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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 RESPONSE TO THE STATE'S SUPPLEMENTAL MEMORANDUM

PLAINTIFF'S RESPONSE TO THE STATE'S SUPPLEMENTAL MEMORANDUM

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Plaintiff League of Women Voters of Hawaii (League) responds to the supplemental memorandum, filed March 13, 2026, by Defendant State of Hawai`i (State). The State constructs various straw arguments that avoid answering the real issues presented on the merits.

I. A COMPLAINT IS A SHORT AND PLAIN STATEMENT

Based on the summary judgment briefing and hearing, the Court's order framed the bill introduction deadline issues. A critical issue before the Court is whether the final version of S.B. 935 as enacted was—constitutionally—the same "bill" as S.B. 935 when introduced.

Rather than address the issues raised in prior briefing and this Court's minute order, the State retreated to a contrived reading of the Complaint inconsistent with the Court's questions. Dkt. 55 at 6 n.1, 13 ("the State disagrees with the premise of this question").[1] The State reads the Complaint as only challenging whether S.B. 935 violated the bill introduction deadline *as soon as the deadline passed*. *E.g.*, *id.* at 12 (arguing germaneness cannot be applied because there are no amendments at bill introduction). The State's approach is flawed. To the extent the Complaint has any relevance at this stage, it provided the State with sufficient notice of the relevant facts and alleged constitutional provision violated.

First, a complaint is a "short and plain statement of the claim showing that the pleader is entitled to relief." HRCP 8(a). It is a "liberal notice pleading standard." *Bank of Am., N.A. v. Reyes-Toledo*, 143 Hawai`i 249, 262, 428 P.3d 761, 774 (2018). Complaints are viewed "in a light most favorable to [the plaintiff] in order to determine whether the allegations contained therein could warrant relief under any alternative theory." *Id.* at 257, 428 P.3d at 769.

The Complaint here alleges that the State introduced S.B. 935 (2025) with no substantive content and the bill was amended after the bill introduction deadline to become Act 290 (2025). Dkt. 1 at 3 ¶¶ 13-16. The League then identifies concerns about the bill introduction deadline and requests an order declaring that "the process for

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

adopting Act 290 was unconstitutional." *Id.* at 5. That is a short and plain statement that covers the current discussion of the germaneness of amendments to S.B. 935 after the bill introduction deadline—even if interpreted as an alternative theory.

Second, even accepting the State's erroneously strict initial read of the Complaint, pleadings "conform to the evidence." HRCP 15(b)(1). The rule exists

> to bring the pleadings in line with the actual issues upon which the case was tried, and to promote the objective of deciding cases on their merits rather than in terms of the relative pleading skills of counsel on the basis of a statement of the claim or defense that was made at a preliminary point in the action and later proves to be erroneous.

Schefke v. Reliable Collection Agency, Ltd., 96 Hawai`i 408, 433, 32 P.3d 52, 77 (2001) (citations and internal quotations omitted). As the Court's minute order made clear, the evidence and arguments at issue have moved beyond whatever constrained gloss the State used to read the Complaint. *Id.* ("Rule 15(b) is not permissive in terms"). The State cannot seek to elevate form over substance to avoid the merits.

Lastly, if necessary—it is not—the League can amend complaint. HRCP 15(a)(2). Leave to amend a pleading "shall be freely given when justice so requires." *Id.* There is no bad faith or undue prejudice, and an amendment would not be futile. *E.g.*, *Dejetley v. Kaho`ohalahala*, 122 Hawai`i 251, 270-71, 226 P.3d 421, 440-41 (2010).

On the merits, for the reasons already briefed and summarized below, the overwhelming weight of authority directly contradicts the State's position regarding the bill introduction deadline.

II. GERMANE AMENDMENTS ARE NOT THE ISSUE

The State argues that the Legislature must have the ability to generally amend legislation. Dkt. 55 at 6-12. The State is describing germane amendments. The League has not challenged germane amendments.

The League's position is that "if the body of the bill is so changed as to constitute a different bill, then it is no longer the same bill." *League of Women Voters v. State* [*LWV*], 150 Hawai`i 182, 200, 499 P.3d 382, 400 (2021); Dkt. 13 at 14; Dkt. 41 at 24; Dkt. 43 at 6-7. For the three readings mandate, *LWV* applied that premise and held: "the three readings begin anew after a non-germane amendment changes the object or subject of a

bill so that it is no longer related to the original bill as introduced." *Id.* at 205, 399 P.3d at 405. The same reasoning applies to the bill introduction deadline. Dkt. 53 at 13-15.

The State, however, seeks to relitigate *LWV*. For example, it claims that the constitution does not limit the Legislature's authority to amend bills. Dkt. 55 at 7-10. In support, the State quotes the remarks of a 1968 Constitutional Convention delegate regarding an elephant/pigeon bill amendment. *Id.* at 9.

LWV addressed those same concerns about violating "the separation of powers doctrine as courts set arbitrary limits on how much a bill can be amended" and that a germaneness standard would "hinder the Legislature's ability to make laws and respond swiftly to extraordinary and sudden events." 150 Hawai`i at 200, 399 P.3d at 400. The supreme court held:

> The State's hypothetical flood of litigation — as well as legitimate separation of powers concerns — are protected by the standard of review for voiding legislation, which shifts the burden to a challenger to prove beyond a reasonable doubt that a law is unconstitutional. While the Legislature might view gut and replace legislation as an effective and expedient bill amendment tool, the constitutional history of the three readings requirement expresses a clear preference for deliberate and careful consideration of legislation and a process in which legislators have the opportunity for a full and open debate and interested persons have notice of proposed legislation and are able to provide input.

Id. at 204-05 & n.35, 399 P.3d at 404-05 & n.35 (citations and footnote omitted).

Discussing the elephant/pigeon remarks, the court explained that "reliance on these floor remarks is misplaced." *Id.* at 198-99, 499 P.3d at 398-99. Rejecting those remarks as a basis to ignore the framers' intent for the legislative process, the court held that "a bill at each subsequent reading must bear some resemblance to the previous versions beyond merely having the same title and number." *Id.* at 199, 499 P.3d at 399. Prescient of the current argument for any amendments after bill introduction if within the scope of the bill's title, Dkt. 55 at 15, the Hawai`i Supreme Court stated: "[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.

Next, the State argues that the framers did not adopt an "original purpose" constitutional provision as exists in some states. Dkt. 55 at 10. Again, this issue was addressed in *LWV*. 150 Hawai`i at 201-02, 399 P.3d at 401-02 (noting the distinctions with states that had "original purpose" clauses). "Original purpose" cases typically go beyond the more deferential germaneness analysis. *E.g.*, *Weeks v. Dep't of Human Servs.*, 302 A.3d 678, 704 (Pa. 2023) (examining whether "the central objective of the legislation remained to 'eliminate Cash Assistance while favoring health-specific benefits for low-income individuals'"). But this case is not about the more exacting scrutiny of a constitutional provision that might fault legislation for changing a tax credit into a tax surcharge. *See Barclay v. Melton*, 5 S.W.3d 457, 459-60 (Ark. 1999); *Opinion of the Justices*, 582 So. 2d 1115, 1117-18 (Ala. 1991) (bill appropriating monies amended to add limits on how the monies may be spent); *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 8 (Mo. 1945) (bill eliminating tax deduction for insurance premiums changed to new tax on insurance premiums). Regardless, the absence of an "original purpose" clause does not mean that courts may ignore constitutional provisions—with well-established standards—that the framers did adopt, such as the bill introduction deadline. *See* Dkt. 53 at 10-12.

The State then claims that the 1978 Constitutional Convention considered and rejected proposals that would have placed constitutional limits on non-germane amendments. Dkt. 55 at 10. The proposals referenced by the State concerned a different issue. Those proposals would have limited amendments from conference committee to only the topics of disagreement between the House and Senate proposals; if the House and Senate versions agreed on certain topics, those topics could not be amended in conference committee.[2] 1 Proceedings of the Constitutional Convention of Hawai`i of

[2] After one chamber holds three readings, the legislation passes to the other chamber. Haw. Const. art. III, § 15 ("Every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration."). Disagreements between the House and Senate are addressed in conference committee. *See, e.g.*, House Rule 16.

1978 at 846 (Proposal 71, "[l]imits authority of legislative conference committees to resolving differences between house and senate versions of bills or resolutions"), 859 (Proposal 130, "[p]rovides that the authority of such committee is limited to resolving differences between the house and the senate versions of a bill or resolution"), 953 (Proposal 720, "[p]rovides that committee of members of each house appointed to confer on differing items in bill for finial passage shall not consider items not in conflict nor recommend new items for final consideration"). Those rejected proposals are not about, and go well beyond, a germaneness analysis for bill amendments.

Finally, the State argues that a germaneness standard for bill introduction would make three readings "superfluous." Dkt. 55 at 10-12. On the State's reading, *LWV* only used germaneness for three readings because the State could restart the readings during session with entirely new material. That interpretation of *LWV* ignores its extended analysis of the "interdependent constitutional restrictions" that reflected the framers' intent for the legislative process. 150 Hawai`i at 202-03, 499 P.3d at 402-03; *see* Dkt. 53 at 11-13. Each of these restrictions serves a purpose; none is superfluous.

For example, even if the Court agrees that the germaneness standard applies at bill introduction, three readings remains relevant to address various potential abuses of the legislative process. First, separate from any germaneness standard, three readings prevents the Legislature from enacting laws on a single day after the bill introduction deadline. Second, three readings germaneness prevents the Legislature from introducing a bill on recidivism reporting, immediately amending the bill to concern hurricane shelters after the bill introduction deadline, then finally enacting a bill on recidivism reporting even though virtually all readings and discussion during session concerned hurricane shelters. Third, if the bill introduction deadline were set late in session (the State claims there are no restrictions), three readings germaneness would ensure a more careful and deliberative legislative process. These examples raise three readings concerns, but no concern under the bill introduction deadline. Three readings is not superfluous under the League's interpretation.

In the end, despite the opportunity in response to the Court's minute order, the State does not attempt to argue that the amendments to S.B. 935 after the bill

introduction deadline were germane. It cannot. *E.g.*, Dkt. 43 at 7 n.5. A bill about nothing—such as S.B. 935—is not "akin, closely allied" to anything.

III. THE BILL INTRODUCTION DEADLINE CANNOT BE MEANINGLESS

Contrary to the State's insinuation, delegates to a Constitutional Convention do not need to expressly discuss a well-established judicially manageable constitutional standard such as germaneness. *See* Dkt. 55 at 14-15 ("Nothing in the constitutional history of the bill introduction deadline indicates that it was intended to abrogate the legislature's authority to amend bills to any extent as long as the public has notice and time to review such amendments."). As discussed in the League's supplemental memorandum, the plain language and constitutional history of the bill introduction deadline squarely supports application of the germaneness standard. Dkt. 53 at 8-15.

Under the State's interpretation, the bill introduction deadline is meaningless. If bills can radically change—other than their number and title—after the bill introduction deadline, then there is no "limitation" on bill introduction as the framers intended. 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Legislature Committee Chair Nishimoto). Nothing would restrict the "bills to be considered". Haw. Const. art. III, § 12.

Bill introduction starts the interdependent legislative process. According to the State, the deadline is only a point by which the Legislature must put forward an empty vessel that could become any law. The public would then review thousands of bills that say nothing substantive and be forced to follow every bill because any one bill could transform into something important. That is not a process that allows "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" as the framers intended. *LWV*, 150 Hawai`i at 202-03, 499 P.3d at 402-03.

The germaneness standard gives meaning to the bill introduction deadline as the limitation that the framers expressly wanted. The bills introduced will be the same bills considered, not something so fundamentally changed as to be unrecognizable.

The State's reference to "sufficient sums" in article XII, section 1 misses the point of *Nelson*. Dkt. 55 at 14-15. The constitutional mandate to provide "sufficient sums" for

specified purposes was *sui generis*. There were no similar constitutional restrictions concerning appropriations for those purposes. There was no existing constitutional standard that had been used for nearly a century. And there were no comparable constitutional provisions in other states. The only source from which the Hawai`i Supreme Court could understand the intent of "sufficient sums" was the discussions at the 1978 Constitutional Convention. Nevertheless, the Hawai`i Supreme Court gave the "sufficient sums" provision all the meaning that it could glean from available sources. *Nelson v. Hawaiian Homes Comm'n*, 127 Hawai`i 185, 203, 277 P.3d 279, 297 (2012) ("funding at or above the $1.3 to $1.6 million envisioned in 1978 would be required.").

Here, there is a much richer constitutional history concerning constitutional restrictions on the legislative process. There is the interdependent set of restrictions that all strive toward the same objective. There is a well-established, judicially manageable standard for understanding, constitutionally, when a bill is no longer the same bill. And there are clear examples from other jurisdictions as to how constitutional bill introduction deadlines work. The State cannot be allowed to essentially read that provision out of the Hawai`i Constitution by claiming that no one knows what it means. *LWV*, 150 Hawai`i at 193, 499 P.3d at 393.

And the Legislature's control over the timing of the deadline does not give it unfettered discretion to violate the deadline.

> While the Legislature is empowered by section 12 to enact its own rules of procedure, that power is not without limits. . . . Accepting the Legislature's contrary proposition would violate the separation of powers doctrine, effectively leaving the Legislature's power unchecked. While Section 12 empowers the Legislature to adopt its own rules of procedure, it contains no "textually demonstrable constitutional commitment" to the Legislature to interpret other constitutional mandates, such that determining whether Act 84 complied with those mandates is a nonjusticiable political question.

Id. (citations and footnote omitted). Under the State's interpretation, the bill introduction deadline would be no different than the existing practice before the 1978 Constitutional Convention. Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 ("The practice of the legislature has

been to impose a bill-introduction deadline at or about the 20th session day."). Putting the deadline in the Hawai`i Constitution had purpose beyond simply leaving the issue to the Legislature. Dkt. 53 at 12-13. Once the Legislature set the bill introduction deadline—as it did in this case—determining whether Act 290 complied with that deadline is not a political question that renders the deadline meaningless.

IV. INTERPRETING THE CONSTITUTION IS NOT A POLITICAL QUESTION

Rather than address the substance of the Court's questions regarding political question, the State largely repeats its prior arguments. In that regard, the League would point the Court to prior briefing. Dkt. 41 at 22-25; Dkt. 43 at 6-10, Dkt. 53 at 17-19. The only new matter presented by the State concerns the 1984 amendment to the bill introduction deadline, which removed the specified constraints on the timing of the deadline. The 1984 amendment does not help the State for several reasons.

First, the 1984 Legislature did not eliminate the *constitutional* bill introduction deadline; it only changed the timing. *E.g.*, 1984 House Journal at 1571 (title: "proposing an amendment to Article III, Section 12 of the Hawaii Constitution to allow greater *flexibility in scheduling* the deadline for introducing bills" (emphasis added)). As the Hawai`i Supreme Court observed in *LWV*, "the understanding of subsequent delegates does not change the meaning of an existing constitutional provision, absent a substantive amendment to the law." 150 Hawai`i at 198, 499 P.3d at 398. If the 1984 Legislature intended to make the bill introduction deadline a matter of legislative discretion as the State contends—thus reverting back to the practice before the Constitutional Convention—then it could have simply eliminated the constitutional language. It did not do that. The 1984 Legislature only changed the timing of the deadline, but that is not an issue here. The issue presented to this Court is what it means to have a bill introduction deadline in the Hawai`i Constitution.

Second, the remarks of individual legislators (even the Senate Judiciary chair) do not override the collective intent expressed in committee reports. *LWV*, 150 Hawai`i at 198, 499 P.3d at 398 ("remarks by individual legislators are not attributable to the full legislature that voted for the bill, and as such are less reliable indicators of legislative intent"); 2A Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and

Statutory Construction § 48:6 (7th ed. 2010) ("Courts presume that when parts of a bill are enacted in the same form as they were introduced by the committee, the legislature adopted the committee's intent. This presumption is not decisive, though courts generally view committee reports as the 'most persuasive indicia' of legislative intent." (footnote omitted)). Both the House and Senate committee reports explain in detail the intent to provide more flexibility to shorten the period for the introduction of bills and the problems with a deadline that overlaps significantly with session days. Stand. Comm. Rep. No. 417-84 in 1984 House Journal at 1031-32 ("there are many significant advantages to an earlier cut-off date for bill introductions"); Stand. Comm. Rep. No. 636-84 in 1984 Senate Journal at 1332-33 ("allow the Legislature to provide for an earlier deadline for the introduction of bills"). As the Hawai`i Supreme Court explained: "In 1984, the bill introduction deadline was amended to allow the Legislature to set an earlier deadline and prefile bills before session started to afford the public more time to familiarize itself with proposed legislation, conduct research, and 'prepare more thoughtful and detailed testimony.'" *LWV*, 150 Hawai`i at 202-03, 499 P.3d at 402-03. The 1984 amendment did not reflect any intent to completely neuter the purpose of having a bill introduction deadline in the Hawai`i Constitution.

Third, the State takes Senator Chang's statements out of context. On the Senate floor, various senators had an extended debate about whether the proposed amendment would further limit the Legislature's ability to introduce bills.[3] 1984 Senate Journal at 770-76. Senator Chang then prefaced the comments quoted by the State:

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[3] *E.g.*, 1984 Senate Journal at 772 (Senator Kobayashi: "If we shorten the period of time in which bill introduction is allowed, maybe, we will have fewer bills and, maybe, that is not altogether a bad thing."), 773 (Senator Abercrombie: "if the intention of the bill was to see that fewer bills were introduced, I have no doubt that that will in fact be the case. Mr. President, you know that I am not an advocate of that position."), 773-74 (Senator Cobb: "I have for sometime been an advocate of limiting the number of bills, yet, at no time when I looked at this particular measure before us, that I consider this measure to be tied in with the bill limitation."), 774-75 (Senator Abercrombie: "I remain unconvinced by the chairman of the Consumer Protection Committee with respect to whether or not this would have the effect of bill limitation. . . . [T]his legislation . . . will have the effect of reducing for the public the capacity to have bills introduced").

> Mr. President, it seems to me that the proposition to be put to this body and to the public has been misstated.
>
> The proposition, simply put, is this. Shall the requirement that bills be introduced after the nineteenth day of the session and prior to the commencement of the mandatory recess be repealed, permitting each house to provide for that date of introduction by rule of its proceedings applicable to both houses? That is the proposition, plain and simple.

1984 Senate Journal at 775. Supporters and opponents both recognized that the deadline imposed a limit on introduction; it was only a question—as stated in that bill's title—of more legislative flexibility over "scheduling".

The 1984 amendment did not make the deadline a political question.

V. EMERGENCIES AND RESERVED QUESTIONS

The League addressed emergencies in its supplemental memorandum. Dkt. 53 at 19-20. The State merely identifies the procedural requirements for a special session. Dkt. 55 at 24-25. If neither the governor nor two-thirds of the Legislature consider a situation dire enough for a special session, it is not an emergency. The State has sufficient flexibility under the Hawai`i Constitution to address true emergencies without violating the framers' intent for the bill introduction deadline.

Lastly, the League notes that the State's proposed reserved questions would merely ask the Hawai`i Supreme Court to decide this case on the merits. The League's questions identify the essence of the disputed legal issues based on the briefing. With the Hawai`i Supreme Court's answers to the League's questions, this Court can resolve the case based on the undisputed facts.

DATED: New York, New York, March 20, 2026

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