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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HAWAII, Plaintiff, v. STATE OF HAWAI`I, Defendant.	CIVIL NO. 1CCV-25-1456 JJK (Declaratory Judgment) PLAINTIFF'S SUPPLEMENTAL MEMORANDUM

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM

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Plaintiff League of Women Voters of Hawaii (League) submits supplemental briefing responsive to the Court's February 6, 2026 Minute Order, Dkt. 47, with specific questions regarding the bill introduction deadline provision in article III, section 12 of the Hawai`i Constitution. The League summarizes the constitutional backdrop for the questions posed before providing direct answers to the Court's questions at the end.

I. PRINCIPLES OF CONSTITUTIONAL INTERPRETATION

When interpreting the Hawai`i Constitution, courts consider the language used, the connection to other constitutional provisions, the circumstances for its adoption, and the history that preceded it. *League of Women Voters of Honolulu v. State* [*LWV*], 150 Hawai`i 182, 189, 499 P.3d 382, 389 (2021).[1] "[T]he fundamental principle in interpreting a constitutional provision is to give effect to [the intent of the framers and the people adopting it]." *Id.*; *accord Hilo Bay Marina, LLC v. State*, 156 Hawai`i 478, 496, 575 P.3d 568, 586 (2025) ("a court may look to the object sought to be accomplished and the evils sought to be remedied by the amendment, along with the history of the times and the state of being when the constitutional provision was adopted."); *see* Dkt. 41 at 7-8.[2]

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[1] Justice Paula Nakayama, who authored *LWV*, was the longest serving Supreme Court justice in Hawai`i history (30 years). She regularly cautioned judicial restraint. *E.g.*, *In re Kanahele*, 152 Hawai`i 501, 520, 526 P.3d 478, 497 (2023) (Nakayama, J.) ("While the dissent appears to question the efficacy of the statutory scheme to protect conservation district land, it is the legislature's role, not ours, to amend existing law."); *Sierra Club v. Dep't of Transp.*, 120 Hawai`i 181, 235-36, 202 P.3d 1226, 1280-81 (2009) (Nakayama, J., dissenting) (protesting the court's expansion of the private attorney general doctrine to award attorney's fees without express waiver of sovereign immunity); *State v. Garcia*, 96 Hawai`i 200, 215, 29 P.3d 919, 934 (2001) (Nakayama, J., dissenting) ("this court's supervisory powers should only be exercised in exceptional circumstances."); *Ross v. Stouffer Hotel Co.*, 76 Hawai`i 454, 459, 879 P.2d 1037, 1042 (1994) (Nakayama, J.) ("regardless of whether we believe that our construction of the statute amounts to good or bad public policy, we are constrained to reaffirm the holding of *Ross I*. To do otherwise -- that is, to adopt the dissent's construction of the statute -- would amount to nothing more than judicial legislation."); *see also Asato v. Procurement Policy Bd.*, 132 Hawai`i 333, 368, 322 P.3d 228, 263 (2014) (Recktenwald, C.J., dissenting) (joined by Justice Nakayama, arguing for stricter standing requirements for regulatory challenges). The majority decision in *LWV* was faithful adherence to sound constitutional principles, not judicial activism.

[2] Pinpoint citations to "Dkt." reference the corresponding PDF page.

In construing standards for constitutional provisions, the Hawai`i Supreme Court has considered, for example:

- Proceedings of the relevant constitutional convention, *e.g.*, *SHOPO v. City & County of Honolulu*, 149 Hawai`i 492, 511, 494 P.3d 1225, 1244 (2021) (constitutional privacy);[3]
- Treatises, restatements, and other authority regarding existing law at the time of the constitutional amendment, *e.g.*, *Hilo Bay Marina*, 156 Hawai`i at 496-98, 575 P.3d at 586-88 (establishment clause); *LWV*, 150 Hawai`i at 195-96, 499 P.3d at 395-96 (legislative requirement for three readings); *SHOPO v. Soc'y of Prof'l Journalists*, 83 Hawai`i 378, 398, 927 P.2d 386, 406 (1996) (constitutional privacy);
- Precedent interpreting similar constitutional provisions, *e.g.*, *LWV*, 150 Hawai`i at 199-200, 499 P.3d at 399-400; *Ching v. Case*, 145 Hawai`i 148, 175-76, 449 P.3d 1146, 1173-74 (2019) (public trust doctrine);
- Similar principles in the common law, *e.g.*, *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai`i 376, 403-04, 363 P.3d 224, 251-52 (2015) (public trust doctrine); and
- Interpretations of similar constitutional provisions in other jurisdictions, *e.g.*, *Dannenberg v. State*, 139 Hawai`i 39, 52-53, 383 P.3d 1177, 1190-91 (2016) (diminishment of retiree benefits).

"When interpreting a constitutional provision, every word is presumed to have meaning." *Kahewa Wind Power, LLC v. County of Maui*, 146 Hawai`i 76, 90, 456 P.3d 149, 163 (2020); *accord Blair v. Harris*, 98 Hawai`i 176, 179, 45 P.3d 798, 801 (2002) ("It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such construction is inadmissible, unless the words require it." (quoting

[3] In connection with the 1978 Constitutional Convention, the supreme court also has considered the materials prepared for the delegates by the Legislative Reference Bureau (LRB). *County of Hawai`i v. Ala Loop Homeowners*, 123 Hawai`i 391, 414 n.32, 235 P.3d 1103, 1126 n.32 (2010); *accord* Resolution 45 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 553 (expressing the Constitutional Convention's appreciation to the LRB because its "Hawaii Constitutional Convention Studies 1978 served as an excellent reference source of material and information").

Marbury v. Madison)). Courts will not interpret the constitution to "produce an absurd result, inconsistent with the purposes and policies behind the constitutional amendment." *Schwab v. Ariyoshi*, 58 Haw. 25, 37, 564 P.2d 135, 142 (1977).

Constitutional provisions also must be construed as "self-executing to the fullest extent that their respective natures permit." Haw. Const. art. XVI, § 16; Stand. Comm. Rep. No. 68 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 223 ("This section is intended, wherever possible, to make the various provisions of the Constitution operative without the aid of supplemental or enabling legislation."). Limited constitutional recognition of legislative discretion (*e.g.*, to set a date) cannot be construed as giving the Legislature absolute control over constitutional rights. *E.g.*, *SHOPO v. City & County of Honolulu*, 149 Hawai`i at 509-10, 494 P.3d at 1242-43 ("That the legislature is charged with 'implement[ing]' the privacy protection, then, means that the legislature must take 'affirmative steps' to 'carry out' the constitution's protections; this responsibility does not equate to authority to reformulate what it is, exactly, the constitution protects.").

II. BEFORE THE 1978 CONSTITUTIONAL CONVENTION

The 1978 Constitutional Convention did not create the bill introduction deadline from whole cloth. Several limitations on the legislative process for enacting laws already existed in the Hawai`i Constitution. And other states had well-established constitutional restrictions on the timing for introduction of bills in the Legislature.

A. Restrictions on the Legislative Process

For over a hundred years before the 1978 Constitutional Convention, the Hawai`i Constitution restricted the nature of bills that could be introduced in the Legislature. The 1852 Constitution of the Kingdom of Hawai`i provided that bills may concern only one subject and that the subject must be expressed in the bill's title. Haw. Const. art. 102 (Kingdom 1852). The Hawai`i Supreme Court enforced that provision through—among other standards—a germaneness test. *Castle v. Atkinson*, 16 Haw. 769, 780 (Terr. 1905) ("We find nothing in the Act which is not expressed in its title in the sense of being properly incident germane or cognate thereto.") ("Creating Counties Within the

Territory of Hawaii and Providing for the Government Thereof," 1905 Haw. Sess. Laws Act 39). The court elaborated on the test in *Territory v. Kua*. 22 Haw. 307, 313 (1914).

And since 1894, the Hawai`i Constitution has required that any law be read on three days in each chamber of the Legislature before enactment. Haw. Const. art. 64 (Rep. 1894). For decades before the 1978 Constitutional Convention, other jurisdictions used a germaneness test to determine compliance with the three readings requirement. *E.g.*, 1 Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and Statutory Construction § 10:4 at 547 (7th ed. 2010) ("[I]t is generally agreed that germane amendments to the text of a bill made at the stage of second or third reading are valid even though the amended version is not read three times on three days."); 1 Thomas Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union [Cooley] at 289 (Walter Carrington ed., 8th ed. 1927) ("Where a bill has been read twice and referred to a committee who have reported a substitute, which is so germane to the original bill as to be a proper substitute, such substitute need not be read three times; a single reading will suffice."); Earl T. Crawford, The Construction of Statutes [Crawford] § 41 at 65 (1940) ("And in the case of substituted bills, so long as they are germane to, or concerned with the same subject matter or embrace the same general principles of the original, a re-reading is not necessary." (footnotes omitted)); *accord Giebelhausen v. Daley*, 95 N.E.2d 84, 94 (Ill. 1950) ("In order to come within the rule that an amendment need not be read three times in each House, it must be germane to the general subject of the bill as originally introduced."). In 2021, the Hawai`i Supreme Court applied a constitutional germaneness standard for three readings under the Hawai`i Constitution. *LWV*, 150 Hawai`i at 199-205, 499 P.3d at 399-405.

B. History of Bill Introduction Deadlines

As a result of the 1968 Constitutional Convention, Hawai`i no longer had separate sessions for budget and general legislation in alternating years. *Compare* Haw. Const. art. III, § 11 (1950), *with* Haw. Const. art. III, § 11 (1968). With that change, bills from year one carried over to the second year of the biennium session. *E.g.*, Haw. Const. art. III, § 16 (1968). The number of bills under consideration ballooned in the

years leading up the 1978 Constitutional Convention. LRB, Hawaii Constitutional Convention Studies 1978 Article III: The Legislature (Volume I) [LRB Study], at 111 (1978). Hawai`i ranked 12th in the United States for the number of bills introduced. *Id.* at 66. The Legislature had an existing practice to restrict the introduction of bills after the 20th session day. Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 [Stand. Comm. Rep. No. 46] at 603.

Other states had procedures that constrained bill introduction. LRB Study at 65, 124-26. A handful of states limited the number of bills that each legislator could introduce per session, by legislative rule. *Id.* at 65. Most states instead had limits on the timing of when bills could be introduced and exceptions to those time limits. *Id.* at 125-26. In the context of limiting the number of bills, LRB explained that such limits could be imposed by "constitutional amendment, statutes, or by legislative rule." *Id.* at 66. "The most effective and binding procedure would be the constitutional amendment, but it may be inflexible in application." *Id.*

The germaneness standard for *constitutional* limits on the time for bill introduction was established long before the 1978 Constitutional Convention.

> If the constitution prohibits the introduction of bills after a certain period in a session, the regulation cannot be evaded by substituting new measures by amendment of pending bills. But whatever is within the proper scope of amendment is admissible after that period, and this embraces whatever is germane to the purpose which the bill had in view.

J.G. Sutherland, Statutes and Statutory Construction § 26 at 29-30 (1891);[4] *accord* 82 C.J.S. Statutes § 28 at 48-49 (2009); 1 Cooley at 286-87 & n.2; Crawford § 37 at 59-60; *see* Dkt. 43 at 6-8.

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[4] The Sutherland treatise has gone through several editions in the last 135 years, but as available to the 1978 Constitutional Convention, it consistently identified the germaneness test as the standard for constitutional bill introduction limits. 1 J.G. Sutherland, Statutes and Statutory Construction § 66 at 112 (2d ed. 1904); 1 J.G. Sutherland, Statutes and Statutory Construction § 805 at 137-38 (3d ed. 1943); 1 Norman J. Singer, Statutes and Statutory Construction § 9.05 at 448 (4th ed. 1985); *see also* 1 Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and Statutory Construction § 9:5 at 535 (7th ed. 2010) (current edition).

III. THE 1978 CONSTITUTIONAL CONVENTION

The 1978 Constitutional Convention delegates chose to modify the legislative process. The delegates proposed a series of additional interdependent constitutional limitations on how laws are enacted in Hawai`i that built on the existing restrictions (single subject, subject-in-title, and three readings). Stand. Comm. Rep. No. 46 at 603; *accord LWV*, 150 Hawai`i at 202-03, 499 P.3d 402-03 (mandates "rely and build on each other to ensure a legislative process as the framers intended"). Those proposals led to the bill introduction deadline, mid-session recess, public committee hearing requirement, and increased final printing mandate to 48 hours. Stand. Comm. Rep. No. 46 at 603; *accord* Haw. Const. art. III, §§ 10, 12, 15.

In connection with these changes, the framers expressed concerns about the public's ability to follow legislation and participate in the legislative process when there are so many bills being introduced. Stand. Comm. Rep. No. 46 at 603. The mid-session recess would (1) "provide both legislators and the public an opportunity to review during the recess all bills that have been introduced in both houses"; (2) allow "legislators and constituents to communicate on matters before the legislature at about the midpoint of the session"; and (3) "afford the public an opportunity to become acquainted with and follow the bills through the legislature more intelligently." *Id.*; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto) ("This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input.").

The bill introduction deadline would "allow the public the use of the mandatory 5-day recess to review every bill that will ever be introduced in that legislative session." Stand. Comm. Rep. No. 46 at 603. "This basically provides for a *limitation*, not necessarily in number but in time, of the bills to be introduced. In conjunction with the recess, this amendment should further aid the public in its attempts to actively follow and participate in the legislative process." 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto) (emphasis added); *accord, e.g.*, 1 Cooley at 286-87 ("[T]he purpose of these

clauses is to prevent hasty and improvident legislation, and to compel, so far as any previous law can accomplish that result, the careful examination of proposed laws, or at least the affording of opportunity for that purpose; which will not always be done when bills may be introduced up to the very hour of adjournment"); Crawford § 37 at 59-60.

And as the framers explained for the final printing mandate: "In view of the increasing numbers of bills being introduced in the legislature and the public concern expressed on the difficulty of following the many bills through the legislature in the closing days of the session, [enlarging the time] would help both legislator and constituent to avoid hasty decisions and surprises regarding the bill." Stand. Comm. Rep. No. 46 at 603. "It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills." 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto).

The Constitutional Convention delegates understood that adding these requirements to the Constitution would provide real protection for the public from potential abuses as compared to current practices that relied solely on legislative rules. As the framers explained in connection with the public committee hearing requirement: "While your Committee is informed that such is the current practice of both houses of the state legislature by their respective rules, it finds that the public's right to know what their legislators are deciding is deserving of constitutional protection." Stand. Comm. Rep. No. 46 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto) ("It was felt that this right should be constitutionally protected rather than left to the discretion of the house or the senate."). Just a year prior to Constitutional Convention, the Hawai`i Supreme Court had held that legislative rules did not create enforceable obligations. *Schwab v. Ariyoshi*, 58 Haw. 25, 39, 564 P.2d 135, 144 (1977); *accord, e.g.*, 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 317 (remarks of Delegate Campbell) ("Rules, although they do exist in each house, may be changed. Rules may not be changed if they are established in a Constitution. Furthermore, the rules as they exist

do not have any sanctions or penalties for violations and therefore can be disobeyed without any sanctions being imposed.").

The framers also knew that they could create exceptions to these constitutional limitations, but chose not to do so. *E.g.*, 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 863 (summarizing Proposal 146, "[p]rohibits introduction or consideration of bill in regular session after 10th day, unless 3/4 of members of that house consent"), 905 (summarizing Proposal 412, "[l]imits bill introduction to the 20-day session. Provides that no more than 500 bills shall be identified . . ., subject to waiver of requirement by 2/3 vote").

IV. RESPONSE TO QUESTIONS

A. Applying the Germaneness Standard at Bill Introduction

> *Provide any applicable authority addressing whether the germaneness standard applies at the time of bill introduction under the Hawai`i Constitution. If you are unable to find any authority, provide supporting authority for why this Court should or should not extend the germaneness standard to the time of bill introduction. If a party contends that the germaneness standard should apply at bill introduction, would all short form bills fail the standard?*[5] *Please also address whether the germaneness standard articulated by the Hawai'i Supreme Court in League of Women Voters under Article III, Section 15 should be construed as limited to amendments made after introduction and first reading under Article III, Section 15, or whether its rationale supports some role at the bill introduction stage under Article III, Section 12. If a party contends that germaneness cannot apply at introduction, it should explain why the purposes identified in League (continuity of subject, public notice, and transparency) do not logically extend to the period between introduction and final passage.*

Neither the Hawai`i Constitution nor the Constitutional Conventions reference the germaneness standard in connection with the bill introduction deadline or any other constitutional limitation on the legislative process. Nevertheless, germaneness is the standard that the Hawai`i Supreme Court has applied to such restrictions for over a century.

"There is a long tradition in Hawai`i law of applying a germaneness standard to constitutional requirements for legislating." *LWV*, 150 Hawai`i at 199, 499 P.3d at 399.

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[5] The response to this question is in the next section.

In extending the germaneness standard to three readings, the Hawai`i Supreme Court examined several factors—all of which support extending the standard to the bill introduction deadline. *Id.* at 200-04, 499 P.3d at 400-04.

First, a germaneness standard gives effect to the plain language. The bill introduction deadline is for "all bills to be considered in a regular session." Haw. Const. art. III, § 12. "[I]t 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." *LWV*, 150 Hawai`i at 200, 499 P.3d at 400. If the framers wanted to leave the bill introduction deadline to legislative discretion, they would have simply left it out of the constitution or allowed existing practices to continue or incorporated exceptions for the Legislature to override the deadline. Stand. Comm. Rep. No. 46 at 603; 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 863, 905. Without a germaneness standard, the deadline has no meaningful effect—contrary to the framers' intent that the deadline serve as a "limitation" on the Legislature. 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto); *accord, e.g.*, *Blair*, 98 Hawai`i at 179, 45 P.3d at 801.

Second, the germaneness standard is an established and enforceable standard. *LWV*, 150 Hawai`i at 200, 499 P.3d at 400. Hawai`i courts (and numerous other jurisdictions) have applied the standard for 120 years. *E.g.*, *Castle*, 16 Haw. at 780.

Third, the purpose of the bill introduction deadline tracks other constitutional requirements that use a germaneness test (single subject, subject-in-title, and three readings). The bill introduction deadline focuses on "providing notice to legislators and the public." *LWV*, 150 Hawai`i at 201-03, 499 P.3d at 401-03; Stand. Comm. Rep. No. 46 at 603; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto); *accord, e.g.*, 1 Cooley at 286-87 (prevent hasty legislation and provide opportunity for careful examination of legislation); Crawford § 37 at 59-60. And as reflected in the treatises on this subject, other jurisdictions with constitutional bill introduction deadlines adopted germaneness as the relevant standard. *E.g.*, *State ex rel. Martin v. Ryan*, 139 N.W. 235, 238 (Neb. 1912);

Hale v. McGettigan, 45 P. 1049, 1051 (Cal. 1896); *Atty. Gen. v. Detroit & S. Plank-Road Co.*, 56 N.W. 943, 944 (Mich. 1893).

Fourth, applying a germaneness standard contributes to the interdependent restrictions that the framers intended for the legislative process "to allow the public to identify bills of interest, familiarize themselves with a bill's contents during the mid-session recess, provide meaningful input, and monitor their progress through enactment." *LWV*, 150 Hawai`i at 202-03, 499 P.3d at 402-03. Bill introduction is the starting point for that process. Three readings alone does not preserve the framers' intent because the Legislature could wait until the last week of session to hold readings on a gut-and-replace bill that had no relation to any bill previously considered.[6]

Lastly, applying the germaneness standard to the bill introduction deadline aligns with the Legislature's own parliamentary procedures. The Legislature uses Mason's Manual of Legislative Procedure. House Rule 61 (citing 2020 edition), *available at* https://www.capitol.hawaii.gov/docs/HouseRules.pdf; Senate Rule 88 (citing 2010 edition), *available at* https://www.capitol.hawaii.gov/docs/SenateRules.pdf. Mason's Manual provides: "When a bill has been introduced into the legislature within the time limit prescribed by the constitution for the introduction of bills, amendments that are germane to the purpose of the bill may be made after that limit has expired, and bills may be consolidated after that date." Nat'l Conf. of State Legislatures, Mason's Manual of Legislative Procedure § 725[8] at 535-36 (2020); Nat'l Conf. of State Legislatures, Mason's Manual of Legislative Procedure § 725[8] at 500-01 (2010).[7]

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[6] Notably, the bill introduction deadline alone also is not sufficient to serve the framers' intent. For example, if the bill in *LWV* had reverted back to a recidivism reporting bill after conference committee, it would have satisfied the bill introduction deadline, but only have two readings in the House because the other readings concerned a hurricane shelter bill. All the interdependent constitutional limitations contribute to the framers' intended process and must be met on their own terms.

[7] Mason's Manual stated in substance the same germaneness standard for constitutional bill introduction deadlines before the 1978 Constitutional Convention. Paul Mason, Manual of Legislative Procedure § 726[8] at 512 (1979); Paul Mason, Mason's Manual of Legislative Procedure § 726[8] at 513 (1953).

For all these reasons, the same analysis in *LWV* for three readings extends to using the germaneness standard for the bill introduction deadline.

B. Short Form Bills and Germaneness

> *Can germaneness supply a judicially manageable limiting principle for distinguishing: (a) a permissible short-form bill that, despite its brevity, still discloses a subject to which subsequent, additional detail can be germane, from (b) an impermissible shell so empty that no meaningful subject is disclosed and germaneness cannot operate? If so, what minimum level of subject-matter disclosure is necessary at introduction for germaneness to function (e.g., identification of a chapter or topic; identification of a class of affected actors)?*

Yes, germaneness provides a judicially manageable standard for distinguishing valid short form bills from those that are unconstitutional. Under the germaneness standard, not all short form bills automatically fail once the bill introduction deadline passes. As reflected in this record, short form bills are defined by their title. *E.g.*, Dkt. 13 at 24 (Pl. Ex. 3, S.B. 935 as introduced) (amending the HRS to effectuate the bill's title). A more descriptive title thus may provide sufficient basis to compare the introduced bill to later amendments. For example, a short form bill entitled "Relating to Import Duties on Wines" could be reviewed for germaneness to later amendments even though it contained no specific details as introduced. *See Hyman Bros. v. Kapena*, 7 Haw. 76, 78 (1887).

However, as the Hawai`i Supreme Court concluded in *LWV*, overly broad titles cannot save legislation under a germaneness review. In that case, although both recidivism reporting and hurricane shelters arguably fell within the ambit of the bill's broad subject-in-title ("public safety"), the different versions were not germane to one another. 150 Hawai`i at 206, 499 P.3d at 406. "[W]e 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." *Id.* at 202 n.32, 499 P.3d at 402 n.32.

A short form bill would be permissible if it discloses, at introduction, a cognizable subject to which subsequent amendments can be germane. The bill need not contain fully developed legislative text. In contrast, a shell bill that discloses nothing is,

in substance, a blank check permitting the later introduction of any legislation the Legislature desires—long after the constitutional window has closed.

C. Political Questions

If the Court were to conclude that at least one of the Nelon/Baker factors is implicated (e.g., textually demonstrable commitment; lack of judicially manageable standards) but not the other, analyze whether that is sufficient to render Count II non-justiciable, and why.

The political question "factors" are formulations of distinct separation of powers concerns. *LWV*, 150 Hawai`i at 192, 499 P.3d at 393. "The presence of any one of these six factors renders a case nonjusticiable." *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp.*, 117 Hawai`i 174, 209, 177 P.3d 884, 919 (2008), *rev'd on other grounds sub nom. Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). But the purported political question must be "[p]rominent on the surface" and "inextricable from the case at bar" to warrant dismissal for non-justiciability. *LWV*, 150 Hawai`i at 192, 499 P.3d at 392. Assessing the validity of political question claims is "itself a delicate exercise in constitutional interpretation, and is a responsibility of [the] Court as ultimate interpreter of the Constitution." *Id.* It requires "discriminating inquiry into the precise facts and posture of the particular case." *Trs. of Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 169, 737 P.2d 446, 455 (1987). Issues are not non-justiciable political questions simply because the case would have political repercussions; "all constitutional interpretations have political consequences." *Nelson v. Hawaiian Homes Comm'n*, 127 Hawai`i 185, 196, 277 P.3d 279, 290 (2012).

Does the existence of a germaneness test grounded in constitutional text and history (as recognized in League) undercut the State's argument that there are "no judicially discoverable and manageable standards" for enforcing Article III, Section 12 as it relates to the definition, form, or qualifications of a bill. If not, why can that test not be adapted or used by analogy in the Section 12 context? Conversely, if the State maintains that Count II presents a political question, it should explain why germaneness is sufficiently manageable for Section 15 but not for any aspect of Section 12.

For the reasons stated above and in prior briefing, the germaneness test provides a judicially manageable standard for the bill introduction deadline.

Related to the parties' arguments Nelson v. Hawaiian Homes Comm'n and its reliance on the six-factor Baker v. Carr test, on the one hand, and League of Women Voters of Honolulu v. State, on the other hand:

> *1. Can a party articulate a principled way to distinguish between (a) enforcing constitutional procedural requirements (e.g., three readings; bill-introduction deadline) and (b) policing internal rule compliance (other deadlines, content definitions)?*
>
> *2. Identify and explain the precise point at which, in your party's view, a court crosses from the former into the latter.*

Concerning purported textual commitment of the bill introduction deadline to the Legislature, the principled dividing line is when no further action is required by the Legislature—here, when it picks a date for the bill introduction deadline. At that point, a constitutional provision is self-executing. Haw. Const. art. XVI, § 16; Stand. Comm. Rep. No. 68 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 223 ("This section is intended, wherever possible, to make the various provisions of the Constitution operative without the aid of supplemental or enabling legislation."); *see, e.g.*, *County of Hawai`i v. Ala Loop Homeowners*, 123 Hawai`i 391, 413, 235 P.3d 1103, 1125 (2010) (constitutional provision for clean and healthful environment self-executing because no legislative action needed, even though provision expressly recognized that Legislature could impose reasonable limits on the right).

Interpretation of the bill introduction deadline as self-executing is confirmed by the framers' intent. *See Ala Loop Homeowners*, 123 Hawai`i at 413-14, 235 P.3d at 1125-26. The Constitutional Convention delegates expected that the bill introduction deadline would be a "limitation" on the Legislature. *E.g.*, 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto). The framers could have left the bill introduction deadline to already existing legislative practices, but added it to the Hawai`i Constitution knowing that a constitutional requirement—as compared to legislative rules—would be independently enforceable. Stand. Comm. Rep. No. 46 at 603; LRB Study at 66; 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 317. Moreover, the Hawai`i Supreme Court considered it a "restriction" on the legislative process. *LWV*, 150 Hawai`i at 202,

499 P.3d at 402. As the supreme court observed: "This court has consistently rejected the argument that alleged violations of constitutional mandates concerning the legislative process are nonjusticiable political questions." *Id.* at 192, 499 P.3d at 392.

This case solely concerns the meaning of the bill introduction deadline in the Hawai`i Constitution, not legislative rules. "[T]extual interpretation, particularly constitutional interpretation, is generally judicial fare. *E.g.*, *Nelson*, 127 Hawai`i at 197, 277 P.3d at 291. The Legislature—internally—can use any interpretation of "bill" or the bill introduction deadline that it wants, but its interpretation does not define the meaning of the constitution; that is for the Judiciary. *See, e.g.*, *SHOPO v. City & County of Honolulu*, 149 Hawai`i at 509-10, 494 P.3d at 1242-43 ("[R]equiring the legislature to 'implement' the right does not mean the legislature is empowered to change its definition."). Whether the Hawai`i Constitution allows a bill to be "so changed as to constitute a different bill" (*i.e.*, non-germane amendments) after the bill introduction deadline is not a political question and has nothing to do with legislative rules. *LWV*, 150 Hawai`i at 200, 499 P.3d at 400.

As with three readings, the State's contention that the bill introduction deadline presents a non-justiciable political question would leave "the Legislature's power unchecked" contrary to the framers' intent. *Id.* at 193, 499 P.3d at 393; *see also Baker v. Carr*, 369 U.S. 186, 230 (1962) ("It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.").

D. Emergencies

> *At the hearing, counsel for Plaintiff indicated that if the Court were to grant their motion, the unintended consequence would be the elimination of short form bills to address emergency circumstances and that such emergencies, should they arise, may be addressed by way of a special session. How would your party reconcile this with an emergency that arises between the final bill introduction deadline and the close of the legislative session? Also address whether the Court should take into consideration these unintended consequences in deciding the Motions for Summary Judgment.*

As in *LWV*, there is no reason for the Court to consider the impact of hypothetical emergencies when, as here, there was no emergency that required passage of the legislation at issue. 150 Hawai`i at 205 n.35, 499 P.3d at 405 n.35 (noting the

emergencies argument, but emphasizing that there was no actual emergency for the bill at issue). Act 290 (2025) concerns pensions for individuals to be hired six years later. 2025 Haw. Sess. Laws Act 290 ("first employed as judges before July 1, 2031").

Also, similar to *LWV*, there is no emergency exception to the bill introduction deadline. 150 Hawai`i at 205 n.35, 499 P.3d at 405 n.35 ("In any event, even if an exigency did exist, the plain language of [three readings] contains no emergency exception."). The 1978 Constitutional Convention was well aware of the potential for exceptions to bill introduction deadlines and expressly considered proposals with exceptions. 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 863, 905; LRB Study at 125-26; *see, e.g.*, *Peer News LLC v. City & County of Honolulu*, 143 Hawai`i 472, 484, 431 P.3d 1245, 1257 (2018) (omission of previously considered exception reflects intent). The delegates did not adopt an exception.

Regardless, if the Court considers the issue, the State would have alternatives to address emergencies. As recognized in *LWV*: "If there is an urgent need to pass legislation, 'the legislature maintains the option of holding a special session." 150 Hawai`i at 205 n.35, 499 P.3d at 405 n.35. Even in the middle of a regular session, the Legislature may convene a special session for an emergency by recessing the regular session. A.G. Op. No. 64-17 ("the legislature may be called into special session during a recess or adjournment").[8]

Alternatively, if an emergency existed, the State has expansive authority under the emergency management chapter. *E.g.*, HRS §§ 127A-12, -13.

The State is well positioned to address urgent matters that fall outside the ordinary legislative timeline.

E. Reserved Questions

If the Court were to certify the legal issues outlined in the cross-motions for summary judgment as reserved questions for disposition by the Hawai'i Supreme

[8] Subsequently, the 1968 Constitutional Convention expanded the Legislature's discretion to recess during regular session. Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 214-15.

Court pursuant to Rule 15 of the Hawai'i Rules of Appellate Procedure, what should be the reserved question(s)?

1. Does the article III, section 14 subject-in-title requirement in the Hawai`i Constitution prohibit overly broad legislative titles?

2. Does the article III, section 12 bill introduction deadline in the Hawai`i Constitution prohibit non-germane amendments after the deadline?

DATED: Honolulu, Hawai`i, March 13, 2026

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