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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-25-0001456
(Declaratory Judgment)

STATE OF HAWAII’S RESPONSE TO PLAINTIFF’S SUPPLEMENTAL MEMORANDUM FILED MARCH 13, 2026 [DKT. 53]; CERTIFICATE OF SERVICE

Hearing:
Judge: Hon. Jordon J. Kimura
Date: March 27, 2026
Time: 9:00 A.M.

Trial Date: None

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**STATE OF HAWAII'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM FILED MARCH 13, 2026 [DKT. 53]**

**A. The Court must apply the *Baker* factors to determine whether a political question exists.**

Plaintiff acknowledges that if one of the factors identified in *Baker v. Carr*, 369 U.S. 186, 217 (1962) is present, this case must be dismissed as non-justiciable. Dkt. 53 at 17; *see also Salera v. Caldwell*, 137 Hawai'i 409, 422, 375 P.3d 188, 201 (2016) ("Under the *Baker* test, a case involves a non-justiciable question if **any** of the following circumstances applies[.]") (emphasis added). Plaintiff also acknowledges that determining whether a political question is present is "itself a delicate exercise in constitutional interpretation[.]" Dkt. 53 at 17 (quoting *League of Women Voters of Honolulu v. State*, 150 Hawai'i 182, 192, 499 P.3d 382, 392 (2021)). As the Hawai'i Supreme Court has made clear, the political question doctrine is the "result of the **balance** courts must strike in preserving separation of powers[.]" *League of Women Voters*, 150 Hawai'i at 192, 499 P.3d at 392 (emphasis added).

Despite the foregoing, Plaintiff appears to argue for the first time that this Court can eschew the careful, multi-factor consideration required by *Baker* and instead simply ask whether a constitutional provision is self-executing. Dkt. 53 at 18. In support, Plaintiff cites to *County of Hawai'i v. Ala Loop Homeowners*, 123 Hawai'i 391, 235 P.3d 1103 (2010). However, *Ala Loop* did not discuss the political question doctrine at all, but the separate question of whether Haw. Const. art. XI, § 9 could create a private right of action to enforce a "law[] relating to environmental quality." *Id.* at 408-09, 235 P.3d at 1120-21. Specifically, the question before the Court was whether "article XI, section 9 [is] self-executing, i.e., does the legislature need to act before the ability to 'enforce this right' can be realized?" *Id.* at 409, 235 P.3d at 1121.

Here, the issue is not whether art. III, § 12 is operative by itself, but whether the claim is non-justiciable because a determination that a bill has violated the Legislature's adopted bill introduction deadline is a question for the Legislature, not the courts. To be sure, it is often the case that a claim is non-justiciable because it involves both a non-self-executing provision *and* a political question. However, the self-executing doctrine focuses on whether a constitutional provision "requires more specific legislation to make it operative[,]" *State v. Rodrigues*, 63 Haw. 412, 414, 629 P.2d 1111, 1113 (1981), while the political question doctrine is concerned with the broader question of "whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority

has been committed[.]" *Baker*, 369 U.S. at 211.

And while it is clear that a claim involving a non-self-executing provision is non-justiciable, it cannot be said that *only* non-self-executing provisions are non-justiciable. Indeed, in *Nelson v. Hawaiian Homes Comm'n*, 127 Hawai'i 185, 197, 277 P.3d 279, 291 (2012), the Court examined a single provision mandating that the Legislature make "sufficient sums" available for four enumerated purposes. If the question were merely whether the provision was self-executing, either all or none of the purposes would have been justiciable because all were included in the identical mandate that the Legislature "make sufficient sums available" for each one, and none required the Legislature to implement legislation before its mandate became operative. Instead, the Court applied the *Baker* factors – the test the Court has indisputably adopted to determine whether a political question exists – and determined, based on the evidence of the framers' intent (or lack thereof) that three of the four purposes presented political questions. *Id.* at 202-05, 277 P.3d at 296-99.

Even assuming Plaintiff's analysis, though, the only arguably self-executing mandate in art. III, § 12 relating to the bill introduction deadline is the requirement that the Legislature select one. It provides: "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." The Legislature has done that. There is no self-executing language requiring that the deadline be set at any specific time or stating what a bill must include to meet the deadline. It plainly leaves it to the Legislature "by rule of its proceedings" to make such determinations. The very same constitutional section vests the enforcement of "the rules of its proceedings" to the Legislature alone, not the courts. *Schwab v. Ariyoshi*, 58 Haw. 37-39, 564 P.2d 135, 142-44 (1977) (where the constitution requires each house to determine the rules of its proceedings, the separation of powers doctrine renders alleged violations of those rules non-justiciable political questions). The provision itself does not provide a self-executing deadline enforceable by the courts.

Moreover, as demonstrated in the State's Supplemental Memorandum, when the Constitution was amended in 1984 to remove any restrictions on the Legislature's discretion to select the bill introduction deadline, the stated purpose was to "be consistent with the remaining Section XII of Article 3, whereby, each house chooses its own officers, determines the rules of its proceedings and keeps a journal[,]" i.e., constitutional requirements vested solely within the authority of the Legislature to implement. Dkt. 55 at 20 (quoting 1984 Senate Journal at 775).

The amendment "merely permits the Legislature to establish a timetable that is appropriate to the conditions that it must deal with in its proceedings each year[.]" *Id.* The history of the current constitutional language thus supports the conclusion that it vests the Legislature with the sole authority to implement, interpret, and enforce the rules regarding the bill introduction deadline, just as it may with any of its other internal rules and deadlines.[1]

Regardless, as discussed, this Court does not need to determine whether art. III, § 12 is self-executing because doing so would not determine whether this case presents a political question. This Court is bound to apply the *Baker* factors and dismiss this case if any of the factors is present.

**B. The Court cannot apply a germaneness standard to the bill introduction deadline without violating the political question doctrine.**

**a. There is a textual constitutional commitment of authority to the Legislature to implement, interpret, and enforce the bill introduction deadline.**

Both the plain text and the history of art. III, § 12 demonstrate that the intent of its present language is to give the Legislature the same authority over the bill introduction deadline that it has over any other "rule of its proceedings." Indeed, the language in art. III, § 12 regarding the bill introduction deadline is substantially the same as the constitutional language that demonstrably commits the authority to determine and enforce its own rules and the qualifications of its own members to the Legislature. Dkt. 55 at 19. To put it another way, the same section of the Constitution that says the bill introduction deadline will be as "provide[d]" in the Legislature's rules of proceedings, also gives the Legislature the sole authority to interpret and enforce those rules. *Schwab*, 58 Haw. at 37-39, 564 P.2d at 142-44.

That Hawaii's Constitution gives the Legislature the authority to select the bill introduction deadline "[b]y rule[s] of its proceedings" – rules over which it has exclusive authority – distinguishes it from other states with constitutions that directly impose an introduction deadline with no room for legislative discretion. Plaintiff has not demonstrated that any states with constitutional provisions similar to ours allow courts, rather than the legislature, to determine when

[1] Plaintiff relies heavily on the intent of the 1978 Constitutional Convention, notwithstanding that the 1978 version of art. III, § 12 set specific requirements for the bill introduction deadline that were removed in 1984. Dkt. 53 at 18. "[T]he understanding of subsequent delegates does not change the meaning of an existing constitutional provision, **absent a substantive amendment to the law.**" *League of Women Voters*, 150 Hawai'i at 198, 499 P.3d at 398 (emphasis added). The 1984 amendment substantively changed art. III, § 12 by removing any constitutionally required limitations on the bill introduction deadline and put the implementation, interpretation, and enforcement of the deadline entirely under legislative authority.

the deadline has been violated. Dkt. 53 at 14-15, citing *State v. Ryan*, 139 N.W. 235, 235 (Neb. 1912) (discussing whether amendments were allowed "[w]here a bill has been introduced into the Legislature within the time limited by the Constitution for the introduction of bills," which was apparently 40 days);[2] *Hale v. McGettigan*, 45 P. 1049, 1050-51 (Cal. 1896) (exact text of constitution does not appear in the opinion, but appears to set a 50-day deadline for introduction); *Att'y Gen. v. Detroit & S. Plank-Road Co.*, 56 N.W. 943, 944 (Mich. 1893) (constitution itself provided a 50-day deadline for new bills).[3]

The authority to judge a bill's compliance with the introduction deadline as provided for in the Legislature's own rules is demonstrably committed to the Legislature by the text of the Hawai'i Constitution. This fact alone is sufficient to mandate dismissal of this case as a political question.

**b. Applying a germaneness standard to the bill introduction deadline is unnecessary to effectuate its purpose.**

In determining whether "judicially discoverable and manageable standards" exist to measure compliance with a constitutional mandate, courts look to the purpose of the mandate and the intent of the constitutional framers. *Nelson*, 127 Hawai'i at 203, 205, 277 P.3d at 297, 299. Thus, in *League of Women Voters*, the court adopted the germaneness standard to measure compliance with the three readings requirement because it would "effectuate both the plain

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[2] It should also be noted that the court in *Ryan* affirmed the practice of replacing a bill entirely as long as the new contents were germane to the **title**, not the contents of the original bill:

> [The expiration of a constitutional bill introduction deadline] does not prevent the substitution of one bill for another after such period, provided the subject–matter of the substituted bill is germane to the general purpose **indicated by the title of the original bill**. Under this rule, a bill purporting by its title to amend a specified section of a city charter, without stating the subject of the section, may have substituted for it a bill to amend a certain other section of the same charter, **the subject–matter of which has no necessary connection with that of the former section**.

*Ryan*, 139 N.W. at 238–39 (emphasis added; citation omitted). Thus, under the test articulated in *Ryan*, Act 290 would be constitutional because all amendments after the bill introduction deadline were germane to the title "Relating to Government."

[3] Like Nebraska, the Michigan courts at the time only required that the substitute bill be germane to the title of the original bill to satisfy the constitutional introduction deadline. *Common Council of City of Detroit v. Schmid*, 87 N.W. 383, 388 (Mich. 1901) ("It seems, therefore, that the law is fully settled in this state that whatever might have been incorporated into the original act under the title of such original act may be added by way of amendment under the most general title.")

language of the three readings requirement and the purposes for which it was adopted." 150 Hawai‘i at 200, 499 P.3d at 400.

As the State has argued, while the germaneness standard may have been necessary to effectuate the purpose of the three readings requirement, the same cannot be said about the bill introduction deadline. Dkt. 55 at 7-12, 14-16, 20-21. Requiring non-germane amendments to be read three times in each house on separate days sufficiently carries out the purpose of both the three readings requirement and the bill introduction deadline – to provide both the legislators and the public sufficient notice and time to review the introduced bill and all subsequent amendments. *Id.* at 7-9. Plaintiff cites no evidence that our constitutional framers intended to preclude non-germane amendments entirely after the bill introduction deadline, even when such amendments receive the necessary three readings. Plaintiff's sources regarding the purpose of the bill introduction deadline and other constitutional provisions regarding the legislative process merely stand for the proposition already recognized – that such provisions are intended to give all interested parties sufficient notice and time to review bills and amendments. Dkt. 53 at 11-12, 14-15. And crucially, adopting a rule that non-germane amendments are totally prohibited after the bill introduction deadline would render the ultimate holding of *League of Women Voters* – that the three readings must begin **anew** after a non-germane amendment – a nullity. 150 Hawai‘i at 205, 499 P.3d at 405.

Plaintiff is incorrect in contending that "[w]ithout a germaneness standard, the deadline has no meaningful effect[.]" Dkt. 53 at 14. As the State pointed out, the deadline still provides a limitation for all bills to be introduced, meaning that once the deadline has passed, the universe of all bills that can be considered and amended for that session is fixed. This caps the number of bills to be considered during the session, which Plaintiff states is one of the reasons for the deadline. Dkt. 53 at 9-10. Plaintiff also contends that precluding all non-germane amendments is necessary because "[t]hree 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." Dkt. 53 at 15. First, this is implausible and overstated, as the amended bill would need to receive three readings in both houses on separate days, and the final reading in each house could not take place until the bill has been printed and made available for 48 hours. Haw. Const. art. III, § 15. Haw. Const. art. III, § 12 also requires any legislative committee making a decision on the amendments to hold a public meeting (which includes public

notice). All of this also demonstrates why it is unnecessary to entirely preclude non-germane amendments: other constitutional provisions sufficiently ensure that bills cannot be gutted and replaced without notice and the opportunity for public input.[4]

Plaintiff acknowledges that "[n]either 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." Dkt. 53 at 13. Thus, rather than citing any evidence in Hawaii's constitutional history indicating that our framers were targeting non-germane amendments when proposing the bill introduction deadline, Plaintiff appears to contend that we can simply rely on treatises and cases discussing the purposes of *other* states' constitutions to determine what our framers intended. *Id.* at 7, 9-12, 14-15. As already discussed, Plaintiff has not demonstrated that any states that leave the bill introduction to the selection of the Legislature (like Hawai'i does), allow courts to invalidate non-germane amendments made after the deadline. Moreover, Plaintiff's cases do not support the conclusion that treatises and other authorities can provide a substitute for evidence of the intent of *our* constitutional framers when evidence of intent is otherwise lacking. Dkt. 53 at 7 (citing *Hilo Bay Marina, LLC v. State*, 156 Hawai'i 478, 497-98, 575 P.3d 568, 587-88 (2005) (considering federal cases interpreting the Establishment Clause where the framers stated their intent was for the State to "avail[] itself of the decisions of the Federal Courts construing said clause of the Federal Constitution."); *League of Women Voters*, 150 Hawai'i at 195-96, 499 P.3d at 395-96 (citing to the proceedings of the 1950 Constitutional Convention as the source of the intent of the provision, and citing to supplemental authorities which echoed a similar purpose); and *SHOPO v. Soc'y of Prof'l Journalists*, 83 Hawai'i 378, 398, 927 P.2d 386, 406 (1996) (citing to Restatement of Torts in analyzing the right to privacy under the Hawai'i Constitution when the framers specifically intended that the constitutional right encompass the common law right of privacy)). Neither can case law from other states provide a substitute for evidence of what our framers intended. *Kaho'ohanohano v. State*, 114 Hawai'i 302, 347-48, 347 n.32, 162 P.3d 696, 741-42, 741 n. 32 (2007) (finding Alaska's case law instructive in interpreting a similar clause in the Hawai'i constitution, but also noting that "[p]lainly, the expressed intentions of the Hawai'i framers must guide this court" and citing to evidence that the framers intended to reach the same result as the Alaskan cases and that both states intended to

[4] The subject-in-title requirement provides another guardrail on amendments, as it requires that all amendments remain germane to the title.

emulate New York) (cited by *Dannenberg v. State*, 139 Hawai‘i 39, 52-53, 383 P.3d 1177, 1190-91 (2016)).

Moreover, the fact that the current Legislature has adopted *Mason's Manual* as parliamentary authority does not logically substitute for evidence of the intent of the constitutional framers. Further, *Mason's Manual* itself provides that the Legislature's own adopted rules and its customs, usage, and precedents govern over adopted parliamentary authority. Nat'l Conference of State Legislatures, *Mason's Manual of Legislative Procedure* (2020 ed.) §§ 4.2, 4.4. It also states:

> [u]nder a constitutional provision declaring that each house of the legislature shall determine the rules of its own proceedings, the fact that a house acted in violation of its own rules or in violation of parliamentary law in a matter clearly within its power does not make its action subject to review by the judiciary

*Id.* at §§ 15.3, 15.4. *Mason's Manual* itself thus acknowledges that even when it is adopted, it does not provide a source of standards that can be enforced by the judiciary to invalidate contrary legislative rules, customs, usages, or precedents.

In sum, Plaintiff has not contradicted the State's demonstration that there is nothing in our state's constitutional history indicating either that the framers intended to preclude all non-germane amendments after the bill introduction deadline or that doing so is necessary to effectuate the purpose of the deadline, given the protections already afforded by other constitutional provisions.

**c. Applying a germaneness standard to the bill introduction deadline requires a policy determination and disrespects legislative authority.**

Because applying the germaneness standard is not required to effectuate the purpose of the bill introduction deadline, this Court would have to make a policy determination to decide that applying the standard strikes the proper balance between promoting public participation on one hand, and preserving the Legislature's ability to amend bills to respond to public input, correct defects in legislation, and respond to unforeseen circumstances on the other. Dkt. 55 at 21-22. And doing so would intrude on the Legislature's authority to make that judgment for itself, as the branch of government with the constitutional authority to legislate (Haw. Const. art. III, § 1), but also as a branch politically accountable to the people. Dkt. 55 at 22-23.

Plaintiff emphasizes that Justice Nakayama, who authored the opinion in *League of Women Voters*, "regularly cautioned judicial restraint." Dkt. 53 at 6 n.1. Yet Plaintiff ignores the restraint demonstrated by that case. The opinion purports to adopt a "meaningful interpretation of the three readings requirement" that will "effectuate the[] stated purposes" of the "interdependent

requirements of mid-session recess, bill introduction deadline, and final printing[.]" 150 Hawai'i at 203, 499 P.3d at 403. To give effect to the bill introduction deadline and all other "interdependent requirements," the Court did not adopt a rule precluding all non-germane amendments after the bill introduction deadline, even though the case before it squarely involved such amendments. *See* Dkt. 55 at 11. The Court found it sufficient to adopt a limited rule requiring that the three readings begin anew after a non-germane amendment. 150 Hawai'i at 205, 499 P.3d at 405. The decision thus stands for the proposition that allowing non-germane amendments as long as they receive three readings is sufficient to give effect to the interdependent requirements of the three readings requirement and bill introduction deadline. If it were not sufficient, the rule laid down by the Court would be ineffective.

If this Court were to adopt a rule precluding non-germane amendments after bill introduction, it would not only be going beyond what the Court in *League of Women Voters* deemed sufficient to give effect to the intent of the constitutional framers, but it would be inserting an original purpose provision into the Constitution. Dkt. 55 at 10, 22. It is illogical to assume that those voting for a constitutional provision that simply required the Legislature to set a deadline for bill introduction must have necessarily understood that they were also implicitly voting for the equivalent of an original purpose requirement. The requirement that no bill can be amended to deviate from its original purpose is generally set forth in separate and clear constitutional language. *Id.* at 10 (collecting examples). Whether such a requirement should be included in our Constitution should be determined by the voters themselves.

**C. The Court must consider emergency situations and other unforeseen circumstances.**

A constitutional construction that "would produce an absurd result, inconsistent with the purposes and policies behind the constitutional amendment . . . should not be adopted." *Schwab*, 58 Haw. at 37, 564 P.2d at 142. If the Court determines that the Hawai'i Constitution precludes non-germane bill amendments after the bill introduction deadline, that judgment will be binding on the State as to **all bills** and will necessarily include bills that arise out of emergency situations and other unforeseen circumstances. As a result, if a non-germane amendment is required to effectuate an important result – for example, to correct a critical defect in a bill, to respond to public input, or to respond to an unforeseen event – it cannot be done during the regular session once the bill introduction has passed **even if** the bill could receive three readings in each house.

As discussed, there is no evidence that the constitutional framers intended the bill

introduction deadline to give rise to that result. Neither would *League of Women Voters* require it. *League of Women Voters* specifically recognized that the intent of the Constitution was to allow bills to be "amended any number of times" following deliberation. 150 Hawai'i at 195, 499 P.3d at 395 (citing Stand. Comm. Rep. No. 47 in 1 Proceedings of the Constitutional Convention of Hawaii 1950, at 184 (1960)); and *id.* at 195 n.20, 499 P.3d at 395 n.20. The impact of the Court's decision on potential emergencies, as well as other situations that may necessitate non-germane amendments, therefore **must** be considered to avoid absurd results and effectuate the intent of the framers.

Plaintiff dismisses this concern, asserting that the Legislature can simply recess the regular session to call a special session. Dkt. 53 at 20. As the State explained, calling a special session during regular session may not be a tenable option, not only because of the constitutional requirements for doing so (Haw. Const. art. III, § 10), but because delaying the important business already taking place during regular session (including passing necessary budget bills before the start of the fiscal year)[5] might not be possible. Dkt. 55 at 24. Special sessions still require open committee meetings (Haw. Const. art. III, § 12) and three readings of bills on separate days (Haw. Const. art. III, § 15), as well as their own procedural deadlines, meaning that the session could take weeks. It cannot be assumed that the Legislature can afford to recess the regular session for so long.

It also cannot be assumed, as Plaintiff suggests, that the Governor's emergency powers will be sufficient. Dkt. 53 at 20. Critically, expenditures from the State's emergency and budget reserve fund (the rainy day fund) can only be made by legislative appropriations. HRS § 328L-3(c). The rainy day fund is specifically intended to provide funding during "times of emergency, severe economic downturn, or unforeseen reduction in revenues." *Id.* And the Governor's emergency powers do not provide a remedy for non-emergency situations that could still result in severe consequences if not addressed quickly – for example, the federal government's decision to drastically cut funding for state and non-profit programs.

[5] The Constitution also requires that general fund expenditures cannot exceed the State's current general fund revenues and unencumbered cash balances. Haw. Const. art. VII, § 5. Thus, the Legislature must have an available vehicle to take necessary action if something occurs after the bill introduction deadline that could result in expenditures exceeding funds.

**D. There is no reason why germaneness cannot be determined once an amendment is proposed.**

Even if non-germane amendments are precluded after the bill introduction deadline (which the State obviously disputes), Plaintiff has not explained why a court must apply the germaneness standard before an amendment is even proposed. Dkt. 53 at 16. The germaneness standard would only be implicated if an amendment were adopted, and at that point, the original bill could be compared to the amendment to determine whether they are germane to each other. Whether a bill fails to disclose "a cognizable subject to which subsequent amendments can be germane[,]" *id*., can be tested by comparing the short-form bill to the actual proposed amendment. This is consistent with the literal definition of "germane." Dkt. 55 at 13. Plaintiff also provides no example of another court applying its proposed standalone version of the germaneness test.

**E. If the Court were to reserve questions for disposition by the Hawai‘i Supreme Court, it should adopt the State's proposed questions.**

The State respectfully disagrees with Plaintiff's formulation of the proposed reserved questions. Dkt. 53 at 21. They ask for answers to abstract questions untethered to the undisputed facts of this case. And answering these questions will not finally determine the case unless they are applied to the actual circumstances at issue. Thus, the State requests that if the Court is inclined to reserve questions for the Hawai‘i Supreme Court, that it adopt those proposed by the State, which specifically ask the Court to consider Act 290 of 2025.

DATED: Honolulu, Hawai‘i, March 20, 2026.

/s/ Lauren K. Chun
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Attorney for Defendant STATE OF HAWAI‘I

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served electronically (through the Court's JEFS system), or conventionally via US Mail, upon the following parties on the date below:

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DATED: Honolulu, Hawai'i, March 20, 2026.

/s/ Lauren K. Chun
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