



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 52, RELATING TO THE ELECTION OF MEMBERS TO THE BOARD OF TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Thursday, January 26, 2023 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Anne E. Lopez, Attorney General,
Reese Nakamura, Deputy Attorney General, or Patricia Ohara,
Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of the bill are to amend the process for electing members to the Board of Trustees of the Office of Hawaiian Affairs (OHA Board) and require the Reapportionment Commission to establish a reapportionment plan based on basic island units for the OHA Board so that they are selected according to their respective districts rather than an at-large statewide election for each seat.

Instead of members being elected during an at-large statewide election in which all registered voters are permitted to vote to fill all of the seats on the OHA ballot, the bill provides for an election in which only qualified voters of a district within a basic island unit are permitted to elect one of the nine OHA Board members. We are concerned that the reapportionment of OHA's nine-member Board among the four basic island units may fall short of the one-person, one-vote standard established by the U.S. Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964). While there need not be an identical number of persons in each district, the states must make honest and good faith efforts to construct districts with equal numbers of persons, as practicable. Due to disparities in population sizes among the basic island units, however, we believe that deviations from population equality in the reapportionment of the OHA Board may be required and, in some instances, be quite significant, potentially resulting in a violation of the Equal

Protection Clause of the Fourteenth Amendment of the U.S. Constitution. Because of the concern that the reapportionment of the OHA board will fall short of the one person, one vote standard, and Department respectfully asks the Committee to hold this bill.

LATE



Testimony of the Office of Hawaiian Affairs

SB52

RELATING TO THE ELECTION OF MEMBERS TO THE BOARD OF TRUSTEES OF
THE OFFICE OF HAWAIIAN AFFAIRS.

Senate Committee on Hawaiian Affairs

January 26, 2023

1:00 pm

Room 224

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** in response to SB52, which would amend the process for electing members to the OHA Board of Trustees by determination of the Reapportionment Commission pursuant to Article IV of the Hawai'i State Constitution.

OHA wishes to reaffirm concerns that were expressed in a similar measure introduced in 2021 (SB196), which focused on the issue of equal representation. OHA has concerns that the measure's limitation to the four basic island units provides no definitive representation for Moloka'i or Lana'i residents who presently have a combined, yet dedicated seat on the OHA Board.

With that said, OHA also wishes to reiterate concerns that reapportionment may result in inadvertent inflation of OHA's operating costs, and ultimately take away from the available funding that OHA uses to address the ongoing need for the betterment of conditions for Native Hawaiians.

OHA appreciates the opportunity to testify on this measure. Mahalo nui loa.

SB-52

Submitted on: 1/24/2023 10:14:28 AM

Testimony for HWN on 1/26/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

I have always wondered why my ballot includes only candidates from my district, yet I can vote for OHA trustee from e.g. Molokai.

SB-52

Submitted on: 1/24/2023 5:05:10 PM

Testimony for HWN on 1/26/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Support, enabling legislation that allows all islands to select their own trustee representative to the Office of Hawaiian Affairs. Conforms to other elective offices, such as Senators and House Representatives. Should the legislation contain some guidance on the effective date for reapportionment since the Reapportionment Committee recently completed its work.

SB-52

Submitted on: 1/24/2023 10:49:48 PM

Testimony for HWN on 1/26/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cyd L. Hoffeld	Individual	Support	Written Testimony Only

Comments:

Aloha Senator Maile S.L. Shimabukuro, Chair, Senator Kurt Fevella, Vice Chair, and Members of the Committee on Hawaiian Affairs,

My name is Cyd L. Makanui Hoffeld and I am in **strong support of SB52** which requires the Reapportionment Commission to establish a reapportionment plan for the members of the Board of Trustees of the Office of Hawaiian Affairs so that OHA candidates are elected according to their respective districts, rather than an at-large statewide election for each seat.

I am a proud Kanaka Maoli woman who was born and raised in Hilo. My father was from Laupahoe and my mother was born and raised at Loko Aka in Keaukaha. I live on Hawai'i Island, have raised my daughters here, and have worked with and for my community my whole adult life. When the opportunity to continue to service my lahui in a greater capacity as an OHA candidate opened, I ran for the Hawai'i Island seat along with several amazing and well qualified friends and colleagues from Moku o Keawe.

It was then that I personally experienced the imbalance of power from O'ahu and other islands who by their overwhelming number of voters were able to choose a representative for our district. It just wasn't fair! They chose a candidate who lived and worked on O'ahu. Whose wife worked in Honolulu and whose children were registered to attend school there. It became apparent that it was not a position he wanted because he resigned shortly after. The right to elect a candidate to serve our community was usurped by people who did not live, work, play or worship on our island.

You have the opportunity now to bring balance and equity to the Native Hawaiian communities and to the candidates who want to serve them. You have the ability to give back the power to voters from their respective district so they can choose for themselves the leaders who will best represent them and their voices.

Please vote to **support SB52**.

Mahalo piha for allowing me to share my mana'o with you!

LATE

SB-52

Submitted on: 1/26/2023 1:04:13 AM

Testimony for HWN on 1/26/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Regina Peterson(Nani)	Individual	Support	Written Testimony Only

Comments:

I support this bill

Center for Hawaiian Sovereignty Studies
46-255 Kahuhipa St. Suite 1205
Kane'ohe, HI 96744
(808) 247-7942
Kenneth R. Conklin, Ph.D. Executive Director
e-mail Ken_Conklin@yahoo.com
Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
For hearing Thursday, January 26, 2023

Re: SB 32 PROPOSING AN AMENDMENT TO THE HAWAII STATE CONSTITUTION TO REQUIRE THE REAPPORTIONMENT COMMISSION TO ESTABLISH A REAPPORTIONMENT PLAN TO DRAW DISTRICT LINES FOR THE MEMBERS OF THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF TRUSTEES.
Amends the State Constitution to require the Reapportionment Commission to establish a reapportionment plan to draw district lines for the total number of members of the board of trustees of the office of Hawaiian affairs.

And

SB52 RELATING TO THE ELECTION OF MEMBERS TO THE BOARD OF TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS.
Amends the process for electing members to the Office of Hawaiian Affairs Board of Trustees. Requires the Reapportionment Commission to establish a reapportionment plan for the members of the Board of Trustees of the Office of Hawaiian Affairs so that they are elected according to their respective districts, rather than an at-large statewide election for each seat.

TESTIMONY IN OPPOSITION TO BOTH SB32 AND SB52

Both of these poorly written bills contain provisions that were ruled unconstitutional by federal courts two decades ago, and one bill was so hastily copy/pasted from a bill that failed ten years ago that this "new" bill would enact a law explicitly to take effect in year 2014(!!!) Whoever actually authored these two bills should be severely reprimanded by the Senator with the illegible signature who signed them and by the committee chair who placed them on the agenda for hearing. Furthermore, that Senator who signed the bills and the committee chair are presumably old enough and sufficiently aware of the highly publicized controversies surrounding the unconstitutional provisions of these bills that by introducing these bills and placing them on the agenda they may be presumed to have knowingly violated their oath of office to "support and defend the Constitution of the United States." Shame on them!

PROVISIONS IN THESE BILLS THAT WERE RULED UNCONSTITUTIONAL BY FEDERAL COURTS AND DELETED FROM THE HAWAII STATE CONSTITUTION MORE THAN TWO DECADES AGO:

SB32 pdf version page 6 lines 18-20 says that OHA board members shall be "elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians."

SB52 pdf version page 1 lines 14-16 says "No person shall be eligible for election or appointment to the board unless the person is Hawaiian ..."

HISTORY OF FEDERAL COURT CIVIL RIGHTS DECISIONS FORBIDDING THOSE PROVISIONS:

Those racist requirements were written into the 1978 amendment to the Hawaii Constitution that created OHA; but because OHA is an agency of the State government, the federal courts ruled them contrary to the U.S. Constitution and stripped them out of the State Constitution. Now I shall educate the introducing Senator, committee chair, and members of the public who read this testimony, regarding the court decisions.

The racial restriction regarding who can vote for candidates for the OHA board was ruled unconstitutional by the U.S. Supreme Court by vote of 7-2. The racial restriction regarding candidacy for the OHA board was ruled

unconstitutional by the U.S. District Court in Honolulu and by the 9th Circuit Court of Appeals.

Of course this committee could rescue those provisions by redefining the word “Hawaiian” to mean “citizen of Hawaii” rather than the racially exclusionary meaning requiring at least one drop of Hawaiian native blood. I would welcome such a redefinition. Please do it! But of course you won’t; so here’s the story.

In year 2000 the U.S. Supreme Court by vote of 7-2 ruled in *Rice v. Cayetano* that there can be no racial restriction on who can vote in the election for OHA trustees.

Later in year 2000 the U.S. District Court in Honolulu, Judge Helen Gillmor presiding, ruled that there can be no racial restriction on who can run as a candidate for OHA trustee. The case was CV 00-00514 HG-BMK Arakaki et. al. vs. State of Hawaii et. al, and OHA as intervenor. I was honored to be among the multiracial group of 13 plaintiffs including 3 Native Hawaiians. We won.

Governor Cayetano ousted all nine OHA trustees on grounds they had been illegally elected. In the election of November 2000 I ran as a candidate for OHA trustee, along with 95 other candidates for the 9 seats. There were at least a dozen so-called “non-Hawaiians” [Hawaii citizens with no native blood] among the 96 candidates; and one of them, Charles Ota, won the Maui seat.

Judge Gillmor’s civil rights racial desegregation decision was appealed to the 9th Circuit Court of Appeals, and was upheld by the three-judge panel, with the final judgment filed on July 1, 2003 by Honolulu clerk Walter Chinn.

The judgment concludes: “... The State is ordered to permit otherwise qualified non-Hawaiians to run for office and to serve, if elected, as trustees of the Office of Hawaiian Affairs. Section 5 of Article XII of the State Constitution and HRS Â§ 13D-2 violate the Fifteenth Amendment and the Voting Rights Act, to the extent that they require persons running for OHA trustee positions and serving, if elected, to be Hawaiian.”

EMBARRASSING ATTEMPT TO NOW LEGISLATE WHAT MUST HAPPEN 9 YEARS AGO

SB52 pdf version page 3 lines 1-4: "Beginning January 1, 2014, members of the board of trustees shall be nominated at a primary election and elected at the general election in every even—numbered year."

CONCERN ABOUT THE LIKELY VIOLATION OF THE "ONE PERSON = 1 VOTE" CONCEPT IF THESE BILLS ARE ENACTED

Although these bills are poorly written and with convoluted concepts and language, it appears to me that the main purpose behind both bills is to put a stop to the 45-year-old system of allowing all voters throughout the State to vote in every one of the 9 contests for OHA board members, even though 5 of the board members are required to be actual residents of the designated county or island whose seat they are seeking. For whatever reason, the holder of the "Molokai seat" is required to be a resident of Moloka'i, even though all the voters in Hawaii can vote in the contest for that seat; likewise for the O'ahu, Kaua'i (including Ni'ihau), Hawai'i Island, and Maui (including Lana'i and Kaho'olawe) seats. The comparable electoral situation for O'ahu County Council would be to allow every resident of O'ahu to vote for the District 3 representative, while requiring that representative to actually live in District 3. The existing O'ahu system says only the residents of a district can vote for that district's representative. What makes it possible for for the existing O'ahu system to comply with federally-mandated "one person = one vote" rule is that all the districts on O'ahu have their boundaries redrawn after each decennial census to ensure that there are approximately the same number of residents in every district. But the 4 OHA seats currently set aside for residents of specific counties could not possibly comply with one person = one vote unless heavily populated portions of O'ahu were somehow grouped with each of the neighbor counties. The districting concept in these bills is simply illegal and could only be made permissible if there were a wild and crazy hodgepodge of canoe districts. Of course you might get away with an illegal system for 20 years, as happened with the racial segregation of voters and candidates in OHA elections from 1980 to 2000; but in the end there will hopefully be civil rights activists who will come forward and put a stop to it as happened with Rice v. Cayetano and the lawsuit Arakaki v. State where I was honored to be a plaintiff.

LATE

SB-52

Submitted on: 1/26/2023 12:38:17 PM

Testimony for HWN on 1/26/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daphne Lindsey	Individual	Support	Written Testimony Only

Comments:

I Support SB52

LATE

SB-52

Submitted on: 1/26/2023 1:11:35 PM

Testimony for HWN on 1/26/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Malia Marquez	Individual	Support	Written Testimony Only

Comments:

Aloha Kākou,

I agree and support SB52. Mahalo for your time on this matter.

Malia Marquez

I agree and support SB52. Mahalo for your time

on this matter.

