

THIRTY-FOURTH DAY

Monday, March 21, 2005

The Senate of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2005, convened at 11:41 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Fred Hemmings, Hawaii State Senate, after which the Roll was called showing all Senators present with the exception of Senator Sakamoto who was excused.

The President announced that he had read and approved the Journal of the Thirty-Third Day.

At 11:53 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:00 o'clock noon.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 1041 (Gov. Msg. No. 377):

Senator Hanabusa moved that Stand. Com. Rep. No. 1041 be received and placed on file, seconded by Senator Hee and carried.

Senator Hanabusa then moved that the Senate advise and consent to the nomination of KATHLEEN N.A. WATANABE to the office of Judge, Circuit Court of the Fifth Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Hee.

Senator Hanabusa rose to speak in support of the nominee and said:

"Mr. President, I stand in support of Gov. Msg. No. 377, Kathleen Watanabe, for a term of ten years in the Circuit Court of the Fifth Circuit.

"Mr. President, members, Kathleen Watanabe is not a stranger to any of us. Let me give you some of her background. She has a Bachelor's of Art degree from the University of Puget Sound and her Juris Doctorate from the William S. Richardson School of Law. She's been licensed to practice law in Hawaii since 1982. In that time she served as the deputy county attorney and the county attorney for the Kauai County. Subsequent to that she went into private practice and she also served for four years as a per diem judge in the fifth circuit. During that time she basically presided over traffic, criminal, civil, juvenile and family court cases, then Kathleen Watanabe and her husband made a decision and that is when their two daughters, Puanani and Lehua, made the decision to attend Kamehameha Schools. Kathleen and her husband basically moved to the island of Oahu to be near their two daughters. At that time, she became a deputy attorney general.

"When I first met her was when she was in charge of the individual claims unit within the Attorney General's Office. Many of us know her now as the director of DHRD for Governor Lingle.

"Kathleen Watanabe was rated qualified by the Hawaii State Bar Association and I'd like to add that to her credit she said she was very pleased to receive the qualified rating. And the

reason why is because Kathleen admitted up front that she did not have trial experience, albeit civil or criminal. However, she explained that because of her four years as a per diem judge, she believed that she had the necessary experience, albeit not as a trial attorney, to preside over the various types of cases.

"One of the things that Kathleen said is that she has always tried in her legal career to get to the point of developing that trial experience. But what has somewhat stood in her way, which is really a compliment in and of itself, is that she's always been tapped for supervisory type positions even if she specifically asked not to be a supervisor because she wants that in-the-trenches kind of experience.

"Kauai court, Mr. President, is a very different kind of animal. It has the whole gamut. It has one circuit court judge, basically, and we all know him. It's of course Spike who runs that court with an iron hand. Even the members of the judiciary basically defer to Spike and he does what he wants to do. Kathleen is going to be a nice addition to that because she'll be the balancing factor.

"What I would like to say about her is that she made a very interesting comment. And it's these kinds of comments that leave an impression, especially to your Chair. She said the one thing that she appreciates more than anything else is her husband and her two daughters because they will keep her very well grounded. And on Kauai that's probably very necessary – to keep her well grounded and solid because of the total gamut of cases that she'd have to deal with.

"She shared one story that I thought was one of the nicest things that I'd ever heard. She said that she has wanted to be a judge for such a long time, so much so that her daughter Lehua, when she was a lot younger, wrote a letter to Santa Claus and told Santa Claus, 'I don't want anything, Santa, but please, please give my mommy a judgeship because that's what she really wants.' So, along the lines of the editorial that appeared in the New York Sun in 1897, of course the quote there was 'Yes, Virginia, there is a Santa Claus,' we'd like to all say, 'Yes, Lehua, there is a Santa Claus.'

"Mr. President, members, there were some questions as to why Kathleen Watanabe's nomination is on the Floor today. It is because she specifically requested that those two girls be in attendance here with her because it's clearly something that they have stood by their mother and wanted to see this happen. So, Mr. President, I ask you and my colleagues to join me in voting for the confirmation of Kathleen Watanabe.

"Thank you very much."

Senator Slom rose in support and stated:

"Mr. President, on behalf of your Senate Minority, we would like to add our support for Kathleen Watanabe.

"She'll make an excellent judge. While she may be lacking in trial experience, she certainly is not lacking in life experience. She's had the ability to respond to the call for her leadership ability and her skills and her background, and she has exercised them ably.

"We know her for her preparation, for her fine and positive demeanor, and now we learn about her priorities. She certainly has her priorities right with her family, her daughters and her husband. We're very happy – I don't know whether it was Santa Claus or not and some people always look to this

Legislative Body as being Santa Claus to give them their every wish – but I'm very happy that we are in fact able to provide the judgeship because she is going to provide the important leadership and the positive decisions that we all need in Hawaii.

"So, we wish her and her family well and we're very happy to add our support. Thank you Mr. President."

Senator Hooser rose to support the nominee and said:

"Mr. President, I rise in support of Gov. Msg. No. 377.

"Mr. President, colleagues, some of the earlier comments I won't reiterate. In looking at the nominee's background, I have to say that I chose to look prior to the receipt of the law degree. And what I saw there reiterates and supports the reason that I believe Kathleen Watanabe will make a great judge.

"Prior to going to law school she was a social worker with the Department of Health providing recreational therapy to mentally retarded adult populations on Kauai. She was also a guidance counselor providing guidance and counseling to at-risk Hawaiian youth and provided home tutoring to pregnant and alienated high school students.

"Mr. President and colleagues, as the Senator representing district 7, comprising all of Kauai and Niihau, it gives me great pleasure to speak in support of the appointment of Kathleen Watanabe to the Circuit Court of the Fifth Circuit. After all, Ms. Watanabe is a Kauai girl. She's a graduate of Kapaa High School and she has done her school and her island proud. The Garden Isle Newspaper wrote, 'Serving on the bench of the Fifth Circuit Court would make Kathleen Watanabe an excellent role model for students attending public high school on Kauai. She has made it in the big city off island, and is now poised to take on one of the most prominent and important civic roles on Kauai.'

"Kathleen Watanabe knows Kauai and its people. In 1992 she was recognized by the American Bar Association for outstanding legal performance in response to hurricane Iniki. Kathleen Watanabe has practiced law for over 20 years and served as District Court Fifth Circuit per diem judge on Kauai for four of those years.

"Former Attorney General Margery Bronster states, 'Ms. Watanabe has expansive legal knowledge and experience. She has the temperament, objectivity, and compassion necessary to be a judge. The community will be well served by the judicial appointment of Ms. Watanabe.' Temperament and character are the words I hear over and over again; both are attributes for any judge and certainly the attributes of Kathleen Watanabe.

"Another former Attorney General Earl Anzai states, 'I have no doubt that Ms. Watanabe has the legal background to serve as a Circuit Court Judge. Moreover, her people skills will make her the people's judge of Kauai.'

"My friends in the legal profession and those who I know as former judges tell me that temperament is everything. Former Governor Cayetano says, 'I believe Ms. Watanabe is a person of high integrity and possesses a judicial temperament which is so important in assuring those who appear in court that they will be treated fairly and with respect under the law.'

"The people who know Ms. Watanabe best are the people from Kauai, Kauai people, people such as retired Kauai Judge Gerald Matsunaga who says, 'I supported her earlier appointment based on her intelligence, her competence, humble and polite demeanor, and her unquestionable character.' Other Kauai residents, a mutual friend, Bobby Kubota, who runs and

owns Pono Market says, 'Her early family life was not always easy. But through it all, Kathleen stayed on course. She was always a leader while showing compassion to her fellow classmates. Knowing where Kathleen came from, I'm proud of what she has accomplished. I truly believe she is the right candidate for a judgeship.'

"Former State Representative Al Lardizabal states, 'What Kathleen Watanabe possesses is judicial temperament, character and qualities befitting a judge in the Fifth Circuit Court. Another very telling letter states, 'Throughout much of her childhood years she endured a great deal of personal adversity. She was raised in a single parent home with multiple siblings and limited resources. Despite the many inherent challenges that she faced, she persevered never to lose sight of her goals and her aspirations,' Henry Hashimoto, a community member.

"In conclusion, Mr. President and colleagues, I will quote the words as if they were my own from former Mayor and present Councilwoman Joanne Yukimura who says simply, 'We on Kauai are very proud of Ms. Watanabe and her accomplishments. I know that Mrs. Watanabe will serve the state well as the fifth circuit court judge.'

"Mr. President and colleagues, please join me in consenting and confirming Ms. Kathleen Watanabe as circuit court judge in the fifth circuit.

"Thank you, Mr. President."

Senator Kanno rose to speak in support as follows:

"Mr. President, I rise in support of the nominee.

"Mr. President, I've had the opportunity to work with the nominee for the past two years in her capacity as Director of the State Department of Human Resources Development. She has done an excellent job. She's bright, articulate, and brings with her a special ability to work on difficult issues by treating all parties with respect and bringing a commitment to find a common ground.

"I have an example of her commitment and dedication to her work. She has worked out with the Chief Justice an arrangement to allow her to continue in her position as DHRD director until the end of Session. I very much want to thank her for her staying through the end of Session to finish the important work at hand.

"I very much appreciate having had the opportunity to work with her. I know that she'll do an excellent job as a circuit court judge. I urge my colleagues to support the nominee. Thank you."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Sakamoto).

At this time, Senator Hanabusa introduced Judge Watanabe to the members of the Senate. (Judge Watanabe, who was seated in the gallery with members of her family, rose to be recognized.)

At 12:15 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:21 o'clock p.m.

RE-REFERRAL OF HOUSE BILL

The Chair re-referred the following House bill that was received:

House Bill Referred to:

No. 1017, H.D. 3 Committee on Energy, Environment, and International Affairs, then jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Ways and Means

Senator Baker, Chair of the Committee on Health, requested a waiver of the notice requirement pursuant to Senate Rule 21 for H.B. No. 395.

Senator Baker noted:

“Mr. President, this bill conforms the law to a recent Hawaii Supreme Court decision by amending the Patients’ Bill of Rights external review procedure under which patients may appeal a managed care plan’s final internal decision denying coverage of a health intervention.

“Your Senate Committee on Health heard a Senate companion of this bill and crossed it over to the House. We understand that measure is dead and we would like to use this as a means to address this issue.”

The Chair then granted the waiver.

Senator Kokubun, Chair of the Committee on Water, Land, and Agriculture, requested a waiver of the notice requirement pursuant to Senate Rule 21 for H.B. Nos. 128 and 852.

Senator Kokubun noted:

“Mr. President, H.B. No. 128, H.D. 2, requires DLNR to negotiate beach services concessions with qualified Hawaiian beachboys under specified criteria.

“H.B. No. 852, H.D. 2, exempts proceedings of the Public Utilities Commission from automatic permit approval provisions.”

The Chair then granted the waiver.

ADJOURNMENT

At 12:24 o’clock p.m., on motion by Senator Hee, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o’clock a.m., Tuesday, March 22, 2005.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate