every law concerns "Government"—either in the form of government operations, government action, or government regulation. By providing notice of everything, "Government" provides *fair* notice of nothing. *E.g.*, *W. Int'l v. Kirkpatrick*, 396 N.W.2d 359, 365 (Iowa 1986) ("code corrections" is not "informative . . . does not enlighten the reader as to what practices are being changed"); *see* 1A Sutherland § 17:2 at 7-12. "By necessary implication, a 'subject' must be narrower than the universe of those things with respect to which the legislature is empowered to act, or the provision would be meaningless." *McIntire v. Forbes*, 909 P.2d 846, 855 (Or. 1996); *accord St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147 (Mo. 1998); Manson, 10 Ind. L.J. at 162 & n.15 (providing "general welfare of the people of the State" as an example of a title "so general as to fail to express any object").

Moreover, historically, the State has been far clearer in titles for the statutes at issue here concerning government pensions.[10] A legislator or reasonable member of the

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[10] Act 290 amended HRS sections 88-47 and 88-74. As materially relevant, titles previously used to amend those statutes were:

- "Employees' Retirement System", 1927 Haw. Sess. Laws Act 223; 1951 Haw. Sess. Laws Act 110; 1957 Haw. Sess. Laws Act 143 and 231; 1961 Haw. Sess. Laws Act 175 and 181; 1962 Haw. Sess. Laws Act 20; 1963 Haw. Sess. Laws Act 127; 1964 Haw. Sess. Laws Act 62; 1965 Haw. Sess. Laws Act 222; 1969 Haw. Sess. Laws Act 110; 1975 Haw. Sess. Laws Act 178 and 199; 1982 Haw. Sess. Laws Act 165; 1984 Haw. Sess. Laws Act 108; 1987 Haw. Sess. Laws Act 117, 118, and 149; 1989 Haw. Sess. Laws Act 343; 1991 Haw. Sess. Laws Act 96; 1992 Haw. Sess. Laws Act 160; 1993 Haw. Sess. Laws Act 357; 1994 Haw. Sess. Laws Act 196 and 276; 1997 Haw. Sess. Laws Act 211; 1998 Haw. Sess. Laws Act 189; 2002 Haw. Sess. Laws Act 205; 2003 Haw. Sess. Laws Act 118 and 121; 2004 Haw. Sess. Laws Act 179; 2005 Haw. Sess. Laws Act 58; 2006

public interested in government pensions would have no reason to inquire further into the substance of Act 290 based solely on its vague "Government" subject-matter.

"Government" also does not express a single subject. *St. Louis Health Care Network*, 968 S.W.2d at 147 ("the title cannot be so broad as to render the single subject mandate meaningless."). "Government" is not a single subject because it means *everything* that can be legislated, which is how the State has used it, including amending criminal statutes, 2023 Haw. Sess. Laws Act 137; adjusting the rail surcharge, 2018 Haw. Sess. Laws Act 1 (2017 special session); inventorying state lands, 2013 Haw. Sess. Laws Act 110; amending civil actions for false claims, 2012 Haw. Sess. Laws Act 294; creating Native Hawaiian roll commission, 2011 Haw. Sess. Laws Act 195; creating elections

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Haw. Sess. Laws Act 309; 2007 Haw. Sess. Laws Act 215; 2011 Haw. Sess. Laws Act 163; 2012 Haw. Sess. Laws Act 153

- "Employees' Retirement System, 'Average Final Compensation,' Retirement Age, Constitution of Board of Trustees", 1947 Haw. Sess. Laws Act 85
- "Establish a Retirement System to Provide for the Retirement of Employees of the Territory of Hawaii and Teachers in the Public Schools", 1925 Haw. Sess. Laws Act 55
- "Implementation of the Hawaii Correctional Master Plan", 1973 Haw. Sess. Laws Act 179
- "Judiciary", 1999 Haw. Sess. Laws Act 65
- "Membership in the Employees' Retirement System", 1959 Haw. Sess. Laws Act 236
- "Pension and Retirement Systems", 2004 Haw. Sess. Laws Act 177
- "Permissive (Rather than Mandatory, as Formerly) Membership of Per Diem Workers in Employees' Retirement System if They Were so Employed Prior to January 1, 1952. Existing Members May Withdraw by October 1, 1953, and Receive Their Accumulated Contributions", 1953 Haw. Sess. Laws Act 37
- "Public Employees' Retirement System", 1997 Haw. Sess. Laws Act 374
- "Public Safety", 2022 Haw. Sess. Laws Act 278
- "Retirement of Certain County or City and County Employees Through the Employees' Retirement System", 1927 Haw. Sess. Laws Act 251; 1929 Haw. Sess. Laws Act 190
- "Retirement for Public Officers and Employees", 1967 Haw. Sess. Laws Act 130
- "Retirement for Sewer Workers", 1978 Haw. Sess. Laws Act 230
- "Retirement System", 1945 Haw. Sess. Laws Act 73
- "Trustees of the Office of Hawaiian Affairs", 2002 Haw. Sess. Laws Act 183.

commission, 2004 Haw. Sess. Laws Act 57; and facilitating county skateboard parks, 2003 Haw. Sess. Laws Act 144.[11] The framers did not intend to force the public to read bills about Native Hawaiian federal recognition to determine whether skateboard parks would be affected, or vice versa. A word that implicates both the City's rail surcharge and the State elections commission is not a single subject within the meaning of article III, section 14. *See, e.g.*, *Bd. of Trs. v. N.D. Legis. Assembly*, 996 N.W.2d 873, 886 (N.D. 2023) ("The topic of state government operations is a subject of 'excessive generality' that 'would violate the purpose and intent of the single subject rule'"); *Johnson*, 819 P.2d at 698 ("Such a blatant violation of the one-subject rule cannot be justified by petitioners' assertion that each provision relates to 'state government.'"); *Carmack*, 945 S.W.2d at 960 ("the words 'economic development' are too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its contents"); *Harbor v. Deukmejian*, 742 P.2d 1290, 1303 (Cal. 1987) ("the rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'"). As the Oregon Supreme Court explained:

> The relating clause for SB 1156, even thus limited, is still so broad and general that it logically connects all provisions in the Act only in the meaningless sense that it announces a connection among nearly all things in the legislative universe. The title does not, in the constitutional sense, express a unifying principle. The phrase "relating to the activities regulated by state government" is too broad and general to unify the disparate topics embraced by SB 1156.

*McIntire*, 909 P.2d at 857.

If "Relating to Government" is constitutional, then every bill can use that title, and the subject-in-title requirement becomes a meaningless formalism. The State may argue that such concerns are overblown because the Legislature rarely uses the title "Relating to Government". That misses the point. Constitutional limits do not depend

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[11] From a review of session laws since statehood, the League is aware of fifteen laws—other than Act 290—with the title "Relating to Government." The first such use was in 1998. 1998 Haw. Sess. Laws Act 311. In this action, the League only challenges the constitutionality of Act 290.

on legislative grace and restraint. The framers intended for titles to provide meaningful notice of a law's substance irrespective of legislator discretion.

Acceptance of "Government" as a single subject also threatens other constitutional limits on the legislative process. It would be authorize the State to enact laws that blatantly logroll different issues—contrary to the framers' intent. *E.g.*, 1999 Haw. Sess. Laws Act 160 ("Relating to Government") (reducing cost of government records; amending authority of Barbers Point redevelopment commission; creating special fund for Kapolei sports complex; creating performance partnership board in the Office of the Governor; amending funding and authority for use of funds for DLNR special fund; amending rights for security interests related to DLNR leases; amending provision for publication of notices; housekeeping amendments; creating individual development accounts as a special savings account program).

And such logrolling undermines the Governor's constitutional veto power. Article III, section 16 only permits the Governor to veto non-appropriation bills "as a whole." Thus, under the guise of a "Government" bill, the Legislature would be able to present a single bill with multiple issues that the Governor might otherwise veto if not also combined with issues that the Governor supports, veto-proofing the legislation.[12] *E.g.*, *Johnson*, 819 P.2d at 697-98. Contrary to "longstanding canons of statutory construction," the State's proposed interpretation of the subject-in-title requirement substantially disrupts the separation of powers in the Hawai`i Constitution. *LWV*, 150 Hawai`i at 193 & n.15, 499 P.3d at 393 & n.15 ("if one construction would make it possible for a branch of government substantially to enhance its power in relation to another, while the opposite construction would not have such an effect, the principle of checks and balances would be better served by a choice of the latter interpretation." (internal quotations omitted)).

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[12] In *Schwab*, the Hawai`i Supreme Court held that the veto provision does not require separate legislation for executive, legislative, and judicial budget appropriations. 58 Haw. at 36-37, 564 P.2d at 142. The legislative practice challenged in *Schwab*, unlike here, did not affect the Governor's power; the Governor could still exercise item veto over executive items even if included in legislation with non-executive appropriations.

S.B. 935's title is the most egregious possible violation of the subject-in-title requirement. "Government" is facially invalid because it provides no notice to the public about the proposal's content. Act 290 is a plain, clear, manifest and unmistakable violation of the subject-in-title requirement of article III, section 14.

### C. "Government" Is Misleading Because It Obscures the Subject of Legislation.

A broad title may mislead when it conceals the subject of legislation. *Dondero*, 21 Haw. at 25; *accord Jensen*, 40 Haw. at 608; 1A Sutherland § 18:9 at 55; 26 Am. & Eng. Encyc. of Law at 580-82 ("courts do not hesitate to declare void an act whose title is misleading in that it does not express the real subject of the act"); Manson, 10 Ind. L.J. at 162 & n.16 (providing bill entitled "promote public health"—but that only regulated production of pepper—as an example of a title "so general as to render the title deceptive because of the lack of sufficient provisions in the body of the act to accord with the general title"); *accord, e.g.*, *Liddell*, 29 P. at 253 ("there is no attempt to conceal the purpose or scope of the act"). "Government" conceals the subject of legislation.

The State argues that no level of specificity is required as to the statement of subject. Dkt. 17 at 10. The Texas Supreme Court addressed such a retort:

> Some times it is said that the Constitution does not undertake to prescribe the degree of particularity with which the subject of the bill is to be expressed in its title, but leaves that to the Legislature, and this is largely true. A title is not bad merely because of comprehensiveness, but it is bad if it is so indefinite as to express no subject, or if it does not express the particular subject of the Act. The title must not only express a subject, but must express that which is dealt with in the body of the Act. No authority but the plain language of the Constitution is needed for that proposition. But the authorities recognize, as they must, that a title may be so indefinite as not to express any subject of legislation sufficiently or that if may fail to express the subject of the body of the Act.

*Mo., Kan. & Tex. Ry. Co. v. State*, 113 S.W. 916, 917 (Tex. 1908) (citing Sutherland). As a concrete example, the Texas court endorsed a hypothetically broad title to adopt the common law of England, but explained that such a title would be problematic if the law in fact were far more limited in scope.

> We should have a different question if under the title just stated, an Act were passed merely to adopt the rule in Shelley's Case. The question then

> would be whether or not the title expressed the subject of the Act. While it is true that the Constitution does not define the degree of particularity with which the title of an Act shall express the subject, it is equally true that it does require the subject of the Act to be expressed in the title.

*Id.* at 918; *accord Jensen*, 40 Haw. at 608 (recognizing that a more comprehensive title—"elections"—may be acceptable, but that the title still must identify the significance of the legislation) ("It is satisfied if provisions of the Act are naturally connected and expressed in a general way in the title -- nor need all the provisions be referred to in the title -- *yet a sweeping change such as contended for, which would make radical changes in both the primary and election laws, should be included in the title to give proper notice to legislators and to the electorate at large*." (emphasis added)).

Historically, many states adopted the subject-in-title requirement after Georgia's 1795 Yazoo Act. That act provided a lengthy title that covered most of its subject, but it also provided "for other purposes."[13] Under the guise of those "other purposes," the Georgia legislature authorized the sale of millions of acres of land to private companies for pennies. *See, e.g.*, *White v. City of Mableton*, 911 S.E.2d 570, 572 n.4 (Ga. 2025). The subject-in-title requirement was intended to prevent legislative bodies from enacting laws with such deceptive titles. "The words 'other purposes' in a title have no force whatever under the title-body clause provision. They are placed out of consideration as worthless. Nothing which the act could not embrace without them can be brought in by their aid." Manson, 10 Ind. L.J. at 164; *accord* 1A Sutherland § 18:8 at 54 ("these words have little or no effect on a law's validity."). "Government" says nothing more than "other purposes" and is equally misleading. As the only subject, it is "worthless."

The State erroneously asks this Court to treat the case as a dispute over semantics. The cited cases concern quibbling over the meaning of words. Dkt. 17 at 11-12 & n.4. In *Schwab*, the plaintiffs contested whether a law "Making Appropriations for

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[13] Manson, 10 Ind. L.J. at 164 & n.25 ("Title of the Yazoo Act: "An act supplementary to an Act, entitled 'An act for appropriating a part of the unlocated territory of this State for the payment of the State troops, *and for other purposes therein mentioned*,' declaring the right of this State to the unappropriated territory thereof for the protection and support of the frontiers of this State, *and for other purposes*.").

Salaries and Other Adjustments, Including Cost Items of Collective Bargaining Agreements Covering Public Employees and Officers" provided notice that salaries unrelated to collective bargaining would be adjusted. 58 Haw. at 32-35, 564 P.2d at 140-41 ("The term 'includes' is ordinarily a term of enlargement, not of limitation"). In *Montclair v. Ramsdell*, the plaintiffs challenged whether creating the township of Montclair included all the powers afforded to other townships. 107 U.S. 147, 155 (1882). In *Johnson v. Harrison*, the plaintiff argued that "to establish a Probate Code" did not cover issues of wills and title to property by descent. 50 N.W. 923, 924-25 (Minn. 1891). In *Petro v. Platkin*, the plaintiffs contested whether the "Medical Aid in Dying for the Terminally Ill Act" provided notice that euthanasia would be permitted. 277 A.3d 480, 497 (N.J. Super. Ct. App. Div. 2022).[14] The League is not wordsmithing the State's title. *See* 1A Sutherland § 18:3 at 38 (liberal interpretation of titles is to "preserve legitimate statutes against over-nice distinctions, while keeping legislation free of the abuses at which the constitutional provision is directed").

Lastly, the State quotes a Missouri Supreme Court case: "the rule is that title to a bill cannot be underinclusive." *Nat'l Solid Waste Mgmt. Ass'n v. Dir. of Dep't of Nat. Res.*, 964 S.W.2d 818, 821 (Mo. 1998). There, it was true because, as the court explained, the title at issue was restrictive, not general. *Id.* at 820-21 ("where the title of an act descends to particulars and details, the act must conform to the title as thus limited by the particulars and details.") (act titled specifically for solid waste management could not also provide for hazardous waste management). But, more importantly, the State ignores the Missouri Supreme Court's companion case that struck down a statute on subject-in-title grounds for being "too broad and amorphous." *St. Louis Health Care Network*, 968 S.W.2d at 147. As to the act at issue, the supreme court observed:

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[14] The State also cites a case about ballot initiatives. The relevance of that case here is unclear, but the Nebraska Supreme Court rejected the proposal, observing "we reject the Secretary's argument that the subject matter of L.R. 41CA is broad enough to encompass any topic connected to parimutuel wagering related to horseracing. Under this reasoning, the Legislature could propose in a single amendment to change any law dealing with a subject as broad as gambling, or the organization of government or schools." *State ex rel. Loontjer v. Gale*, 853 N.W.2d 494, 514 (Neb. 2014).

> The phrase *incorporated and non-incorporated entities*, therefore, could refer to anything; it is difficult to imagine a broader phrase that could be employed in the title of legislation.
>
> . . . It is without cavil that when alternate readings of a statute exist, this Court must adopt the reading that favors the constitutionality of the statute. Even as limited by the definition of *entities* proffered by the state, however, the phrase *incorporated and non-incorporated entities* remains excessively broad. By referring to every type of organization within the definition of section 355.066(14), the title of HSSB 768 could describe any legislation that affects, in any way, businesses, charities, civic organizations, governments, and government agencies. The title of HSSB 768 could define most, if not all, legislation passed by the General Assembly. Even employing the limited definition proffered by the state, therefore, the phrase *incorporated and non-incorporated entities* is far too broad to provide fair notice to the legislators and public of the subject of pending legislation.

*Id.* at 147-48. Although the Missouri Supreme Court could not imagine a broader title for legislation, the State has. The State does not cite a single case from any jurisdiction that endorses a title of "Government".

"Government" is misleading as a subject because, as asked in *Dondero*, it conceals or obscures the purpose or effect of the legislation. Considering the far more limited focus on pensions, "Government" fails to express the actual subject of legislation as required by the subject-in-title requirement. Act 290 is a plain, clear, manifest, and unmistakable violation of the subject-in-title requirement of article III, section 14.

## III. S.B. 935—AS INTRODUCED—WAS NOT A BILL.

The Hawai`i Constitution requires *bills* to be introduced by a deadline to provide notice of what will be considered during the session. Documents with no substantive content provide no notice and simply are not bills under the Hawai`i Constitution. Thus, Act 290 violated the constitutional notice requirements because S.B. 935—as introduced before the deadline—was not a bill.

### A. The Purpose of the Bill Introduction Deadline

Before the 1978 Constitutional Convention, the Legislative Reference Bureau (LRB) provided delegates with information about limiting the introduction of bills. LRB, Hawaii Constitutional Convention Studies 1978 Article III: The Legislature

(Volume I), at 65-67 (1978). The LRB provided a survey of all states and U.S. territories regarding bill introduction deadlines and exceptions. *Id.* at 125-26. The LRB study noted that Hawai`i ranked high in the number of bills introduced each session. *Id.* at 66.

The 1978 delegates then created the bill introduction deadline to limit the introduction of bills "not necessarily in number but in time." 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto). The deadline provided a timeframe to ensure that the public could "review every bill that will ever be introduced in that legislative session.'" *LWV*, 150 Hawai`i at 202, 499 P.3d at 402 (quoting with added emphasis Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603). It afforded "the public more time to familiarize itself with proposed legislation, conduct research, and 'prepare more detailed and thoughtful testimony.'" *Id.* (quoting Stand. Comm. Rep. No. 417-84, in 1984 House Journal at 1031).

The deadline is one of several "interdependent constitutional limitations, which are meant to ensure public participation in the legislative process." *Id.* at 202-03, 499 P.3d at 402-03. These limitations are not viewed in isolation. *Id.* at 202 n.32, 499 P.3d at 402 n.32 ("We disagree that the subject-in-title requirement alone is sufficient to ensure that new legislation is not introduced after the bill introduction deadline in order to allow the public and legislators to use the mid-session recess to read all of the bills that will be introduced in the legislative session."). One provision cannot be read in a manner that renders other provisions meaningless. *Id.* at 202-03, 499 P.3d at 402-03.

Contrary to the State's motion, the bill introduction deadline is not mere window dressing. *See* Dkt. 17 at 13-14. It is a deadline of substantive importance. The State's purported "plain language" argument ignores the intent of the Hawai`i Constitution. *LWV*, 150 Hawai`i at 198-99, 499 P.3d at 398-99. This case concerns whether "all *bills* to be considered" were available to the public on the deadline. S.B. 935 was not.

**B. The Bill Introduction Deadline Is Not a Political Question.**

The Hawai`i Supreme Court "has consistently rejected the argument that alleged violations of constitutional mandates concerning the legislative processes are nonjusticiable political questions." *Id.* at 192, 499 P.3d at 392. Nevertheless, the State

again claims that the Judiciary has no authority to interpret the Hawai`i Constitution as it concerns limits on the legislative process. Dkt. 17 at 14-22.

1. Textually Demonstrable Constitutional Commitment

"Put simply, the Legislature's rules of procedure do not trump constitutional provisions. . . . Accepting the Legislature's contrary proposition would violate the separation of powers doctrine, effectively leaving the Legislature's power unchecked." *LWV*, 150 Hawai`i at 192-93, 499 P.3d 392-93. The State argues that only the Legislature may decide what is a "bill" for purposes of the Hawai`i Constitution. Dkt. 15-17.

None of the cases cited by the State hold that the Legislature has authority over constitutional issues absent express commitment in the Hawai`i Constitution. *Schwab* addressed several challenges premised—as here—on constitutional provisions. 58 Haw. at 30-39, 564 P.2d at 139-44. The State's quote concerns a separate effort to enforce *legislative rules* that required public committee meetings.[15] *See* Defs.-Appellees' Answering Br., *Schwab v. Ariyoshi*, No. 6179, at 1-2 (Haw.). Without a constitutional provision, the Court concluded that the "power of the legislature should not be interfered with unless it is exercised in a manner which plainly conflicts with some higher law." *Schwab*, 58 Haw. at 39, 564 P.2d at 144. In *Hussey*, the challenge concerned a House representative's qualifications for office when the Hawai`i Constitution expressly provided that "[e]ach house shall be the judge of the . . . qualifications of its own members." *Hussey v. Say*, 139 Hawai`i 181, 188, 384 P.3d 1282, 1289 (2016).

Although article III, section 12 commits to the Legislature the authority to select a date for the bill introduction deadline (within intended limits),[16] the dispute here does not concern the date. The dispute is whether the State complied with the deadline once selected. Compliance, unlike in *Hussey*, is not textually committed to the Legislature.

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[15] After *Schwab*, the 1978 Constitutional Convention required public meetings.

[16] It is not relevant to this case, but the framers expressly intended limits on Legislature's authority to set the date for the bill introduction deadline. *LWV*, 150 Hawai`i at 202-03, 499 P.3d at 402-03. The State cannot ignore that intent with a purported plain language argument. *See* Dkt. 17 at 19 n.10.

2. Judicially Discoverable and Manageable Standards

Contrary to the State's argument now, the Hawai`i Supreme Court already addressed the constitutional minimum for a "bill". In *LWV*, the Court defined and analyzed whether the legislation in that case was a "bill" for constitutional purposes. 150 Hawai`i at 200, 499 P.3d at 400 ("A bill consists of the number, title, and body. Because the plain language of section 15 states that a bill must be read three times on separate days, it follows that if the body of the bill is so changed as to constitute a different bill, then it is no longer the same bill and the three readings begin anew."). There is no basis to conclude that "bill" has a different constitutional meaning in sections 12 and 15 of article III.

3. Nonjudicial Policy Determination

This case only concerns whether S.B. 935 had substance before the bill introduction deadline. The judicial determinations in *LWV*—and over a century of constitutional jurisprudence—go further. For example, in *LWV*, the Court not only identified the bill's body, but also examined the nature and content of that substance and compared that content to the body of the law as enacted. 150 Hawai`i at 206, 499 P.3d at 406. There is no legislative policy determination in identifying whether S.B. 935 had substance (the first step in the *LWV* inquiry).

The State offers purported examples that contradict the facts in this case. This case does not concern an incomplete proposal; there was no proposal. *Compare* S.B. 935 ("The Hawaii Revised Statutes is amended to [effectuate Government]."), *with* Dkt. 17 at 20-21 ("unforeseen circumstances that make it difficult, if not impossible, to draft fully formed and detailed proposals") (referencing bills with blank appropriation amounts or effective dates). There was no emergency; Act 290 concerns pensions for individuals to be hired six years later. 2025 Haw. Sess. Laws Act 290 ("first employed as judges before July 1, 2031"). The Hawai`i Supreme Court already rejected the State's generic arguments about legislative flexibility and efficiency. *LWV*, 150 Hawai`i at 205 & n.35, 499 P.3d at 405 & n.35 (holding that although "the Legislature values its ability to be flexible and amend bills quickly to enact legislation," courts must construe and apply

the Hawai`i Constitution as the framers intended and that the Legislature always has the option of special session for emergencies).

4. Lack of Respect for the Legislature

A constitutional minimum has been adopted by the people of Hawai`i as a limit on legislative authority that all branches of state government are tasked with enforcing, including the Judiciary. Enforcing article III, section 12 does not disrespect the Legislature; it respects the Hawai`i Constitution, and the public's constitutional right to participate meaningfully in the legislative process.[17]

**C. S.B. 935 Was Not a Bill for Purposes of the Bill Introduction Deadline.**

The bill introduction deadline does not serve its constitutional function if the introduced "bills" have no content. Citizens cannot "review every bill that will ever be introduced" and prepare "detailed and thoughtful testimony" if the body of the bill says nothing substantively about its purpose. Analogous to the issues addressed in *LWV*, it would be futile for the public to "read every bill that would be introduced in the session in both houses and to prepare to offer testimony if the Legislature may then gut and replace the bill with an entirely new one." *Id.* at 203, 499 P.3d at 403. Such practices make "the bill introduction deadline meaningless and reduce [it] to empty formalism." *Id.*

A document without substance is not a "bill" under the Hawai`i Constitution. As the Hawai`i Supreme Court explained, a bill—for constitutional purposes—"consists of the number, title, and body." *Id.* at 200, 499 P.3d at 400. The body is the "substance

[17] Contrary to the State's out-of-context quotes, neither Arizona nor Pennsylvania consider enforcing constitutional limits on the legislative process as disrespect for the legislative branch. *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 208 P.3d 676, 685 (Ariz. 2009) ("Our review, then, must include an inquiry into whether the Commission followed the mandated procedure."); *compare Pa. Senate Intergovernmental Operations Comm. v. Pa. Dep't of State*, 290 A.3d 321, 328 (Pa. Commw. Ct. 2023) (challenge based on compliance with senate rule and Mason's Manual), *with Consumer Party v. Commw.*, 507 A.2d 323, 334 (Pa. 1986) ("where the facts are agreed upon and the question presented is whether or not a violation of a mandatory constitutional provision has occurred, it is not only appropriate to provide judicial intervention, and if warranted a judicial remedy, we are mandated to do no less.").

of the bill." *Id.* at 194, 499 P.3d at 394. Thus, a proposal with no substance at all is not a bill. *See id.*; *accord D.M.C. Corp. v. Shriver*, 461 S.W.2d 389, 392 (Tenn. 1970) ("a 'bill' introduced in the Legislature containing only a title is not a 'bill' within the meaning of this word as used in the [Tennessee Constitution]"), *cited in LWV*, 150 Hawai`i at 201 n.27, 499 P.3d at 401 n.27 ("the challenged bill was invalid because on the first two readings, it contained no substance and consisted of only a title and number.").

As introduced before the bill introduction deadline, S.B. 935 had no substantive content. As clarified in *LWV*, a bill is not simply "a title and an enacting clause" as the State argues. Dkt. 17 at 23. And it does not even meet the State's definition of a bill as a "draft law." *Id.* The introduced S.B. 935 proposed nothing; if enacted, it would do nothing—express nothing about the law of Hawai`i. S.B. 935 ("The Hawaii Revised Statutes is amended to [effectuate Government].")

If the State is correct, every bill introduced could look identical to S.B. 935 without violating the bill introduction deadline. No one reviewing bills on the deadline would know anything about what the Legislature proposed to do, what interests would be impacted, what issues to research, or what testimony to submit. The framers intended more, and the Hawai`i Constitution cannot be reduced such an absurd "empty formalism." *LWV*, 150 Hawai`i at 202-03 & n.32, 499 P.3d at 402-03 & n.32.

S.B. 935 was not a bill before the bill introduction deadline.

**CONCLUSION**

The League respectfully requests that the Court deny the State's motion.

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