

THIRTY-THIRD DAY**Friday, March 12, 2004**

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:42 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend John Berger, The Cathedral of Our Lady of Peace, after which the Roll was called showing all Senators present.

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

At 12:01 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:22 o'clock p.m.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 288 and 289) were read by the Clerk and were disposed of as follows:

Hse. Com. No. 288, transmitting H.B. No. 1800, H.D. 1, which passed Third Reading in the House of Representatives on March 11, 2004, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, H.B. No. 1800, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE STATE BUDGET," passed First Reading by title and was referred to the Committee on Ways and Means.

Hse. Com. No. 289, transmitting H.B. No. 2300, H.D. 1, which passed Third Reading in the House of Representatives on March 11, 2004, was placed on file.

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, H.B. No. 2300, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE JUDICIARY," passed First Reading by title and was referred jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Ways and Means.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions (S.C.R. Nos. 49 to 52) were read by the Clerk and were deferred:

Senate Concurrent Resolution

No. 49 "SENATE CONCURRENT RESOLUTION URGING THE OFFERING OF CONTINUING MEDICAL EDUCATION ON PAIN MANAGEMENT."

Offered by: Senator Chun Oakland.

No. 50 "SENATE CONCURRENT RESOLUTION URGING THE DEPARTMENT OF EDUCATION TO ENSURE FULL COMPLIANCE WITH THAT PORTION OF THE ADMINISTRATIVE RULES THAT CALLS FOR 'APPROPRIATE INTERVENTION AND TREATMENT SERVICES' FOR STUDENTS EXCLUDED FROM SCHOOL DUE TO 'POSSESSION OF A DANGEROUS WEAPON, SWITCHBLADE KNIFE, INTOXICATING LIQUOR, OR ILLICIT DRUGS'."

Offered by: Senators Tsutsui, English, Baker.

No. 51 "SENATE CONCURRENT RESOLUTION REQUESTING OUR CONGRESSIONAL DELEGATION'S SUPPORT FOR MEASURES TO RESTORE HEALTH CARE BENEFITS TO VETERANS."

Offered by: Senator Tsutsui.

No. 52 "SENATE CONCURRENT RESOLUTION URGING THE SUPPORT OF DEPLOYED HAWAII NATIONAL GUARD AND MILITARY RESERVISTS THROUGH ECONOMIC RELIEF MEASURES."

Offered by: Senator Kawamoto, by request.

SENATE RESOLUTION

The following resolution (S.R. No. 23) was read by the Clerk and was deferred:

Senate Resolution

No. 23 "SENATE RESOLUTION URGING THE SUPPORT OF DEPLOYED HAWAII NATIONAL GUARD AND MILITARY RESERVISTS THROUGH ECONOMIC RELIEF MEASURES."

Offered by: Senator Kawamoto, by request.

STANDING COMMITTEE REPORT

Senator Inouye, for the Committee on Water, Land, and Agriculture, presented a report (Stand. Com. Rep. No. 2874) recommending that S.C.R. No. 9, as amended in S.D. 1, be adopted.

By unanimous consent, action on Stand. Com. Rep. No. 2874 and S.C.R. No. 9, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION SUBMITTING TO THE LEGISLATURE OF THE STATE OF HAWAII FOR REVIEW OF ACTION TAKEN BY THE BOARD OF LAND AND NATURAL RESOURCES ON LAND EXCHANGES," was deferred until Monday, March 15, 2004.

ORDER OF THE DAY**ADVISE AND CONSENT**

Stand. Com. Rep. No. 2868 (Gov. Msg. Nos. 259, 260, 261, 262, 263, 264, 265 and 266):

Senator Sakamoto moved that Stand. Com. Rep. No. 2868 be received and placed on file, seconded by Senator Hooser and carried.

Senator Sakamoto then moved that the Senate advise and consent to the nominations to the Hawai'i Medical Education Council of the following:

SHERREL L. HAMMAR MD, term to expire June 30, 2007 (Gov. Msg. No. 259);

CHRISTI L. KELIPIO, term to expire June 30, 2005 (Gov. Msg. No. 260);

LESLIE J. KRENK RPH, CDE, term to expire June 30, 2005 (Gov. Msg. No. 261);

SUSAN REHBERG MERRILL, term to expire June 30, 2005 (Gov. Msg. No. 262);

LAWRENCE O'BRIEN, term to expire June 30, 2007 (Gov. Msg. No. 263);

ARTHUR USHIJIMA, term to expire June 30, 2007 (Gov. Msg. No. 264);

JOSEPH G. WEBB JR., term to expire June 30, 2007 (Gov. Msg. No. 265); and

MARY EVELYN WORRALL, term to expire June 30, 2005 (Gov. Msg. No. 266),

seconded by Senator Hooser.

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 2869 (Gov. Msg. No. 298):

Senator Kawamoto moved that Stand. Com. Rep. No. 2869 be received and placed on file, seconded by Senator Espero and carried.

Senator Kawamoto then moved that the Senate advise and consent to the nomination of DAVID SPROAT to the Commission of Transportation, term to expire June 30, 2007, seconded by Senator Espero.

Senator Kawamoto rose in support of the nominee and said:

"I'd like to insert language into the Journal in support of Stand. Com. Rep. No. 2869, David Sproat."

The Chair having so ordered, Senator Kawamoto's remarks read as follows:

"Mr. President, your TMG Committee reviewed Gov. Msg. No. 298, nominating DAVID SPROAT to the Commission on Transportation for a term to expire on 6/30/07.

"Our Committee finds that the nominee has the necessary qualifications for this appointment.

"Mr. Sproat is a retired Fire Chief from the Kauai Fire Department, with 30 years of service. He graduated from the University of Hawaii with a degree in Tropical Agriculture.

"His community activities include:

- the Kilauea Neighborhood Board Association,
- Kilauea School PTA,
- Hawaiian Farmers of Hanalei,
- Waipa Foundation, and
- Mahelona Medical Center Charitable Foundation.

"Mr. Sproat also served with the Hawaii Army National Guard and had two years of active duty, including a tour in Vietnam.

"Your TMG Committee recommends that we advise and consent to this nomination."

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 2870 (Gov. Msg. No. 299):

Senator Kawamoto moved that Stand. Com. Rep. No. 2870 be received and placed on file, seconded by Senator Espero and carried.

Senator Kawamoto then moved that the Senate advise and consent to the nomination of CYNTHIA LYNN STINE to the Advisory Board on Veterans Services, term to expire June 30, 2007, seconded by Senator Espero.

Senator Kawamoto rose in support of the nominee and said:

"I'd like to insert language into the Journal in support of Stand. Com. Rep. No. 2870, Cynthia Stine."

The Chair having so ordered, Senator Kawamoto's remarks read as follows:

"Mr. President, your TMG Committee reviewed Gov. Msg. No. 299, nominating CYNTHIA LYNN STINE as the Oahu representative to the Advisory Board on Veterans Services for a term to expire on 6/30/07.

"Our Committee finds that the nominee has the necessary qualifications for this appointment.

"Ms. Stine received a degree in occupational education from the Wayland Baptist University. She is currently a computer instructor and testing engineer. She served in the Air Force for 20 years, from 1979 to 1999, and was awarded the Air Force Commendation Medal.

"Ms. Stine is currently the Commander of Post 32 and the Vice Commander for District 2, of the American Legion. She is also an active member of the Air Force Association and the American Business Women's Association.

"Your TMG Committee recommends that we advise and consent to this nomination."

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 2871 (Gov. Msg. Nos. 252, 253, 254, 255, 256 and 257):

Senator Ige moved that Stand. Com. Rep. No. 2871 be received and placed on file, seconded by Senator Aduja and carried.

Senator Ige then moved that the Senate advise and consent to the nominations to the King Kamehameha Celebration Commission of the following:

EIRAYNA K. ADAMS, term to expire June 30, 2005 (Gov. Msg. No. 252);

CAROLEE K. ARICAYOS, term to expire June 30, 2007 (Gov. Msg. No. 253);

ELAINE NICKIE HINES, term to expire June 30, 2007 (Gov. Msg. No. 254);

WHITNEY G.K. SMITH, term to expire June 30, 2005 (Gov. Msg. No. 255);

JENNIFER L. VIERNES, term to expire June 30, 2007 (Gov. Msg. No. 256); and

BENJAMIN J. YIM, term to expire June 30, 2007 (Gov. Msg. No. 257),

seconded by Senator Aduja.

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 2872 (Gov. Msg. No. 293):

Senator Ige moved that Stand. Com. Rep. No. 2872 be received and placed on file, seconded by Senator Aduja and carried.

Senator Ige then moved that the Senate advise and consent to the nomination of BOB DEWITZ to the Board of Directors of the Hawai'i Strategic Development Corporation, term to expire June 30, 2006, seconded by Senator Aduja.

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

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 2873 (Gov. Msg. No. 152):

Senator Hanabusa moved that Stand. Com. Rep. No. 2873 be received and placed on file, seconded by Senator English.

Senator Ihara rose and said:

"Mr. President, I would like to enter into the Journal my objections to certain findings contained in Stand. Com. Rep. No. 2873, and I can submit these objections in writing to the Clerk."

The Chair having so ordered, Senator Ihara's objections to certain findings contained in Stand. Com. Rep. No. 2873 is identified as "ATTACHMENT A" to the Journal of this day.

The motion was put by the Chair and carried.

Senator Hanabusa then moved that the Senate consent to the nomination of TED H.S. HONG to the office of Judge, Circuit Court of the Third Circuit, State of Hawai'i, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, seconded by Senator English.

Senator Hanabusa rose to speak in support of the nominee as follows:

"Mr. President, I rise in support of Gov. Msg. No. 152, submitting for consideration and confirmation to the Circuit Court of the Third Circuit, State of Hawaii, gubernatorial nominee Ted H.S. Hong for the term of 10 years.

"Mr. President, first I'd like to have a little leeway to thank the members of your Judiciary and Hawaiian Affairs Committee. As you are well aware of, we had a record almost nine hours. And I'd like to comment that we had absolutely no breaks – no lunch, no bathroom breaks, nothing.

"Your members were all there and it was, Mr. President, an excellent hearing. It set forth the process. It caused us who

were there to question, and I believe these are all the important aspects of what we have all been elected to do – to ask the questions and to listen. With that, Mr. President, I'd like to proceed.

"Mr. President, Ted Hong is a graduate of the University of Hawaii, earning his undergraduate degree in political science, and he is also a graduate of the UH Richardson School of Law. His present job . . . he's, of course, very well known; it's been covered in the press many times. He is the Chief Negotiator for the State of Hawaii and he is also an interim regent on the Board of Regents of the University of Hawaii. His past experience included solo practice, as well as being a practitioner in a law firm on the Big Island. He has held the position of Assistant Corporation Counsel and Deputy Corporation Counsel for the City and County of Honolulu. He has also been a Deputy Prosecuting Attorney and he served as Grand Jury Counsel as well.

"Mr. President, in my prior speeches this is where I would usually dispense with the one line that the Hawaii State Bar Association has rated the candidate as. But in this particular case, I cannot do so, because the Hawaii State Bar Association has rated Mr. Hong as not qualified. This rating caused your Committee to look into what does this rating mean, and more importantly to this speaker, how the rating was arrived at.

"We must first understand, Mr. President, that this process which the Bar Association utilized is a new process. It's been in effect from March of last year. We had Bert Sakuda, someone who is not a stranger to many of us, come forward and testify how it has been done in the past 10 years, and we had Dale Lee, the sitting president of the HSBA, who told us quite candidly, or told me quite candidly, that he didn't like this process when it first came out. And we had testimony from Doug Crosier, the former president of HSBA, who submitted testimony in support, in strong support, of Mr. Hong, who basically put this whole process into play. We had to kind of sit there and wonder what is going on.

"I can tell you what we did learn is that the bar solicits by e-mail, and it could be technology because we didn't have that technology in the past. And this e-mail solicitation, which I have forwarded on to the members to show you what it is, it's sort of a generic form that says please provide your comments and your comments will be held in confidence and it will be anonymous. Some people, of course, then choose to participate or not to participate. I choose not to participate because I believe it's a conflict sitting as the Judiciary Chair. If you do participate, then your name is redacted and the staff, not the members of the directors of the board or the president or its officers, but the staff redacts your name and it's put on a piece of paper and forwarded. If there is a lot of comments, then what they do is they summarize and these summaries are then presented to the board.

"In this case, in Mr. Hong's case, there were 56 responses. All 56 responses fit on eight pieces of paper. To put that into relative perspective, we must have had equivalent to a ream of testimony that your Committee went through. The 56 were evenly split – 28 saying that he apparently was not qualified; 28 saying that he was qualified. As a result, Mr. Lee said that the board took a secret ballot. He said that they relied on Robert's Rules, and as the chair, he decided it would be a secret ballot. They went into executive session, secret ballot, and voted, and the vote is as reflected – seven finding him not qualified, five finding him qualified, and I believe one person abstained. There are 19 members of the board and this decision was made by 13 of the members, which is the process.

“What I have taken exception to is that there is a fundamental difference between an anonymous process and a process that is confidential, and the reason is that as decision-makers, you should know who is there. Confidentiality is not unknown to lawyers. It is an understood privilege that we deal with all the time. It is a breach of that confidentiality in an attorney/client setting, for example, that can cost you your bar license. You could be disbarred if you breach that confidentiality. Now, what happened here, though is anonymity – not confidentiality, but anonymity.

“The reason I believe that confidentiality may be proper but not anonymity is because you should know who is sending in the e-mail. For example, in the Judiciary Committee, if we’d followed this process and we had a tort reform bill and everyone was in opposition and we didn’t know where it came from, would it surprise you, for example, or what weight would you give it if those in opposition happened to be plaintiff’s lawyers? What weight would you give it if you happen to question the law itself? You need to know who the parties are, because giving weight to testimony is critical. That’s something we all do. That’s something lawyers have to do. That’s something judges have to do. You have to know what the source is. That did not happen here.

“I even have problems with confidentiality, Mr. President, and that’s because I believe that if lawyers cannot come forward and speak up, if lawyers fear retribution, then what does that say about our process? How can we ask people to come forward and testify before us if lawyers themselves say things like, ‘God, we’re afraid of retribution.’ What does that tell everyone else? We lawyers, those of us who are lawyers, we know what rights are. We know about freedom of speech. We should be there defending this right. And if we say, ‘hey, we’re not going to do that,’ something is wrong. And something is more fundamentally wrong with the system.

“Mr. President, about 10 years ago, this Body – I was not a part of it; I didn’t even consider politics back then – this Body was considering the nomination of Sharon Himeno to the Supreme Court. And I remember at that time being asked if I would submit or be part of a petition that was in opposition. And they told us then, if you do that, you know there could be retribution. I felt very strongly about it, so, Mr. President, I signed . . . I signed, along with 200 other lawyers. And we signed on the dotted line because we felt that was our obligation to do so. Now, again, if lawyers can’t step up to the plate, something is wrong.

“Let me tell you what they judge a judicial candidate by. They say a candidate is to be evaluated by integrity and diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, and health – health, you’ve got to be in good health. But, a candidate receives a ‘not qualified’ rating if he or she fails to meet one or more of the criteria with regard to professional competence, judicial temperament, or integrity. Judicial temperament is comprised of 13 subparts, or 13 adjectives. So, conceivably, any one of those, if you don’t meet it, you’re supposed to then result with a ‘not qualified’ rating.

“What we did learn from the testimony is that judicial temperament was basically the common thread among the 28 or so who submitted e-mails in opposition. The question we should all be asking ourselves is, What is judicial temperament? The American Bar Association says it is a subjective judgment as to what is judicial temperament. The ABA, which by the way is what the Hawaii State Bar Association follows and which also provides guidelines for the selection of state judges, the ABA says that as a result of this, it also recommends that wide ranging interview should be undertaken to provide insight

into temperament, because it’s so subjective. The ABA also warns, and this is the American Bar Association, warns that judicial temperament can mean virtually anything to anybody, making it practically susceptible to manipulation by actors in the appointment process. They also go on to say they understand the appointment process is a political process. So, judicial temperament becomes that one thing that you can’t put your hands on, you can’t define, and it can mean almost anything to anyone.

“You know, judges have said that when they are evaluated they have at least one request, and that request is that the lawyer who chooses to evaluate them at least have appeared before them once so that there is some basis. Because they say they don’t want lawyers going out and waging some kind of a campaign against them, but at least they have to be able to say, when we are sent evaluations, that we have appeared before them once so there is a basis for that.

“I read with interest this morning former Justice Padgett’s comments that he did not submit any comments because he doesn’t know who this person is, and he had a very interesting definition of judicial temperament. I can just see Justice Padgett doing this because Justice Padgett was probably one of our better jurists, if not one the best jurists we had. But judicial temperament, as he probably implied, was not something that people may have said that he was unquestionably one who had it.

“There is also an inherent difference in our process between that which we are constitutionally mandated to do and what the Hawaii Bar Association stands for. We are constitutionally mandated in this selection process and what we do, and what the Governor does, and how a judge is selected, and that’s called the judicial selection process. And the Judicial Selection Commission is who does this, and they and we and the Governor have guidelines that we have to do. Primarily for the Governor and for us, it’s time deadlines that we must meet.

“Thanks to the good Senator from Kapahulu, the judicial selection commissioners, two of them, Mr. Edmunds, who was a former chair, and Mr. Ayabe, who is the present chair, came forward. They told us there’s very little that they can say because it’s a confidential process, but they were there to answer questions as best they could. And of course, what they were able to confirm is the fact that judicial temperament is something that is part of their evaluation. At that point, I’ll share with you, Mr. President, what I shared with the Committee. Part of its application process is the identification by the attorney applying of other attorneys who can shed light on that person. I’ve been named in that process so I’ve participated in it, and I can say to everyone, one of the most critical questions that is asked so many different ways in the questionnaire that we fill out is judicial temperament. So, they are getting feedback. And at the end, you are asked to provide other names of other attorneys who may, or anyone who may shed light on this person. And I, as a matter of course, always provide names of people who have been in opposition to this person, who’s been an adversary to this person, because I believe that that’s my duty that all this information comes forth because they have to make the best selection that is possible for them.

“One of the issues that was raised was, Can somebody who is a litigator transition to that which is a judge? Mr. President, the courtroom is litigation. That is what they do. That is why the Hawaii State Bar Association a few years ago there was a movement in there to say only if you have litigation experience can you be a judge, because it is a different situation. And yes, litigators tend to be zealous because that’s exactly what they’re paid to do. They’re paid to represent their clients. It is not a

nice situation. It is a litigation. It's litigious. Those are all from the same words because that is the process. Yes, the judiciary has tried to say maybe we should do more mediation, maybe we should do arbitration, we should do a whole bunch of other things. But the bottom line is the judiciary is exactly that – it is the court system. It is that process where unfortunately there are at least two people squaring off against each other and there is going to be a winner or a loser if that process goes all the way through. That is the process that we participate in.

“So the question becomes, What is it that you want in a judge? Peter Carlisle said, interestingly, the same thing that Justice Padgett said, ‘You don't want milk toast.’ He mentioned judges like Patrick Yim and Marie Milks, to name a few. Marie Milks, and I was very sad to hear, has now stepped down. They are not pushovers. But you know, you can't be a pushover – because you've got to control litigation that goes on in that courtroom.

“Marie Milks' clerk, Mrs. Lynn Gomes, came forward, took time off, sat through our hearing . . . and for those who watched it, you know that once we got over all the people who had to take planes and so forth, we went alphabetically. She sat all the way until her name was called. She said that she took time off to be there. She's been Marie Milks' clerk for over 20 years and she came forward because she wanted to make it clear that she has watched Ted Hong as he has grown as an attorney, basically. She said he has always been courteous to the other lawyer, to the court, and to the staff. And she said, ‘you know, some judges ask you, how do they treat you?’ Because yes, lawyers have to be nice to judges. They almost have to be nice to other counsel too, because they want to be treated in the same light, but a lot of them are not nice to staff. And she said Ted Hong has always been courteous to her, and that's why she came forward. She also said that as she left the court, she told Judge Milks where she was going and Judge Milks said to her, ‘you can go forward and tell the Committee that he has my respect and he has my support.’ That means a lot.

“I believe, for example, Judge Milks, or those of us who are women attorneys, has really been a pioneer for us – four years as a public defender, 20 years on the bench, working her way from district court to circuit court. My only regret is that I could never see her sit on the appellate level. That, to me, would have been the icing for a career, and also for us women lawyers, at least the ability to see that you can work your way through that process.

“Two other lawyers testified and I would like to call upon their testimony and share it with you because I have pending cases with the both of them. I make that disclosure. One is Eric Seitz, and Eric Seitz, as you know, is Eric Seitz, especially those of us who do Felix. We know Eric Seitz. But Eric Seitz said he has known Ted Hong for about 20 years or so, and he said he has the greatest respect for him and he has always been an adversary to him. I will tell you this about Eric Seitz – Eric Seitz fights hard in the courtroom, absolutely fights hard. But you know, when we leave that courtroom, we can talk, and that, to me, as a practicing attorney and somebody who does litigate, is a critical part.

“You cannot take cases personally. You cannot take it home with you. And you cannot hold that grudge. And I never once heard that criticism of Ted Hong, that he had any of those characteristics.

“The other person – I also have a case against, a couple of cases I've had with him – said that you want a judge that is decisive, and you should not hold it against someone because the turf of his job that he's required to patrol is one that requires him to do that. This attorney is Jim Bickerton. Jim also went

on to say – and I think this is a very important statement – he says it would be wrong to hold it against him when no one is suggesting that he acted on behalf of private interest, or for personal gain, or violated any rule of law. People are not saying that he handled matters illegally or negligently or without foresight, only that he ruffled some feathers. Then he goes on to say a very important message – he says this, ‘What message will we send young lawyers in government service if we say stay away from the tough issues because it will jeopardize your chances of getting on the bench. Will we have a better judiciary or better government if we adopt this approach?’ He says, ‘the answer is self-evident.’ Jim Bickerton, as a young attorney, was also one of those who signed that petition, and that is when I first knew who he was.

“Eric Seitz made a very interesting point. He went on to say, if he could, he would quit the bar because of this act – he would quit. Because as we all know, we may have differences with Eric Seitz, but the one thing with Eric is he is always there for civil rights. He takes unpopular cases. He may not be high on any of our Christmas lists, but one thing you know is he stands up for that which he believes is right. And in this particular case, I've got to say, Eric Seitz and I are on the same page. We don't have a choice. Us lawyers have to join the Bar Association. But whether this process is one that we should permit to continue is another question.

“I had some cases yesterday and I met with some other lawyers, and this is the talk of the town – unfortunately, not Ted Hong, but the talk of the town is, What did this Bar Association do? And they, litigators themselves in the corporate arena, are saying we have to do something about it, and he shouldn't be judged by this.

“We had a nine-hour hearing, Mr. President, and there were other people who came to testify. One group that was very moving was the students of UH Hilo. They came on their own because they wanted to say that Ted Hong, as a Regent, is the only one who has taken the time out, who regularly meets with them – regularly meets with them, and he will discuss with them. We have discussed this with their administration, the faculty, and he has time for them. And they were there for him to say how they view him, an image they have of him. And it isn't of someone who is contentious or without judicial temperament. They see a totally different person.

“There was also a gentleman from Hilo who brought in a petition of over 120 names signed from people from Laupahoehoe, Pahoa, Hilo, Kurtistown, Captain Cook, and Keaau. He said these are people who can't come and he's bringing the petition forward for them.

“And neither can we ignore, Mr. President, those lawyers from the Big Island. The Big Island . . . and you know, Mr. President, we hear stories about the Big Island. The Big Island is sort of like a community of their own. I'm surprised they haven't filed a petition to secede from the State. But the Big Island, Mr. President, has their own bar. They, in the Hilo side, which is where Mr. Hong would sit, have 155 licensed lawyers – 85 of them are members of this bar. They sent out . . . I don't know whether it's an e-mail, but they still have . . . for those of us who practice law, they used to have a system in Honolulu called the court jackets where you could put everything in. They still have it over there. They put this thing out in a court jacket and they got 34 responses out of the 85 – 28 highly qualified; five qualified; and one that said he was not qualified, and that one, they said they provided an explanation for. And there are two others who did not participate because they were on the list with Mr. Hong. And one person who was on the list with Mr. Hong also submitted testimony in support.

"The testimony in support of Mr. Hong was clearly overwhelmingly in support of him. But there were testimonies that we received that were in opposition. And we must give them weight too, Mr. President. And I will say, I have weighed the source of the testimony, what was said in the testimony, as well as the technical allegations of wrongdoing, and a lot of the allegations against Mr. Hong were in the area of employment matters. And Mr. President, that's the one area that I can comfortably say I am somewhat considered pretty good at. And I can read and I can say what I feel is there and what I should give appropriate weight to.

"Mr. President, with all of that, I ask you and my fellow colleagues to join me in consenting to the nominee, Ted H.S. Hong to the Circuit Court of the Third Circuit of the State of Hawaii.

"Thank you, Mr. President."

Senator Hogue rose in support of the nominee and said:

"Mr. President, I rise in strong, strong support of the nomination of Ted Hong to the Circuit Court of the Third Circuit.

"Members, first of all, I want to give accolades to the Judiciary Chair because she ran a very, very open, very fair hearing. I was so impressed with her and the members of the Committee who endured a very, very long process. One thing that she didn't bring up is that the room got colder and colder and colder and colder. So, not only did we not get up to go to the bathroom or get to eat, but we were freezing. And through all of this, Ted Hong was there sitting patiently, I think, in fine judicial form and showing his outstanding judicial temperament.

"We were all very, very impressed not only with him but his family as well, a family that goes back to Big Island roots to the turn of the century when his family came here from Korea. He has relatives that were born on the Big Island, and when he went back professionally to live and work on the Big Island in Hilo more than a dozen years ago, he not only worked very, very hard and many times as an advocate for whatever cause that he was behind, but he also did some great volunteering.

"One of the areas that he volunteered for is near and dear to my heart, and that is he was a volunteer coach, not for the soccer team or not for the basketball team, but he was the coach of the Hilo High School mock debate team. All of us in the world of sports know how difficult it is for one of the neighbor island teams to win a state championship, but when Ted Hong was the volunteer coach of the Hilo High School mock debate team, Hilo High won the state championship. So I think that's another good example of what an outstanding man that he is.

"Now, I know I've heard some of the rumblings. I've heard some of the conspiracy theories. I've heard some of the negative things, and it seems that the only crime that Ted Hong has committed is that he's rubbed a few people the wrong way. Well I would say to you, fellow Legislators, if that were a qualification for us to be elected for the Senate, I'm not sure that many of us would be sitting here. As much as we try very hard every single day to be respectful and courteous and to treat others as we would like to be treated, there are some times when it doesn't go that way. But overall, I think that the evidence is overwhelming that Ted Hong has treated people fairly. He has advocated strongly for his side.

"I think it should be noted that he is here with his family that has sat solidly behind him throughout the entire process – his father, who was an attorney general in a Democratic

administration; his mother, who's a long-time public school teacher; his wife sitting by his side. I think that's another indication of what a very fine man that this man is – outstanding credentials, very qualified.

"And the process . . . the Judiciary, very open, not given to anonymous comments, and I would urge you to stand behind and support Ted Hong – a man whom on the bench I believe has all the qualities to be a great judge – respectful, courteous, thorough and decisive, eminently fair, and above all, a very good man. I encourage you to vote 'aye.'

"Thank you, Mr. President."

Senator Kawamoto rose to speak in opposition and said:

"Mr. President, I rise in opposition to this nominee.

"I, too, would like to send my appreciation of the Chair's ability to run a fair and open hearing. I think being here 10 years, this was the best hearing I ever did see conducted by a Chair.

"I'd like to thank the Governor and her cabinet for being there. She stayed there for 6½ hours. She left, then she came back. In total, she stayed there maybe 7½ hours of the 9-hours hearing day we had. I'd like to thank the unions and the friends that wrote in support of Mr. Hong. Regardless of what the vote may be today, I will continue to listen and seek the unions and my friends that supported Ted Hong and seek their advice on labor, seek their advice on fairness, seek their advice on the ability to provide a workforce in Hawaii that's fair. I'd also like to thank those who spoke in opposition, those who called in opposition.

"Mr. President, I know, you know, and many of my colleagues know that I'm a Big Island boy, born and raised in Honomu, Hawaii. If you don't know where that is, it's just the next town to Akaka Falls. I was a '58 grad from Hilo High School. I don't know why, but I was the class president then at that time. But anyway, I had friends on both sides of this issue, and I thank both sides for helping me decide on one way or the other.

"I'll admit, Mr. President, I had some concerns. I see there are some concerns about the nominee's patience, about the nominee's tact, about the nominee's ability to listen, and about the nominee's compassion – compassion not only for the students of Hilo, but compassion for the 81,000 students that are out in the Leeward Oahu side.

"Mr. President, many of these traits I think I've been labeled in that area, and many people say you've got to change, you've got to do this, you've got to do that. And we listen and we try to, but it's very difficult. I am who I am, and people who laugh at me I've been up and down throughout the Session, throughout my life. My 20 years in the military, you know I've been very opinionated. I don't qualify to be a judge, but I don't think I'd make a good judge because of those qualifications. But that's me. But those are the concerns I have.

"These concerns I have, again, at the hearing Mr. Hong made about five apologies . . . I don't know, I can't count how many it was, five or six. And they were, I believe, very sincere. He's a very sincere man, very sincere. But Mr. President, being a judge you have to be on top of things 100 percent of the time. You cannot sentence somebody to 10 years in prison, or whatever, and apologize later, because that victim or that person that you made judgement on, that was probably his one and only chance to face a judge.

“So Mr. President, I weighed it very hard. It’s difficult, especially with the family, his mother and father, sitting there, to make this judgement. But I believe we need to take an idea, we need to take your concept of what a judge should be, and we need to take our job that we have here in the Senate, and especially those that we are in the Senate to confirm or deny judges. That’s our job and you have to think and think if this person is the next best person to be the next judge.

“So, those things, if you have questions, you have doubts, then you should vote the way you think, because you’re 1 of 25 that represents 1.4 million people out there. That’s an awesome task, and this task should not be taken lightly.

“Thank you, Mr. President.”

Senator Hemmings rose to speak in favor of the nomination and said:

“Mr. President, I rise to speak in favor of Ted H.S. Hong’s nomination for the Third Circuit Court of Hawaii.

“This indeed is going to be a fine hour for the Senate, because what it’s devoid of is political labels and decision-making made simply on the politics of it all. It’s going to be a very important debate today, contextually, because what we do is we’re a very narrow funnel by which the whole quality and temperament of an entire branch of government is going to go through. Judges, through the advice and consent of this Chamber, determine the quality of the entire judiciary. I’m hoping that we’ll all make . . . and I know we will, I know we’ll all make informed and, more importantly, caring decisions – decisions that care about the honor and dignity of the judiciary, the honor and the dignity of the nominee, and the dignity and honor in the wellbeing of the people who sent us here to make these decisions.

“We’ll be considering many criteria and it’s important for us to ferret out in our minds, some of those. Is the nominee qualified? I think there might be a few that say ‘no,’ but the overwhelming testimony by all the experts in the judicial arena all testified to his quality. He is eminently qualified.

“The third circuit, as we know, is on the Big Island. He has Big Island roots, as some of the previous speakers spoke of. He certainly is well suited to be a judge in this third circuit.

“Politics – how wonderful it is, for a change, we’re standing up and we’re making decisions not strictly based on political labels. This man’s roots are deep in the party of the majority in this Chamber. His father was a much respected nominee to the bench with strong ties to our respected former Governor Ariyoshi. This man has been part of the administration on the Big Island of the Majority Party, and yet he is nominated by a governor of another party who seemed to think, if nothing else, he was the best man for the job. So he wins on that count also.

“Support . . . I had a chance to look over the list and of course in the marathon hearing we heard from many people across the state, and the support is absolutely and astoundingly overwhelming. Opposition came from a few people that may be losers in prior political battles or losers in prior judicial battles. And they had a right and they exercised it yesterday.

“So, now we come to temperament. How wonderful it is that we have a man who has the strength of his convictions and is willing to stand by what he believes.

“The Bar Association I think will come up again today and I laude the Chairman of the Judiciary Committee for pointing out some very, very salient points regarding the Bar Association’s

recommendation not to approve. I will tell you that that’s been done several times before in the past, and to the credit of the Senate, in the past it has ignored the recommendations of the Bar Association and it’s done what is prudent and right.

“I think the Bar Association, if nothing else, hopefully will be a stronger organization after this exercise. It was Friedrich Nietzsche, the great German mind, who said, that which does not kill you, will only make you stronger. This is not going to kill the Bar Association, but I hope it does make it a stronger organization.

“Their recommendation in the process which was so well enunciated by the Chairman of the Judiciary Committee pretty much ignored one of the basic tenets of all our rights as American citizens. It’s so important that the founding fathers put it right in the Constitution in the Bill of Rights in the Sixth Amendment. It’s fundamental to fairness, and I am astounded that this Bar Association did not adhere to that basic principle. Because when someone opposes you, you have the right as an American citizen to confront that opposition. And we had a responsibility to know what the foundation of that opposition is. But it seems in this process, this time the Bar Association ignored that by keeping the process anonymous. It not only counts what a person says, but who that person is and in what context are they saying it. That gives the substance and the credibility. But we’ll never know . . . we’ll never know because the Bar Association did not give this nominee, nor us, the opportunity to question the accusers or the deniers or the naysayers.

“The other issue has to do with counting. We cannot give any credence to the Bar Association’s recommendation. They sent out an e-mail and I don’t know if every one of the over 4,500 lawyers reads their e-mail. I know I certainly have a hard time keeping up with mine. They got back, they claim, 56 responses. But when I first heard about it, and when Mr. Hong explained what was explained to him by the president of the Bar Association, the count was 28/25. Somehow, several days later, the newspaper was reporting that the count was 28/28, requiring the Bar Association to break the tie through the Board vote, which you just heard about. Nevertheless, how credible, how honest is the Bar Association’s recommendation? In this debate, I have to say not very credible at all.

“So that leaves us with a nominee – a dignified man who has support from both sides of the political aisle; who is eminently qualified; who has served this State and all of us well in his work, both in the volunteer arena and in his profession; a man whose temperament is an asset.

“I’m hoping, after the long debate that’s going to follow, that we are indeed going to make an informed and caring decision, and I know in my heart if we do so, that Ted Hong will be confirmed a judge.

“Thank you, Mr. President.”

Senator Sakamoto rose in opposition to the nominee as follows:

“Mr. President, I rise in opposition to consenting to this appointment.

“This isn’t about the strong points or the good points that have been brought out for the nominee, and I’m not doubting those many good points. However, this is about justice for all. This is about a fair trial.

“The expectation . . . the expectation when one enters a courtroom, anyone – attorney, plaintiff, defendant, others – the

expectation would be a fair trial and we should not have concerns, fears or doubts about the presiding judge. That's not why we enter a courtroom and those concerns have no place in a courtroom. We want and expect and we are owed a fair trial without needing to be concerned about the judge's actions.

"However, based on the concerns raised by others – be it 'ruffled feathers,' be it 'rubbing people the wrong way' – the Bar Association, attorneys, 'everyday citizens' have expressed their concerns. So I ask that another person be appointed, a person who would not raise the concerns that have been raised regarding this nominee so people may enter a courtroom not fearing the judge, with full expectation of a fair trial, a full expectation of justice in our courtrooms."

Senator Kokubun rose to speak in support of the nominee and stated:

"Mr. President, I stand in strong support of the Governor's nominee to the Circuit Court of the Third Circuit.

"This should be really no surprise to anyone because I have publicly stated that I firmly believe that Ted Hong is extremely capable of carrying out the responsibilities of a circuit court judge with tremendous integrity and fairness. I concur with the statements made by the good Chair of the Judiciary and Hawaiian Affairs Committee in her recommendation to this body.

"It was a remarkable experience, Mr. President, attending the marathon hearing conducted by your Committee on Judiciary and Hawaiian Affairs. Although not a member of the Committee, I felt compelled to be there to experience directly the emotion and sincerity of those testifying and the reaction and response of the nominee and his family. But I readily admit that I had to leave occasionally to attend to certain natural functions, unlike some of the conscientious Committee members and others in attendance. At my age, Mr. President, the mind may be willing, but this body . . . well, it requires more attention – let's put it that way. (Laughter.)

"In all seriousness, Mr. President, I'm very, very grateful to the members, all the members, of your Judiciary and Hawaiian Affairs Committee for the dedication and perseverance they all displayed during the close to nine hours of, at times, very intense testimony. Throughout the proceedings, the members, our colleagues, were very respectful and attentive to all the testifiers and, in my opinion, clearly raised the stature of this Legislative Body by their conduct of evenhandedness and fairness.

"To the good Senator from, 'the country' – Waianae, who Chairs this Committee, you never cease to amaze me with your senatorial temperament. I know that all who participated in or observed Wednesday's proceedings appreciate your abilities and manner to create the necessary atmosphere of respect and fair play.

"Mr. President, to all the members of your Committee on Judiciary and Hawaiian Affairs, mahalo on a job well done.

"As most of you know, many residents from the Big Island traveled to Oahu to participate in the hearing. I am very, very grateful for their willingness and commitment to engage in this process. The many attorneys, students and faculty from UH Hilo, and many private citizens truly epitomized the strong sense of community of East Hawaii. Some even joked about the presence of Ka Ua Kani Lehua, the heralded rain of Hilo that appeared in Honolulu that day. To all who participated, mahalo.

"Mr. President, as I have stated, you and your colleagues know where I stand with respect to this gubernatorial nominee to the third circuit court. We must all act conscientiously and with deep conviction to do what is right for Hawaii.

"Thank you. I also, Mr. President, request a Roll Call vote."

The Chair so ordered.

Senator Inouye rose to speak against the nomination and said:

"Mr. President, I rise to speak in opposition to the nomination of Mr. Ted Hong to the Circuit Court of the Third Circuit in Hilo.

"Fellow colleagues and Mr. President, I have a number of significant concerns with this nomination, and I would like to take a few moments to outline them for you. One point I need to make right up front – I represent the first district of the Big Island. I feel that the people of the Big Island deserve the best and the brightest that our State has to offer and that whoever is picked for the bench has to be held to the highest standard.

"This Body has always relied on the recommendations of the Hawaii State Bar Association, and it is very significant that they have given Mr. Hong an unqualified rating. The reasons for their rating are also significant and deserve our full consideration.

"While serving as deputy corporation counsel for the County of Hawaii, Mr. Hong's conduct raised significant questions about his fitness to be a judge. I quote from the testimony of Antonia or 'Toni' Wurster, as we know her, 'He lacks the essential qualities of a judge – respect for others, respect for the law, a sense of fairness, and objectivity.' Ms. Wurster's experience with Mr. Hong reflected what she called a marked and hurtful prejudice without examination of the facts. And she was referring to a very ill tempered comment Mr. Hong made to her during a court proceeding. That comment derided her and her husband without cause, mocking them without understanding that her husband was in fact in very poor health. In that incident, Mr. Hong acted with personal malice in a court hearing where he had a responsibility to be fair and open-minded. And that's not the kind of behavior we have a right to expect from a judge.

"It's very important for the members of the public, like Ms. Wurster, to have a say in the judicial appointment process. A judge's behavior with ordinary people, ordinary folks, deserves close scrutiny because it is everyday citizens who may be affected by his day-to-day behavior as a judge. Therefore, it is only right, in this process before the Senate, for citizens to voice their opinions.

"I've heard from many people in my district about this nomination. A number of members of the Big Island Bar have called me, people who did not submit testimony but want their voices to be heard. They share my belief that in the short period of time he worked in Hawaii County, Mr. Hong has shown his shortcomings in his inability to deal with issues in a manner that's so important in his profession. They have also reminded me that the Senate has a vital responsibility here to uphold the integrity of the process by which judges are named to the bench.

"That process, Mr. President and colleagues, has always relied on the recommendation of the professionals – the members of the Hawaii State Bar Association. That process has already served us well in past confirmation proceedings and there is no reason to subvert it now. Twenty-eight members of the State Bar saw fit to oppose Mr. Hong's nomination, acting

independently of one another. I have no doubt that their decision to oppose Mr. Hong's nomination was made out of conscience and that it was not an easy decision for them. It's not often that we hear these kinds of expressions of concern and we should not take them lightly.

"Practicing attorneys can be adversarial if they choose. That's their job. They can be confrontational. But judges are held to a different standard. Mr. Hong's ability as an attorney is not in question here. It is his ability to obey that higher standard that we must set for those who sit in judgment on their fellow citizens.

"Mr. Hong lacks the judicial temperament required for this appointment. Mr. President, the Senate has a vital responsibility in this matter. We are the gatekeepers. It is we who set the standard. Serious questions have been raised. Other candidates, people with excellent qualifications and exemplary conduct and behavior, are available to us.

"Mr. President, in closing, I will be voting 'no' on this nominee. Mr. Hong, as I have been saying all along, lacks the necessary qualifications to be a circuit court judge, and this Body should oppose his nomination. Colleagues, I urge you to join me in setting a high standard for this position and join me in my opposition.

"Mahalo. Mr. President, may I request a Roll Call vote, please."

The Chair so ordered.

Senator Slom rose in support and said:

"Mr. President, I rise in very strong support of Gov. Msg. No. 152, the nomination of Ted H.S. Hong.

"I, too, want to start off by saying that in my eight years here in the Legislature, and many more years prior to this, I had never seen a hearing conducted so openly and so fairly as the one the other day. To show you how exciting it was, my staff did not go home on time. They stayed to watch to the very end. I don't know whether that was a characterization of how strong a person's kidney or bladder are or the subject matter. I also understand that somebody is going to be issuing the DVD set which will go right along next to the Godfather saga in overall excitement. (Laughter.)

"From now on, this is going to be a benchmark of how hearings should be conducted, not that they need to be nine hours, but that they need to be complete and they take on all comers and they're not afraid of any subject, any issue. And that's what was demonstrated the other day and it goes far beyond, goes far beyond one individual, one subject.

"But let's look at that individual and that subject. It was gratifying to see his family with him, as they are today. The old adage that the acorn does not fall far from the tree is absolutely apropos for those that know his father when he was the attorney general under Governor George Ariyoshi. His family are all dedicated to leadership, volunteerism, community service. They take pride in that.

"Mr. President, often people ask me, what are you doing down at the Legislature? How can you put up with what goes on down there? How could you run for office? And what they mean is, they're not talking about campaign spending, they're not talking about money, they're talking about lots of times the things that are said and that are done that are hurtful on a personal nature when people are trying to do their jobs and the things that some people try to read into, the motivations of

individuals. And I guess, Mr. President, the more active, the more outspoken, the more that a person is able to take a position, the more, sometimes, that criticism surfaces. And so, because of that, all of us know that many good people decline to run for or accept public office. But we're very fortunate that Ted Hong is not one of those people.

"He has accepted that role. He has demonstrated his leadership. He has demonstrated his qualifications. The head of the Judiciary Committee in her remarks at one point said, 'something is wrong here.' And maybe she was talking about the Hawaii State Bar Association in its procedures, or maybe she was talking about something bigger. I want to talk about something bigger.

"We shouldn't even be having this long a debate and we shouldn't even be talking about a close vote for someone who is so eminently qualified and who is so strongly supported throughout this State. As has been mentioned, it is also, I think, a realization that this Governor has broken with many outmoded traditions in absolutely searching out and appointing the best possible individuals for various jobs regardless of any political affiliation.

"I know that many of my colleagues sitting in this room right now a year ago were stunned when the Governor picked Mr. Duffy to the State Supreme Court. And she did so without equivocation because she felt he was the most qualified. That same Governor who made that decision that everyone liked here has made the same decision with Mr. Hong. Is he experienced? No question. Is he qualified? No question.

"By the way, the last speaker, just to correct her – I know she's young so she probably doesn't remember – when she made the statement that we always have relied on the Hawaii State Bar Association, unfortunately, that's not true. Twelve years ago the Hawaii State Bar Association made a recommendation of non-approval of a judicial candidate. The Senate at that time decided that she in fact was qualified. They took into consideration many other factors. She was confirmed by this Senate and two years ago she was re-appointed for another 10 years, demonstrating the wisdom of the overwhelming amount of evidence and personal commitment in testimony.

"Much has been said about the people that came on their own dime from Hilo to come and testify in behalf of Ted Hong. He had to have been humbled. It was quite a sight. As the Judiciary Chairman said, there were all kinds of people there that for all kinds of reasons one might assume would have been in opposition to Mr. Hong if it were based on politics or past decisions or maybe even a political grudge, but they all testified in support. The individuals and the attorneys and members of Hawaiian groups that came, again, on their own time, on their own money to testify in support of this man, have got to be given more emphasis and more support than a few people's concerns and questions and fears.

"I thought the only thing we had to fear was fear itself. I think some of my colleagues have fear of change, and fear of improvement, and fear of doing things differently, including not picking the same people and not looking at political party, because all I've heard are concerns. And while concerns are reasonable and everyone had an ample opportunity to speak, those concerns do not rise to the level of disqualifying someone who epitomizes community service and a search for justice.

"Is this man disrespectful? No! Is he rude? No! Is he non-accessible? No! Are there people that do not like decisions that he made previously? Yes! And as was said previously by the Minority Floor Leader, many of us in this room, if it were on a

basis of a lovefest or doing something that everyone approved of, would be hard-pressed to be here. But that's not what it's about.

"Just like a good judge is not a meek judge, just like a good judge is not determined by the amount of salary or compensation he or she gets, we want someone that understands justice. We want someone that understands different positions in life. We want someone that has different experience, but we also want someone that the people, the people, have urged us to accept overwhelmingly. It seems that sometimes we take these people for granted. They're smart enough to vote for us or give us money, but they're not smart enough to make other decisions including choices of schools or choices of judges.

"The people in the third circuit need a judge. There's no question about that. There's a horrendous back-load of cases. And there is no doubt that they have come forward in strong numbers very passionately and very emotionally – they want this man, Ted Hong, as their judge. And why should they not? He has every qualification that everyone would want and expect.

"And of all the concerns that have been raised . . . and by the way, during that whole nine hours there was nothing new that was brought up. There was nothing new that had not been written about, including the man whose airfare was paid for to come over here to testify against Mr. Hong. He had been very prominently displayed in the paper and his views are important and they should be taken into consideration. And free speech is very important as well, and that's what was demonstrated the other day. But to say, because a couple of shrill voices do not like Mr. Hong because of decisions, because of past political involvement, or because of something else that he doesn't know about, we don't know about, that are grounds enough to disqualify him.

"One more distinction, a year ago we debated the confirmation of two of the Governor's hearings and what a stark contrast. We had hearings that were held that were not open; they were not detailed. We heard about vague charges, vague rumors, e-mails, telephone calls, and all of that. This time, it all hung out. Everybody had an ample opportunity, more than an ample opportunity, to communicate what their concerns were. And I say again, those concerns do not rise to impeach the quality, experience, ability, or judgement of Ted Hong.

"Someone earlier brought up the fact that he apologized during the hearing. You know, it's really amazing, if somebody doesn't apologize, they say you're too arrogant and you haven't done it. Then somebody apologizes and they say well, he apologized too much and he may apologize later on as a judge. Let's remember what he apologized for. The nominee said, 'if, unknown to me, I was rude to anyone, I hurt anyone, someone took something that I said in a different manner from me, then I apologize to them because that was not my intention.' That's the kind of person that we want – someone who is humble and yet who can be strong.

"That, Mr. President, is who we have in Ted Hong. He is the best. He is the brightest. He is dedicated. The people want him in their area. He will be an excellent judge. And we must confirm him today.

"Thank you very much."

Senator Hooser rose in opposition as follows:

"Mr. President, I rise in opposition to the nomination. I just have some brief comments, Mr. President.

"Up until a short time ago, just a few days ago actually, I was reluctantly supportive of the nomination. I say reluctantly because prior nominations or prior appointments we've had have been relatively smooth sailing, relatively peaceful, relatively uncontroversial. And I can sense a rising tide of contention. I could sense that there was a problem with this nomination, but at that point, even though I sensed the problem, I was reluctantly supportive.

"In thinking about the position that we're talking about here, it's a judge – it's control over people's lives; it's a ten year appointment – and I don't think that I want to be reluctantly supportive or vote with reservations. I want to be clearly and unquestionably supportive for me to make that decision. But I was basically reluctantly supportive, and then came the Hawaii State Bar Association decision and my decision point shifted dramatically.

"And then I watched the hearing, and my hats are off also to the Judiciary Chairwoman and the members. Like most of us here today, I watched almost the entire meeting on television in my office along with my staff. It's clear, it's really clear that lots of people love and respect Ted Hong. There's no question about that, and my hats are off to his friends and family for coming out and supporting him. But just like when we make our decisions on legislative issues, it's not how many people show up in support. That's an important aspect of the testimony but that's not what we base our decision on normally, completely. It's not a popularity contest when we're making decisions, and the people have selected us, voted for us, and given us the power of advise and consent because they want us to make those decisions.

"Again, this is a ten-year appointment. The successful nomination controls people's lives. There's important decisions. And when the Hawaii State Bar Association, the Hawaii State Bar Association, which was founded in 1899, and in November of 1989 the Hawaii Supreme Court conferred upon the Hawaii State Bar Association the power and responsibility to aid the court in regulating, maintaining, and improving the legal profession. The mission of the Hawaii State Bar Association is to unite and inspire Hawaii's lawyers, to promote justice, serve the public, and improve the legal profession. I take great stock in the opinions and the decisions made by the Hawaii State Bar Association. This is a group of attorneys who are selected to serve in these positions of leadership. These are not casual positions. These are not people who are untrained in the legal profession. These are not people who are not familiar with the judicial process. These are people of exceptionally high caliber; are people that serve in this profession on a regular basis. I'm not an attorney, but I have great respect for the training and for the positions which the people in the Hawaii State Bar Association hold.

"Regardless of how many e-mails came in and regardless of what was said or discussed, I can imagine 13 people in a room or 13 people having a discussion and coming to these conclusions. And even I don't know . . . I know one member casually, but I don't know the other 12 people, but I can imagine with their training and with the type of people they must be, the men and women, that they don't take these decisions lightly. They recognize the gravity of their decisions; they recognize the importance; they recognize the impact of saying that someone is unqualified to serve as a judge. That cannot be an easy decision to make, just as it's not an easy decision for me to stand here today and speak in opposition to the nomination. But to have seven members – leaders in the Hawaii State Bar Association – state clearly that the nominee is unqualified to serve as a judge is just too much for me to get past, to come back around, to be able to support the nomination.

“So, I am unable to cross the bridge and discount the conclusions of the Hawaii State Bar Association, and so I will be unable to support the nomination.

“Thank you, Mr. President.”

Senator Ihara rose to speak in opposition to the nominee and said:

“Mr. President, I rise in opposition to Gov. Msg. No. 152.

“Mr. President, I understand that by my not consenting to this nomination, I am probably causing much hurt and disappointment for the nominee, his family, friends and supporters . . . and I apologize for that. But I am honor bound to fulfill my constitutional duty to pass judgment on this nomination.

“From media reports, I had expected some controversy on this nomination, so I contacted people wanting to speak with me on the nomination. I sought out documents on negative claims to eliminate or to consider their validity – and sent copies of these documents to the nominee himself. As the Judiciary Chair mentioned, I had sought out and was able to have the Judicial Selection Commission chair and vice chair attend the hearing to explain their process, and I was determined to get clear on as many of the facts as possible.

“I found many people unwilling to comment in public because of what they termed a ‘fear of retaliation.’ That’s not my term; that’s their term. I said to nearly every person that I wanted ‘on the record’ comments because I did not want to use confidential comments as the basis of my decision. I was only partially successful, and I have in the end decided to consider confidential information to the extent that I believe in their veracity.

“Given all the information available to me, including confidential sources – primary of which is the existence of 28 negative comments submitted to the Bar Association – I have decided not to consent to the nomination to Ted Hong for third circuit court judge.

“I have heard the forceful complaints and admonitions against the Bar’s evaluation process of the nominee. I agree that there should be a better method to ensure that no fraud is perpetrated by Bar members, because I’m not certain that Bar staff does this kind of a review when they look at the comments and redact identifying information. With steps to check for possible fraud, I believe that confidentiality of the identity of those submitting comments outweighs the need for board members to know the identity of their colleagues, all of whom are members of their own association.

“Given the Bar’s current process of evaluating judicial nominees, I do concede the possibility of an organized effort to submit inauthentic negative comments, maybe even from a single large Honolulu law firm as has been noted by an attorney in Hilo, a supporter of the nominee. In light of these concerns about the process, it is the board’s responsibility to decide how much weight to give to these comments, these negative comments, and then make their own judgment on how to rate the nominee.

“The Bar president said in testimony that the board did seriously consider the comments and, after deliberation and casting secret ballots, they did determine that the nominee’s rating was ‘not qualified.’

“I do not believe the Bar’s evaluation process has fatal flaws. It probably could be improved . . . and I believe their evaluation

provides important information that deserves consideration by Senators in our own decision-making process.

“The Hawaii State Bar Association is the professional group for attorneys and they alone elect their board of directors. Their board decides the procedures for evaluating judicial nominees, including the process of redacting the identities of attorneys who submit comments, and the board knew full well that the nominee was reviewed and deemed qualified by the State Judicial Selection Commission to serve as a circuit court judge. The board also understood the impact their evaluation might have on the nominee’s confirmation, as was seen today. I accept that the board of the Hawaii Bar did their best to provide an honest evaluation of the nominee’s qualifications.

“After all the harsh words said against the Bar’s procedures, after all of that is said and done, there still remains on the table 28 negative comments from individual and separate attorneys of the bar. Apparently, these attorneys believed that their concerns were of such significance that they believed the nominee was not qualified to serve as a judge.

“In addition to the 28 attorneys who submitted confidential negative comments, there were more than a dozen non-attorneys that I would consider credible – this is after discounting persons not in a position to have first-hand comments and those who made comments purely on what could be political motives. After further discounting people who might have insincere motives, it appears to me that there are a few dozen people who might have a real basis for believing, erroneously or not, that the nominee should not be a judge.

“It also appears that most of the negative concerns relate to the nominee’s judicial temperance. The nominee has acknowledged that he has ‘crossed the line’ in dealing with people in his professional career, but does not believe that this is a pattern. He has also acknowledged not being aware of offending others in the past, but would apologize to these persons if they informed him of such offenses. At the hearing we discussed this ‘blind spot,’ the size of which I do not know; it is perhaps not even known to the nominee.

“This inability of being aware when other people – from the other person’s point of view – when they feel wronged, offended, or mistreated, it raises the question about whether the nominee can eliminate his ‘blind spot’ while serving as a judge.

“I can’t really know for certain if the nominee has a pattern of offensive behavior in certain types of circumstances, including those intense adversarial situations. It does appear that there have been incidents in the nominee’s past involving people who apparently felt wronged and they are unwilling to forgive the nominee. I can only make a judgment based on what I know, which to me includes a few dozen persons in the community who believe the nominee is not qualified to serve as a judge.

“And if there is a pattern of, for example, disrespecting adversaries, can the nominee stop this pattern by personal commitment or perhaps by becoming a neutral judge rather than a zealous advocate that he is known to be? On this I am not certain either, but I believe that a judge should epitomize, embody, and foster the community value of respect among combatants in the legal arena. I believe that winning, ambition, and pride should not be of greater value than respecting other human beings, whether an adversary or not.

“In the larger scheme of things, which might be hard to see at this moment, I believe that what’s at stake here is our community value of respect, not simply whether a certain person should become a judge.

“Mr. President, I intend no disrespect to the nominee when I cast my ‘no’ vote for his confirmation. I honor Mr. Ted Hong, his family, and his supporters – and I wish him the best no matter what the outcome of this vote is.

“I wanted to . . . I jotted down some notes after I heard some of the other speakers and I wanted to quote a couple pieces from testimony and give my comment. This is a gentleman from Hilo and he says, ‘I support the confirmation of Ted Hong. I also believe Mr. Hong has common sense. This is an essential quality that a judge must have. I understand that there has been opposition because of Mr. Hong’s temper. I attended law school and studied with Mr. Hong and I have seen his temper. However, I believe Mr. Hong, if appointed, is the type of person to recognize that he has a temper and he will be able to control it.’ And if the nominee is confirmed, we’re all going to count on it.

“I have the American Bar Association guidelines on judicial temperament. This is a quality that one does not gain if the nominee becomes a judge. Judicial temperament is a quality that the nominee must already possess before becoming a judge. It says here, candidates should possess a judicial temperament which includes compassion – I won’t read the whole list but I’ll just pick some of the . . . I won’t read the big words – humility, open-mindedness, patience, tact, understanding. ‘Judicial temperament is universally regarded as a valid and important criterion in the evaluation of a candidate. There are several indicia of judicial temperament which, while premised upon subjective judgement, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.’ It also mentions a few qualities like even-tempered, yet firm, forbearance under provocation. And ‘factors which indicate a lack of judicial temperament are also identifiable and understandable.’ I’m still quoting, ‘Judicial temperament thus implies and absence of arrogance, impatience, pomposity (that’s the biggest word I’ll use), arbitrariness or tyranny. Its absence can be fairly ascertained.’

“This is an e-mail I got from someone who is close to the nominee. I won’t say who. It says, ‘with respect to questions about Ted’s blind spot, he acknowledged that he needed to work on his sensitivity regarding others’ perceptions of him. Since perception is that particular person’s reality, I am afraid to say that sensitivity to others is not something taught or even encouraged in law school’ (they should; that was my comment; continuing) ‘or in litigation practice, but it certainly is something we can all learn,’ end quote. I believe one should learn this sensitivity to others before becoming a judge.

“I want to also note a few corrections for the record, and it’s my version of the corrections. One is that the secret ballot that was used and proposed by the Bar Association president was agreed to by all the members present. No one objected to that. The Bar Association has never rated a judicial nominee not qualified. A dozen years ago, it wasn’t a rating. It was support or not support a nominee. It was not, is a person qualified or not. It happens that the following year the Bar changed its system to, instead of support or not support, to evaluate the qualifications of the nominee whether it was highly qualified, qualified, or not qualified.

“I also want to note that no Bar in the land, not even the American Bar Association, informs the nominees of the identities of persons submitting comments. What is revealed, oftentimes, is the identity of the commenter to the persons making the recommendation, but not to the nominee, him or herself. The 56 responses – 28 for, 28 against – were not votes. The Big Island Bar voted. They sent out an e-mail and said e-mail us back – vote qualified, highly qualified, or not qualified.

The State Bar did not do that. The State Bar was soliciting comments from persons who would be in a position to comment on the qualification of the nominee, and they were to submit comments. So, you don’t just respond and get everyone to respond and say yes, yes, yes or no, no, no. You respond with comments.

“As I mentioned earlier, 28 of those attorneys, members of the Bar believe that their comments, their concerns were sufficiently great enough to believe that their colleague was not qualified to serve on the bench.

“I had asked the Bar president at the hearing to indicate among the 28 comments, the negative comments, whether they referred to what the nominee has said or done that raised their concerns, or was it how and the way the nominee had conducted himself. This is a question some testifiers and some people have said . . . people were concerned and were opposed because of what he said and they disagreed with what he said and were therefore, I guess the theory goes, wanted to I guess disapprove to the point of not having him be a judge. But the Bar president, in the hearing, said that the responses had a common theme. He said the common theme of the concerns was judicial temperament. He said, I think four or five mentioned arrogance. But the theme was his manner of behavior.

“So basically, that is kind of the summary of my struggle. It’s been a struggle, and it hasn’t been easy, and it hurts to do this. But we are bound by the Constitution to cast a vote one way or the other.

“Thank you, Mr. President.”

Senator Baker rises in opposition to the nomination as follows:

“Mr. President, I, too, rise in opposition to the confirmation of this nomination.

“This has not been an easy conclusion for me to reach, nor, as the good Senator before me has indicated, has it been an easy conclusion for many of my colleagues, I suspect. There are people whose opinions that I value and respect on both sides of this confirmation. I’ve met twice with the nominee. I’ve read much of the testimony. I’ve heard from people from Maui, from the Big Island, from Oahu. I’ve heard concerns and I’ve heard support.

“Although now the Hawaii State Bar Association’s recommendation is being dismissed as the product of a flawed process, we’ve always taken their recommendation to heart. And so the fact that this nominee was deemed unqualified to serve troubles me and give me great pause.

“Mr. President, this is not a matter on which I can vote with reservations, knowing that any flaws can be fixed in Conference. This is the nomination for a Circuit Court judge for a 10-year term, and I simply cannot dismiss nor resolve the reservations that remain about the qualities of this nominee. Therefore, Mr. President, when the vote comes, I will be voting ‘no.’”

Senator Trimble rose to support the nomination and stated:

“Mr. President, I rise in support Ted Hong.

“I want to share with you how I reached my conclusion to support. I do respect the Senator from Kaimuki. This may be the first time that I rose to disagree with the conclusion that he reached.

“The first thing, or one of the things that we are talking about today is the ability to wear another hat. If I look back at myself, I don’t think you could have asked one friend that knew me five years ago whether they thought that I would be standing here today. People rise to the situation. When they are given a different set of responsibilities, they act differently. So, I believe that Ted Hong can be an impartial, sensitive, caring judge.

“The second thing that we’ve spent a great deal of time talking about is the Hawaii Bar Association Committee. After I read their decision in the newspaper, I started calling attorneys. Most of the attorneys that I know worked for previous administrations. I talked at length to three people. All three of them said the Ted Hong had a great mind, a great understanding of the law. Two of them were very troubled at the Hawaii Bar Association’s process. But all three of them said to me that it was my . . . suggested to me not only did they believe in his capabilities, but if I also believed in Ted Hong, that I will be doing the right thing by ignoring the Hawaii Bar Association. And that is what I’m choosing to do.

“The third thing is – and I don’t know what you do when a potential appointee comes to your office – I don’t talk about the law. We talked about economic development. We talked about vehicular ferries. What impressed me about Ted Hong was his ability to listen and to respond in a manner that showed he understood exactly what we were talking about. When I look for a judge, I want somebody that has experienced life. I want somebody that knows something beyond the law, in the community that he’s living in.

“The last thing that impressed me about this person was his desire to do the very best that he could. This is what I look for when I consider somebody for the bench.

“For these four reasons, I am supporting Ted Hong. Thank you.”

Senator Whalen rose to speak in support and said:

“Mr. President, I rise in support of the confirmation.

“First of all, I had no idea that the good Senator from Kauai gave such great deference to my opinion, at least on legal matters, quoting from his speech. Obviously, levity didn’t go very well there, but oh well. If you remember what he said, you’ll get the joke.

“Getting back to something that our colleague, the Chair of the Judiciary, mentioned, Justice Padgett certainly had a wonderful reputation as a very clear thinker. I think he has the record as being the most productive justice we’ve ever had on the bench. He did the work of two or three justices in authoring the opinions and turning out the work. The Judiciary Chair is very kind in her description. I’ll be a little more blunt. To call him gruff would be the very smallest comment you could make . . . very astute mind, very intelligent, every attorney had the greatest respect for him. But especially as a new attorney – he was there right when I got licensed – the last thing you want to do is have him judge the moot court or go before him and have to argue something. That was a horror because the man said exactly what was on his mind. He didn’t sugarcoat it. But in no way at all did it reflect on his ability as a judge. He didn’t go out there to hurt your feelings or to be cruel to you. But if you said something stupid, he’d call you on it and point it out to you and whoever else was listening that you did something dumb, because he didn’t have time to fool around.

“Getting back to this issue of whether or not we confirm Mr. Hong. Basically, all of the argument that I’ve heard so far up to

this point is that the State Bar found him unqualified and based basically on the lack of judicial temperament. I’d just like to emphasize again for my colleagues here that the Big Island Bar, which knows him best of all on a personal first-hand level, overwhelmingly approved him as being qualified. So there’s a little bit of interest there in the fact that the State Bar could come back with a negative and the people who know him best, the same attorneys who they’re supposedly listening to, say that, overwhelmingly, he is qualified to do the job.

“And also, for the record, if we were using the State Bar’s method of determining whether or not he’d be qualified, you have two Big Island Senators who have no qualms about supporting him. So, based on their analysis, he’d have the recommendation.

“Getting back to the issue, though, I’ve done a fair share of litigation in my time in a courtroom. The very last thing my client wants me to do is walk into a courtroom and say, now, we’re going to try our best, but if they’ve got some good points, I’m just going to lay down and let them win that point. As an advocate for somebody, a client – whether it’s the mayor of a county, a client that you’re paying for, or both of us with the same experience as being deputy prosecutors, representing the state but whatever crimes were committed against the victim – you go in there with the goal on your mind of making sure justice is done but representing your client with every ounce of ability and zealotry that you have within you. And at times, you do tick off the other side, but as the Chair of Judiciary said, as long as you can leave the courtroom and leave that behind and talk to your opponent on the other side, have a relationship in terms of being friendly, you’ve done your job. You’ve done it very well.

“All the testimony that I’ve read and the e-mails that I’ve received from back home on the Big Island says that Ted Hong is just that type of person. He stepped on some toes because he takes his job very seriously and does his best to represent his client to his absolute best ability. And as a judge, is that what you want? Certainly not. And that’s not . . . to make the comparison that as a litigator being very sided and advocating for your cause with everything within you, almost to the point where people think you’re blind to something else, there’s no way a reflection on someone’s ability to be objective when they need to be if there are different roles that they play. In fact, Mr. Hong, I think, exemplifies in his own career this very attribute that we’ve been discussing. As an attorney, as a deputy prosecutor he did that. When he was corporate counsel he played that role. As the negotiator for the Governor, he’s done that role very well. He has had to play different roles at different times and he’s done a very good job at each and every one of them. I think that proves that he can very easily slide into the role as a judge and as being experienced and unbiased and give someone a fair hearing.

“Just one more point. Someone keeps mentioning . . . I keep hearing the constitution, our constitutional duty and our constitutional responsibility to cast votes, etc. I want to remind everyone that we are the ones, in essence, who are the judge right now. We are the ones who are going to cast a vote. We have a responsibility to do it, but our responsibility is to make the best decision on all the information in front of us.

“The testimony in opposition to Mr. Hong relies primarily, almost exclusively – except for some anonymous e-mails that have been referred to around here – about the State Bar’s disapproval of him or unqualified finding. That is there only to assist us, Mr. President. It’s not there to decide for us, otherwise we should just send this function right here over to the State Bar and let them do it. When I hear people say, ‘I could have supported him’ or ‘I wasn’t really sure, but when I

saw the State Bar, that's what we have to do because they know him best,' no, no, it's our decision. It's our call. We make the decision based on all the information that's in front of us, and all the information that I have seen says he's very experienced, very knowledgeable, very decisive. He's a hard worker and will do what he needs to do to get the job done, and if the job is being a judge and ruling in that manner, then that is what he will do and that's what we should rely on. The fact that some people aren't happy with him, that's life.

"I will leave on just one note. I saved this until the end because I didn't want to offend anybody, but I've been in court a lot, like some of the attorneys around here, and there are judges that have been confirmed by this Senate who I, in my experience, didn't feel they should be there – very explosive, very unfamiliar with the law, didn't want to take the time to get knowledgeable with it, and they were confirmed. I'm not saying that the Senate blew it, or whatever else, but obviously, the State Bar gave them the thumbs up. And in personal practice on repeated appearances in front some of these judges, they did not belong on the bench. Does that mean that we made a mistake? Does it mean the State Bar made a mistake? Who can really say? The think is, you just can't take the State Bar Association's recommendation and run with it and say this is why I did it. Because if you do that, you're sticking your head in the sand and you're not fulfilling your constitutional duty to weigh all the factors and make the decision based on all the information in front of us.

"Not to be repetitive, which I am, but I just want to remind you that if that is your standard, the attorneys that know him most of all, the Big Island Bar, overwhelmingly said he is absolutely qualified to do this job.

"Thank you, Mr. President."

Senator English rose to speak in support of the nominee as follows:

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

"Mr. President, colleagues, during our hearing I asked Mr. Hong one question, and the question was this: How will you embody wisdom and compassion from the bench? It may seem like an esoteric question, but it's really a fundamental one because that's what we're dealing with. We're dealing with how someone will take all of the facts, all of the information, process that and then come to something that has compassion, embodies wisdom, and something that will equal justice.

"The question was merely rhetorical at the end of that hearing, because throughout the entire hearing, what I observed – and I observed this very keenly – was all sorts of things coming forward and ideas, all sorts of accusations and praise, and I observed how Mr. Hong absorbed this and processed this. And I saw him thinking, and I saw him considering and weighing and hearing some of the things, and being enlightened to some things that he may not have known.

"You know, members, I believe that life is a series of transitions and it's how we handle those transitions that demarcate those times for us.

"This reminds me of my own appointment to the Maui County Council, a very contentious, to say the least, process in Maui. So contentious, in fact, that the Charter was changed after my appointment to the Maui County Council. So I know how Mr. Ted Hong feels when accusations come forward, half-truths, innuendo, outright attacks and lies. I always remember the chance that those members of the Maui County Council that voted for me at that time, the chance that they gave me, because

I believe they saw the potential to grow and the potential to change. These are the same qualities I see in Mr. Hong – his ability to grow and to transition into a fine judge for the third circuit.

"I also received some other calls. I'm sure all of us have . . . calls and e-mails. In fact, we've been bombarded by them, but one particular call, members, from someone out of the loop, out of the circuit, an average citizen, not a political figure or anything like this, someone called and said, 'you know, I was on the opposing end of a case that Mr. Hong represented to the county, at the time, on the Big Island, and I lost a substantial sum of money in this particular interaction. But I can tell you,' and these are the words that she used, 'I can tell you that he is an honorable man, that even though I did not prevail in this case, I can tell you that he is honorable.' That stuck with me, because if she had won the case and called and said well, yes, we won and he was honorable, I would say alright. But to have lost a case and say that the opposing counsel was honorable, which means that she left the courtroom, I'm sure, upset, I'm sure, devastated, but at the same time, being able to come away with her own dignity and self-respect and respecting the opposing side because of the respect that the opposing counsel showed her, that is seminal for me.

"I started weighing all of the information that we had before us and my own conclusion was that he is well qualified to be a judge, because the things that we talked about and the things that came up were a part of his job as a litigator. And being a litigator, well, you have to be somewhat of a bulldog. You have to be someone that goes out and stands for their client and goes for their case. This is a new set of circumstances. It's a whole new idea, a whole new concept for him, and I see the potential to grow into this.

"Now, the final point, members, that struck me was the consideration that the nominee has and, I believe, a commitment he has to the Hawaiian community. Because, too often when we have Native Hawaiians coming before the judicial system, they are underrepresented. We have very special types of cases, a lot of it around land access, gathering, cultural practices. You know, today – earlier – we had chants in praise of the Aikau family presented, and these are very special, composed especially for this family to be presented here, this practice being protected by our constitution. And I'm so pleased and honored to see that today. Well, I also see that Mr. Hong has an understanding, a deeper understanding, of this particular issue. And I can tell you that Hilo has a large, large population of Native Hawaiians that will be before him, and I can see that he will have the compassion and the wisdom to treat them fairly, as he will treat everyone else, but to understand the basic dilemma that the Hawaiians are in, to understand the deep-seeded issues that we as a people have.

"And so, with these elements combined, members, I've come to my conclusion that I can support him without any reservation. I can support his nomination, and I ask you to consider that. Put everything aside – the issues of the Bar . . . let me just comment on that. You know, the Bar Association is sort of like elections to public office, members. If the members of the Bar chose not to participate, like the voting public chooses not to participate in an election, they have to live with the consequences. If the public doesn't vote and someone gets elected that they don't like, really, it's their fault. If the members of the Bar choose not to vote and the Bar comes out with a negative recommendation based on the people that voted, it's the members of the Bar's fault.

"I'm not faulting the Bar. In fact, I'm pointing out the fact that the Bar did its job by presenting its findings. The failure lies with the attorneys that did not participate, and therefore

they acquiesced and they said yes, we'll agree to whatever you guys come up with – sort of like our elections.

“So, let us use our own judgement. Let us all think this through carefully. It's still not too late to change your vote, and when that roll call is made, consider wisdom and compassion.

“Thank you, members.”

Senator Chun Oakland rose to speak in opposition as follows:

“Mr. President, it is with a heavy heart that I rise in opposition to Mr. Hong's nomination.

“This will be a first for me. My colleagues know that I have never voted in opposition to any nominee for confirmation. In my years serving in the Senate, I diligently listened to public testimony. I accept input from the public outside of the hearing process and have the privilege of meeting with the nominees for each judicial position. I give people the benefit of the doubt and expect that they are committed individuals wanting to fulfill the important duties that they are confirmed to do by Hawaii's State Senate. I have no doubt that Mr. Hong wants to fulfill that commitment.

“In this case, there has been a significant number of people who have come forward to express concerns about the nominee and have expressed judicial temperament as a major and consistent concern. For anyone to come forward against a judicial nominee is rare. But to have the number of people from the Bar and lay people express serious concern and consistently question Mr. Hong's judicial temperament is very disconcerting to me.

“There were concerns raised with the Hawaii State Bar Association's process determining a judicial nominee's qualification as highly qualified, qualified, and unqualified. The new process that is being criticized by some was implemented beginning in March 2003. This was the same process used in determining the qualifications of all past judicial nominees the Senate has confirmed last year and this year. When I asked one of the testifiers, the attorney general of this state, would there be the same criticisms of the process if the outcome for Mr. Hong by the Hawaii State Bar Association was positive rather than negative? He honestly indicated that there probably would have been no concern for the process.

“I did ask the person who served as the Hawaii State Bar Association's legislative liaison for 10 years, prior to the new system being implemented, what the typical response rate was for HSBA members for judicial nominees, what they have been during those years that he served. He indicated that in the past, the response rate ranged anywhere from a dozen responses to over 100 in two cases. During this same conversation, he indicated that the response rate for this nominee was unusually high.

“In the hearing, I asked the current Hawaii State Bar Association president what the response rate under the new system has been for the numerous judicial nominees we have already confirmed. He indicated that probably 10 to 20 people normally would respond with an overwhelming majority of them being in support. In this case, 56 responses were received, of which half raised serious concerns. And to my understanding, after being asked the question, Mr. Lee indicated that documentation was attached to those concerning e-mails.

“What was not discussed on this Floor was the questionable process of the Hawaii County Bar's East Hawaii survey. As a result of the County Bar's process being viewed by members of

the County Bar as concerning, Senate colleagues have been receiving phone calls from Hawaii County Bar members who informed them that they had responded in favor of the nominee for fear that if they did not indicate favor of this nominee, that they would have to appear in front of one of only two judges in East Hawaii for the next 10 years and were concerned about being treated fairly before this nominee, should he be confirmed. Other Hawaii County Bar members indicated to Senate colleagues that they did not participate in the County Bar vote based on that same concern. This pattern of fear of retaliation is of great concern to me. I suspect that is why HSBA's response rate showed a higher number of people opposed, because that process assured greater confidentiality.

“I appreciate Ted, his family, and friends who care very much for him and support him very much, and I thank all of you for having the patience to go through this very arduous public process. Many of the supporters are my friends, and I'm sorry if I've disappointed any of you. My vote in opposition for the confirmation of Mr. Hong for this judgeship reflects the people who were not at the hearing whose lives and livelihood may have been damaged or whose good character, maybe unbeknownst to Mr. Hong, was unfairly disparaged and acknowledges the concerns that were expressed as being just the tip of the iceberg of a larger problem. I cannot turn my back on them.

“Thank you, Mr. President.”

Senator Espero rose to speak in opposition to the nomination and said:

“Mr. President, I regretfully rise in opposition to this nomination.

“The decision to vote against the nominee was not an easy one for me. I have found Mr. Hong to be an outstanding father, husband, and son – a very hard worker involved in his community and who has many friends and supporters. I met with him twice and carefully watched the Judiciary Committee hearing and I spoke with many people about the nomination, including many of the Senators in here today. There was a tremendous amount of information made available to us.

“At first, I was angry at him for his position on UH West Oahu. But after speaking with him, I realized that was not a reason to be against his nomination. Although I did not support his action, I was satisfied with his explanation. His response to me, however, regarding other appointments caught my attention.

“In my humble opinion. There is a major conflict of interest in his dual role as UH regent and chief negotiator for the State of Hawaii. How can one person serve two masters and be loyal to both when they are likely to have a conflict in goals? I asked, was this reason to reject the nomination? I tried to keep an open mind.

“Then, Mr. President, the Hawaii State Bar Association gave the nominee an unqualified rating. Hypothetically, I equated this to the NAACP not supporting a national holiday for Dr. Martin Luther King or the University of Hawaii not supporting an outstanding UH athlete as an all-American selection. For me, the Hawaii State Bar's rating was a huge terrible blow to the nominee.

“Yes, I acknowledge the sample was small, but we're talking about attorneys who had an opportunity to voice their opinion and only a few did. I liken this to a political election with a poor turnout, but we still live and stand by their results. Of the respondents to the State Bar's request, 50 percent had negative

comments or concerns. What I feel is this may just be the tip of the iceberg.

“The process will be reviewed and scrutinized closely because of this nomination, but I believe today we must accept this, as this is what is before us. I do not enjoy voting against this nomination, but as a State Senator, I know I was open-minded, fair, and honest with my decision and vote. I do regret, Mr. President, any pain and disappointment my vote will cause to the nominee and his family.

“In closing, the Chair of the Judiciary Committee, in acknowledging a fellow attorney, stated that he was standing up for what he believed was right. Those of us in opposition today are also standing up for what we believe is right.

“Thank you, Mr. President.”

Senator Slom rose again in support and stated:

“Mr. President, I rise in brief rebuttal in support of the nomination.

“I’ve said before, and I say it again today, that this is probably the best thing that the Senate does when we have full and open discussion, when we have people in the gallery, when we have people that can watch this. They will be the final judges. They will be the arbiters of the things that we’ve said and our own motivations.

“But a couple of final points, I heard one of the opponents say that we should not give credence to someone just because the overwhelming amount of support was positive. Then I heard another one of the opponents say we should give a greater credence to a small number of people. Well, maybe the balance lies somewhere in between. For me, it’s never been the numbers themselves, it’s been the quality of the arguments, the information, and the individuals that have come forward.

“And I don’t think anybody can deny that the individuals that have come forward, as we started this two hours ago with the Chairwoman of Judiciary, they come from a wide and diverse background. They have nothing to gain politically or judiciously by their support. And as has been testified to, they have opposed or been opposed by the nominee in the past. But somehow they were able to put that below them and to look at the nominee himself and his qualifications. And they had no problem coming to support for Ted Hong, none whatsoever.

“Somehow, the last couple of hours has become a referendum on the Hawaii State Bar Association, and that’s unfortunate, because this is about Ted Hong. This is about the people of the Big Island. This is about choices of individuals. This is about real facts versus vague facts, things that might happen, personal fears of individuals, and other things that are not on the table.

“The last speaker did acknowledge that there certainly was a small percentage of people that took part in the Hawaii State Bar Association. I’m wondering how many people really know how small that was. There’s approximately 4,500 attorneys that are forced members of the Hawaii State Bar Association, and the original number, as the Minority Leader had said before, was that there were actually 53 votes. All of a sudden, three more votes came forward to make it 56. Well, that’s nice. That’s 56 out of 4,500. And we get into the same argument – Is the glass half empty or half full? The opponents would like you to concentrate entirely on the 50 percent, the 28 people that gave opinions, and disregard the 50 percent, the other 28, that gave supportive opinions. If we’re going to fair, if we’re going

to be balanced, 50 percent and 50 percent is equal. But that’s not what we’ve done today.

“In addition to that, it hasn’t been brought out that the president of the Bar Association is himself a candidate for a judicial appointment. Now, whether that has anything to do with it or not, I don’t know. But I do know this, it’s not the Bar Association or the procedure, it is the qualifications, the eminent qualifications of Ted Hong. And I have heard nothing here today, I heard nothing in the nine hours the other day that disputes his experience, his honesty, and his integrity. And woe be it to the 25 of us if we had our past records as eviscerated, and every decision that we’ve ever made, and every statement that we’ve ever said, and something that may have been overheard by someone or misinterpreted by someone else, if all of that were laid out. And that’s exactly what happened. And still, after all that, Ted Hong is standing, and he’s standing and willing to serve.

“And while the Hawaii State Bar Association gave the 4,500 attorneys an opportunity to give their opinions, the Hawaii Island Bar Association asked for a vote and that vote was overwhelming in support of the nominee. And you know, that’s what we do here and that’s what we do in Committees. Oftentimes, people give their opinions, or their concerns, or they vote with reservations. There’s a big difference when you have to vote yes or no. And yes, it does have implications for 10 years. But if we do not confirm this nomination and nominee today, we are disrespecting the people of the Big Island who have told us very clearly what they believe, what they want, what they know far better than most of us.

“And one other comment, Mr. President, I’ve heard this before in other hearings and other debates when someone says, how can someone do this job and that job and all of this? How can they do all those things and have one master? Those of us that fancy ourselves as entrepreneurs have people all around us telling us what we can’t do because they are lesser individuals in terms of their desire to do things. And what they say is, basically, I can’t do it and I know how smart and strong I am, so if I can’t do it, how can somebody else do it? That’s the mark of a leader – that man, that woman that can do the things that we can’t do, and can do them well in different arenas. And Ted Hong is one of those individuals.

“Some of my colleagues, who often in debates when we’re talking about money or we’re talking about material things, say let’s put a human face on it, on a dollar amount or a tax or a regulation. Well, you know what? We don’t have to do that today because we have a human face, a very human face in Ted Hong. I am privileged to know him and I am proud to vote strongly in his support today.

“Thank you, Mr. President.”

Senator Kim rose to speak in opposition to the nominee as follows:

“Mr. President, I also rise regretfully in opposition to the nomination.

“First, Mr. President, may I ask that the remarks of the good Senator from Moanalua be entered into the Journal as my own and also that of the Senator from Nuuanu. (The Chair so ordered.) For her to take a position, a very tough position, for me it is very serious and adds to my concern. When someone of her caliber rises in opposition – she is very respectful, always very sympathetic, always erring on the side of caution – I think that says a lot about her vote.

“Mr. President, I cannot stand here to say today that I know the nominee or his family, because I don’t personally know them. And yet, as part of my responsibility, I today have to cast a vote in favor or not for that individual. Certainly, as my colleagues have stated, it is not an easy decision for us to stand here to judge. Certainly, if I was to be up for a nominee for the court, my judicial temperament would be in question, and I trust that I would probably not get the confirmation as well.

“We are who we are. We make decisions, and we are often judged by our decisions everyday, all of us here on this Floor. And, I believe that my positions and my temperament, and I’m sure just as our nominee’s temperament, believe that we need to do what we have to do and yet we have to accept the judgement that comes because of our actions.

“Mr. President, when I met with the nominee he asked that I keep an open mind until his confirmation hearing. And I was very straightforward with him, as I try to be in all situations, and I did express to him that I expected that he would get a cross section of support from friends, from supporters, from people out there. That is the norm for the confirmation process – we will seek out those who will come to support us and certainly people do not like to speak out against anyone. I don’t believe, in the confirmation process, that people, especially local people, like to speak out. And so, I did express that it would be the opposition that I would be paying close attention to because if people take the time, take the risk of coming forward to speak out against someone and not fear retribution, to me that is very, very telling.

“And we see that, Mr. President, not just in the confirmation process, but all kinds of processes that we go through here in the Senate. So, Mr. President, I cannot discount the position of the Hawaii State Bar just as some of my colleagues have also stated. I know many are crying that it was a flawed process. But I’m concerned that no one prior to this cried foul. No one cried foul when they had only 12 attorneys respond in the past to a nominee. As my colleagues have stated, this is the same process used earlier during this Session and used last Session.

“And we have taken their positions to heart. But Mr. President, we cannot have it both ways. You cannot accept the Bar’s position only when it suits you. And I do not respect the statements from attorneys who refused to participate, for whatever reason refused to participate in the process, just as the Senator from Hana pointed out, and then complain now about the process. They are all knowledgeable individuals and they all know the importance of the judicial review by the Bar.

“The short of it is, Mr. President, several of Mr. Hong’s peers voted not qualified, and I am not about to second-guess the reasons for their vote. But I suspect that no matter how thorough or unthorough, no matter how secret or not secret, that they did vote their conscience. I’m sure that they did not just rely on 28/28 e-mails. They did rely on the interview, probably relied on any knowledge they may have from other people, other attorneys, and they did know the importance that their position would have on this Body.

“And no, this is not the only reason. I’m not punting to the Hawaii State Bar. We have to take everything into consideration, Mr. President, all that has come before us. And as it was said earlier, it is not easy to do, but I believe that I need to err on the side of caution, and because of that, Mr. President, I will be erring not to support the nomination.

“Thank you.”

Senator Tsutsui rose in opposition to the nominee and said:

“Mr. President, I rise in opposition to Gov. Msg. No. 152.

“Mr. President, I think we’ve heard most of the arguments, but I, too, am concerned that of the 56 members of the Hawaii State Bar Association, half of them found the nominee to be unqualified. I’m also concerned that the HSBA board voted against the nominee 7 to 5.

“Mr. President, this, in addition to the many other pieces of testimony that we had opposing this nominee, has played heavily into my decision today. And while some may say that the HSBA’s process for declaring a nominee qualified or not qualified should be changed or modified, I challenge the timing of this concern. Over the past year-and-a-half, we have confirmed, without any concerns, 14 judges guided in part by this recommendation.

“Mr. President, I believe that when we confirm anyone to the bench, we should do so with no reservations, with no hesitation, and with no concern. Today, Mr. President, I have some reservation. I have some hesitation. And I definitely have some concern. Therefore, I will be voting ‘no’ on Gov. Msg. No. 152.

“Thank you.”

The motion was put by the Chair and, Roll Call vote having been requested, failed to carry on the following showing of Ayes and Noes:

Ayes, 12. Noes, 13 (Baker, Chun Oakland, Espero, Fukunaga, Hooser, Ige, Ihara, Inouye, Kanno, Kawamoto, Kim, Sakamoto, Tsutsui).

REFERRAL OF HOUSE BILLS

MATTERS DEFERRED FROM THURSDAY, MARCH 11, 2004

The President made the following committee assignments of House bills received on Thursday, March 11, 2004:

House Bill	Referred to:
No. 33, H.D. 2	Jointly to the Committee on Education, the Committee on Judiciary and Hawaiian Affairs and the Committee on Ways and Means
No. 87, H.D. 2	Committee on Economic Development, then to the Committee on Water, Land, and Agriculture
No. 267, H.D. 2	Jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means
No. 432, H.D. 1	Committee on Water, Land, and Agriculture, then to the Committee on Ways and Means
No. 537, H.D. 1	Committee on Judiciary and Hawaiian Affairs
No. 634	Committee on Health, then to the Committee on Ways and Means
No. 680, H.D. 2	Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means
No. 698, H.D. 1	Committee on Judiciary and Hawaiian Affairs

No. 706, H.D. 1 Committee on Health, then to the Committee on Judiciary and Hawaiian Affairs

No. 1071, H.D. 2 Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means

No. 1103, H.D. 2 Committee on Economic Development, then to the Committee on Transportation, Military Affairs, and Government Operations

No. 1259, H.D. 1 Committee on Commerce, Consumer Protection and Housing

No. 1335, H.D. 3 Jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Education, then to the Committee on Ways and Means

No. 1374, H.D. 2 Committee on Labor, then to the Committee on Commerce, Consumer Protection and Housing

No. 1472, H.D. 1 Committee on Tourism, then to the Committee on Commerce, Consumer Protection and Housing

No. 1634, H.D. 1 Committee on Energy and Environment, then to the Committee on Ways and Means

No. 1710, H.D. 2 Committee on Education, then to the Committee on Ways and Means

No. 1717, H.D. 2 Committee on Commerce, Consumer Protection and Housing

No. 1729, H.D. 1 Committee on Commerce, Consumer Protection and Housing

No. 1743, H.D. 2 Committee on Economic Development, then to the Committee on Water, Land, and Agriculture

No. 1758, H.D. 2 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Commerce, Consumer Protection and Housing

No. 1762, H.D. 1 Committee on Commerce, Consumer Protection and Housing

No. 1765, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs

No. 1769, H.D. 1 Committee on Labor, then to the Committee on Judiciary and Hawaiian Affairs

No. 1774, H.D. 2 Committee on Labor, then to the Committee on Ways and Means

No. 1780, H.D. 1 Jointly to the Committee on Education and the Committee on Labor, then to the Committee on Ways and Means

No. 1786, H.D. 1 Committee on Labor, then to the Committee on Ways and Means

No. 1792, H.D. 2 Committee on Labor, then to the Committee on Ways and Means

No. 1796, H.D. 1 Committee on Science, Arts, and Technology, then to the Committee on Judiciary and Hawaiian Affairs

No. 1805, H.D. 3 Jointly to the Committee on Economic Development and the Committee on Transportation, Military Affairs, and Government Operations

No. 1806, H.D. 2 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Water, Land, and Agriculture

No. 1839, H.D. 2 Jointly to the Committee on Health and the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means

No. 1840, H.D. 1 Jointly to the Committee on Health and the Committee on Energy and Environment

No. 1848, H.D. 1 Committee on Water, Land, and Agriculture, then to the Committee on Ways and Means

No. 1894, H.D. 2 Jointly to the Committee on Education, the Committee on Health and the Committee on Human Services, then to the Committee on Ways and Means

No. 1898, H.D. 1 Committee on Economic Development, then to the Committee on Transportation, Military Affairs, and Government Operations

No. 1906, H.D. 2 Jointly to the Committee on Education and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means

No. 1919, H.D. 1 Committee on Labor, then to the Committee on Ways and Means

No. 1924, H.D. 1 Committee on Education, then to the Committee on Ways and Means

No. 1937, H.D. 2 Committee on Education, then to the Committee on Transportation, Military Affairs, and Government Operations

No. 1980, H.D. 1 Committee on Judiciary and Hawaiian Affairs

No. 1987, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs

No. 1991, H.D. 1 Committee on Health, then to the Committee on Judiciary and Hawaiian Affairs

No. 2002, H.D. 2 Committee on Education, then to the Committee on Ways and Means

No. 2015, H.D. 2 Jointly to the Committee on Health and the Committee on Human Services, then to the Committee on Ways and Means

No. 2022, H.D. 2 Committee on Human Services, then to the Committee on Ways and Means

No. 2023, H.D. 2 Committee on Human Services, then to the Committee on Judiciary and Hawaiian Affairs

No. 2025, H.D. 3 Jointly to the Committee on Labor and the Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means

No. 2034, H.D. 3 Jointly to the Committee on Water, Land, and Agriculture and the Committee on Education, then jointly

- to the Committee on Judiciary and Hawaiian Affairs and the Committee on Ways and Means
- No. 2061, H.D. 2 Committee on Tourism, then to the Committee on Ways and Means
- No. 2088, H.D. 2 Jointly to the Committee on Human Services and the Committee on Health, then to the Committee on Ways and Means
- No. 2098, H.D. 1 Committee on Health, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2136, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations
- No. 2142, H.D. 2 Committee on Energy and Environment, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2143, H.D. 2 Committee on Commerce, Consumer Protection and Housing, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2158 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2172, H.D. 2 Jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Science, Arts, and Technology, then to the Committee on Ways and Means
- No. 2181, H.D. 2 Jointly to the Committee on Transportation, Military Affairs, and Government Operations and the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means
- No. 2184, H.D. 2 Jointly to the Committee on Education, the Committee on Judiciary and Hawaiian Affairs and the Committee on Ways and Means
- No. 2186, H.D. 2 Committee on Tourism, then to the Committee on Ways and Means
- No. 2191, H.D. 1 Jointly to the Committee on Economic Development and the Committee on Science, Arts, and Technology, then to the Committee on Ways and Means
- No. 2206, H.D. 1 Committee on Judiciary and Hawaiian Affairs
- No. 2215, H.D. 2 Committee on Labor, then to the Committee on Ways and Means
- No. 2229, H.D. 2 Committee on Labor, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2230, H.D. 2 Committee on Labor, then to the Committee on Ways and Means
- No. 2251 Jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Transportation, Military Affairs, and Government Operations
- No. 2254 Committee on Judiciary and Hawaiian Affairs
- No. 2259, H.D. 1 Committee on Judiciary and Hawaiian Affairs
- No. 2262, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2273 Committee on Education, then to the Committee on Ways and Means
- No. 2280 Committee on Ways and Means
- No. 2290, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2291, H.D. 2 Jointly to the Committee on Transportation, Military Affairs, and Government Operations and the Committee on Tourism, then to the Committee on Ways and Means
- No. 2294 Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means
- No. 2301, H.D. 1 Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means
- No. 2320, H.D. 1 Committee on Judiciary and Hawaiian Affairs
- No. 2321, H.D. 2 Jointly to the Committee on Transportation, Military Affairs, and Government Operations and the Committee on Economic Development, then to the Committee on Ways and Means
- No. 2359, H.D. 1 Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means
- No. 2361, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2370, H.D. 1 Committee on Judiciary and Hawaiian Affairs
- No. 2378 Committee on Judiciary and Hawaiian Affairs
- No. 2396, H.D. 2 Jointly to the Committee on Science, Arts, and Technology and the Committee on Economic Development, then to the Committee on Ways and Means
- No. 2398, H.D. 2 Committee on Labor, then to the Committee on Ways and Means
- No. 2403, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2404, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2408, H.D. 2 Committee on Commerce, Consumer Protection and Housing
- No. 2444, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means
- No. 2455, H.D. 1 Jointly to the Committee on Human Services and the Committee on Health, then to the Committee on Ways and Means
- No. 2458, H.D. 1 Committee on Human Services, then to the Committee on Judiciary and Hawaiian Affairs

- No. 2459, H.D. 1 Committee on Human Services, then to the Committee on Ways and Means
- No. 2462, H.D. 1 Committee on Labor, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2464, H.D. 1 Committee on Labor
- No. 2466 Committee on Labor, then to the Committee on Ways and Means
- No. 2467, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2520, H.D. 2 Jointly to the Committee on Transportation, Military Affairs, and Government Operations and the Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means
- No. 2527, H.D. 2 Committee on Transportation, Military Affairs, and Government Operations
- No. 2529, H.D. 1 Jointly to the Committee on Energy and Environment and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Water, Land, and Agriculture
- No. 2539, H.D. 2 Committee on Health, then to the Committee on Commerce, Consumer Protection and Housing
- No. 2573, H.D. 1 Committee on Ways and Means
- No. 2579, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2581, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2608, H.D. 1 Jointly to the Committee on Tourism and the Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means
- No. 2611, H.D. 2 Jointly to the Committee on Economic Development and the Committee on Science, Arts, and Technology, then to the Committee on Ways and Means
- No. 2633, H.D. 1 Jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Judiciary and Hawaiian Affairs
- No. 2645, H.D. 2 Committee on Education, then to the Committee on Ways and Means
- No. 2657, H.D. 2 Committee on Labor, then to the Committee on Ways and Means
- No. 2659, H.D. 1 Committee on Labor, then to the Committee on Ways and Means
- No. 2662, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means
- No. 2667, H.D. 2 Jointly to the Committee on Education and the Committee on Labor, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2674, H.D. 1 Jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Commerce, Consumer Protection and Housing
- No. 2691, H.D. 1 Committee on Judiciary and Hawaiian Affairs
- No. 2703, H.D. 1 Jointly to the Committee on Transportation, Military Affairs, and Government Operations and the Committee on Water, Land, and Agriculture, then to the Committee on Ways and Means
- No. 2713, H.D. 2 Jointly to the Committee on Labor and the Committee on Education, then to the Committee on Ways and Means
- No. 2717, H.D. 1 Committee on Judiciary and Hawaiian Affairs
- No. 2722, H.D. 1 Committee on Water, Land, and Agriculture, then to the Committee on Ways and Means
- No. 2740, H.D. 1 Committee on Labor
- No. 2741, H.D. 1 Jointly to the Committee on Labor and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means
- No. 2742, H.D. 2 Jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means
- No. 2743, H.D. 2 Committee on Ways and Means
- No. 2748 Committee on Ways and Means
- No. 2749 Committee on Ways and Means
- No. 2759, H.D. 1 Committee on Water, Land, and Agriculture, then to the Committee on Ways and Means
- No. 2768 Jointly to the Committee on Commerce, Consumer Protection and Housing and the Committee on Judiciary and Hawaiian Affairs
- No. 2786, H.D. 1 Committee on Commerce, Consumer Protection and Housing, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2788, H.D. 1 Committee on Commerce, Consumer Protection and Housing, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2792, H.D. 1 Jointly to the Committee on Water, Land, and Agriculture and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Judiciary and Hawaiian Affairs
- No. 2796, H.D. 1 Jointly to the Committee on Health and the Committee on Human Services, then to the Committee on Ways and Means
- No. 2809, H.D. 2 Jointly to the Committee on Tourism and the Committee on Economic Development, then to the Committee on Ways and Means
- No. 2814, H.D. 2 Committee on Health, then to the Committee on Ways and Means
- No. 2864, H.D. 2 Jointly to the Committee on Judiciary and Hawaiian Affairs and the Committee on Health, then to the Committee on Ways and Means

No. 2873, H.D. 2 Jointly to the Committee on Health and the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means

No. 2894, H.D. 1 Committee on Water, Land, and Agriculture, then to the Committee on Commerce, Consumer Protection and Housing

No. 2911, H.D. 2 Committee on Education, then to the Committee on Ways and Means

No. 2956, H.D. 1 Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means

No. 2960, H.D. 2 Committee on Energy and Environment, then to the Committee on Ways and Means

No. 2961, H.D. 2 Jointly to the Committee on Economic Development and the Committee on Commerce, Consumer Protection and Housing, then to the Committee on Ways and Means

No. 2964, H.D. 1 Committee on Water, Land, and Agriculture, then to the Committee on Judiciary and Hawaiian Affairs

No. 2968, H.D. 2 Jointly to the Committee on Energy and Environment, the Committee on Health, the Committee on Water, Land, and Agriculture and the Committee on Transportation, Military Affairs, and Government Operations, then to the Committee on Ways and Means

No. 2974, H.D. 1 Committee on Energy and Environment, then to the Committee on Commerce, Consumer Protection and Housing

No. 2976, H.D. 1 Committee on Judiciary and Hawaiian Affairs, then to the Committee on Ways and Means

ADJOURNMENT

At 2:48 o'clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o'clock a.m., Monday, March 15, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate

ATTACHMENT A

Senator Ihara's objections read as follows:

"Pursuant to my remarks on the Senate Floor on March 12, please include in the Senate Journal for that day my objections to JHW's SSCR 2873 on GM 152 (Ted Hong). I object specifically to the underlined findings on pages 3 and 4, because the committee majority did not agree or discuss including any of these findings in the committee report (without my vote, there would have been no majority).

Stand. Com. Rep. No. 2873

Honolulu, Hawaii

March 11, 2004

RE: Gov. Msg. No. 152

Honorable Robert Bunda
President of the Senate
Twenty-Second State Legislature
Regular Session of 2004
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred Governor's Message No. 152, submitting for study and consideration the nomination of:

CIRCUIT COURT OF THE THIRD CIRCUIT, STATE OF HAWAII, TED H.S. HONG

G.M. No. 152 TED H.S. HONG, for a term of Ten Years,

begs leave to report as follows:

Upon review of the resume, application for judicial office, letter of the nominee dated February 17, 2004, and testimony, your Committee finds that Ted H.S. Hong received a BA and a JD degree from the University of Hawaii at Manoa. Currently, he is the Chief Negotiator for the State of Hawaii and an interim Board of Regent for the University of Hawaii. He was a solo practitioner, Grand Jury Counsel for the Third Circuit Court, Corporation Counsel for the County of Hawaii, Deputy Corporation Counsel for the City and County of Honolulu, associate attorney at Roehrig, Roehrig, Wilson, Hara, deSilva, and Deputy Prosecuting Attorney for the City and County of Honolulu.

The nominee is a member of the Hawaii State Bar Association (HSBA) and American Bar Association (ABA).

Your Committee has received testimony in support of the nominee from the Attorney General, Department of Defense, Department of Human Resources Development, Office of Human Resources of the Judiciary, University of Hawaii Professional Assembly, Mayor of the County of Hawaii, Moanalua High School, Hawaii County Bar Association, the County of Hawaii Mayor's Office, Hawaii County Police Department, Honolulu Prosecuting Attorney, UH Hilo Student Association, Big Island Candies, Inc., Hawaiian Floral Express, Hawaii Island Portuguese Chamber of Commerce, Hawaii Tire Company, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Kamuela Kayak Corporation, Kope Kope Espresso Cafe, Mauna Kea Anaina Hou, Pacific Transfer, Pinnacle Investment Group, Rotary Club of Hilo, Rotary Club of Hilo Bay, State of Hawaii Organization of Police Officers, Hawaii Fire Fighters Association, Korean American Bar Association of Hawaii, Society for Human Resource Management, Communications Pacific, Hilo Reporters, Dolan, Silva & Associates, CPAs, Inc., Stryker, Weiner & Yokota, Victor V. Vierra and Associates, Hawaii Orchid Growers Association, ninety-eight attorneys, and two hundred ninety-two individuals. Your Committee has received testimony in opposition of the nominee from one attorney and twenty individuals. Your Committee has received comments regarding the nominee from the Chair of the Hawaii County Council, Hawaii County Corporation Counsel, two attorneys, and four individuals.

The Board of Directors of the HSBA found the nominee to be unqualified to serve as a circuit court judge. As part of the HSBA Board's procedures for taking a position on judicial appointments, the candidate is asked to submit a resume, respond to a questionnaire, and appear before the Board to answer questions. The HSBA Board utilizes a modified version of the ABA Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria for judicial positions: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability.

Your Committee notes that there are issues regarding the judicial candidate's evaluation process performed by the HSBA. Specifically, your Committee expressed concerns about the short time frame in which the evaluation process takes place. Thus, if concerns are raised regarding a nominee, the HSBA does not have enough time to investigate a candidate any further. As a practice, your Committee postpones confirmation hearings as much as possible to accommodate the HSBA's initial evaluation process to enable the HSBA adequate time to prepare an evaluation. If there is a situation where a further investigation is warranted, the HSBA may be unable to address any of the issues and must evaluate a nominee based on the information immediately available.

Your Committee is concerned about the HSBA's methodology in evaluating a judicial candidate. Specifically, issues were raised regarding the necessity for total anonymity of comments submitted for the evaluation process and the anonymous ballot voting used for this nominee's HSBA judicial evaluation. While your Committee appreciates the HSBA's efforts in evaluating this nominee, this nominee's evaluation brings to light the apparent flaws and inequitable nature of the HSBA's evaluation processes.

In response to the concerns raised with the HSBA's judicial evaluation process, your Committee heard testimony from the Judicial Selection Commission (Commission) regarding their evaluation process. The Commission is authorized under the Constitution of the State of Hawaii to nominate no less than four and no more than six potential candidates from a pool of applicants for the Governor to choose from. The Commission is bound by the amount of information they are allowed to disseminate to this legislative body and the public. However, only the names of qualified candidates are submitted to the Governor for consideration.

Moreover, your Committee finds that the nominee was screened by the Judicial Selection Commission after an exhaustive process of finding qualified candidates. Additionally, in the HSBA screening process, only fifty-six of the four thousand three hundred bar members in Hawaii sent in comments about the nominee, which your Committee finds to be too small a minority of that organization to provide a true representation of the nominee's qualifications.

Your Committee has reviewed all of the testimony submitted, heard testimony from those who were present, and provided each person testifying with the amount of time needed to articulate their position. The testimony was overwhelmingly in support for the nominee; however, testimony was presented in opposition to the nominee. The main concern raised to this Committee was the nominee's judicial temperament.

From the testimony of the HSBA and others familiar with the judicial evaluation process, the term "judicial temperament" is subjective. The Commission testified that judicial temperament is one of the qualifications evaluated to determine if a candidate is qualified or unqualified. The Commission uses the ABA Guidelines to define "judicial temperament" for their evaluation process. Under this definition, "judicial temperament" is a nominee who possesses "a judicial temperament which includes common sense, compassion, decisiveness, firmness, humanity, open-mindedness, patience, tact and understanding."

Your Committee notes the concerns regarding the nominee's judicial temperament. However, in evaluating the criticism of this nominee, it appears that the nominee's direct nature and zealous advocacy on behalf of his clients are confused with the definition of judicial temperament. Your Committee believes that the criticisms articulated were not traits that would impede his ability to perform in an effective and fair manner as a judge, with the proper judicial demeanor.

Your Committee also considered the number of Big Island testifiers that were present in support of the nominee from attorneys, individual residents, students and faculty from the University of Hawaii at Hilo, and the Hawaii Community College. The University of Hawaii Regents were also present to support and clarify some misconceptions regarding the issues surrounding this nominee.

From all of the testimony, questions and answers, and a review of the personal history, résumé, and statements submitted by the nominee, your Committee finds the nominee to have the necessary qualifications to be appointed to the position of circuit court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate consent to the nomination."