

MAR 09 2018

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# SENATE CONCURRENT RESOLUTION

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URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

1 WHEREAS, Hawaii's collective bargaining in public  
2 employment law, chapter 89, Hawaii Revised Statutes, was enacted  
3 to promote labor-management harmony in the public sector by:

- 4
- 5 (1) Establishing guidelines for employment relations  
6 relating to wages, hours, and working conditions;  
7
- 8 (2) Providing a method for dealing with disputes and work  
9 stoppages; and  
10
- 11 (3) Maintaining a favorable political and social  
12 environment; and  
13

14 WHEREAS, the policy to promote harmonious and cooperative  
15 relations between government and its employees rests on the  
16 right of public employees to organize for the purpose of  
17 collective bargaining in accordance with article XIII, section  
18 2, of the Hawaii State Constitution; and  
19

20 WHEREAS, in the interest of labor peace and viability of  
21 the collective bargaining enterprise, the Legislature has  
22 consistently required all public employees in bargaining units  
23 to bear the pro rata costs of their duly-elected exclusive  
24 representatives' collective bargaining function, in accord with  
25 *Aboud v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52  
26 L.Ed.2d 261 (1977) (allowing public sector agency fees) (*Aboud*);  
27 and  
28



1 WHEREAS, in *Janus v. American Fed'n of State, County, and*  
2 *Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert.  
3 granted, 138 S.Ct. (Mem), 198 L.Ed. 2d 780 (2017), (*Janus*) the  
4 petitioner is asking the United States Supreme Court to overrule  
5 *Abood*, and the Court has accepted the case, arguments have been  
6 submitted and presented, and a decision is expected by the end  
7 of June, 2018; and

8  
9 WHEREAS, most commentators expect that *Abood* will be  
10 overruled and traditional agency fees will be banned; and

11  
12 WHEREAS, should the United States Supreme Court strike down  
13 laws requiring the payment of agency fees by public sector  
14 employees, such a ruling would fundamentally undermine the  
15 Legislature's consistent efforts to bar "free riders", and  
16 ensure labor management peace; undercut the collective  
17 bargaining representative's ability to collect resources from  
18 its bargaining unit; and greatly diminish public employees'  
19 ability to negotiate with management thus causing the government  
20 to lose the advantages envisioned under the collective  
21 bargaining in public employment law; and

22  
23 WHEREAS, the intent of the Legislature is to ensure that  
24 public employees are able to effectively bargain collectively  
25 with their public employers by establishing a mechanism,  
26 consistent with the United States Constitution, that provides  
27 exclusive bargaining representatives with the resources  
28 necessary to adequately represent public employees, and removes  
29 economic incentives to "free ride" so that Hawaii law will not  
30 be biased for or against employee membership in the bargaining  
31 unit; and

32  
33 WHEREAS, the United States Supreme Court may issue a ruling  
34 in *Janus* after the Legislature has adjourned, leaving public  
35 sector employees and the State and counties of Hawaii uncertain  
36 of their rights without immediate legislative recourse; and

37  
38 WHEREAS, under such circumstances the Hawaii Labor  
39 Relations Board, or other agencies or judicial bodies, may be  
40 called upon to interpret, adapt, or conform chapter 89, Hawaii  
41 Revised Statutes, to the result in *Janus*, through rules or



## S.C.R. NO. III

1 decisions, perhaps pending later legislative action; now,  
2 therefore,

3  
4 BE IT RESOLVED by the Senate of the Twenty-ninth  
5 Legislature of the State of Hawaii, Regular Session of 2018, the  
6 House of Representatives concurring, that the Hawaii Labor  
7 Relations Board, and other concerned agencies or judicial  
8 bodies, are urged to take notice of this body's intent to enable  
9 exclusive representatives to maintain financial viability and  
10 organizational capacity and effectively represent public  
11 employees, and to remove or reduce financial incentives for  
12 employees to "free ride"; and

13  
14 BE IT FURTHER RESOLVED that the Hawaii Labor Relations  
15 Board is requested to submit a report of its findings and  
16 recommendations on the status and consequences of *Janus*,  
17 including any proposed legislation, to this body no later than  
18 twenty days prior to the convening of the Regular Session of  
19 2019; and

20  
21 BE IT FURTHER RESOLVED that certified copies of this  
22 Concurrent Resolution be transmitted to the Governor,  
23 Chairperson of the Hawaii Labor Relations Board, and Chief  
24 Justice of the Supreme Court of Hawaii.  
25  
26  
27

OFFERED BY:

*[Handwritten signatures and names follow]*

*Michelle Tidani*  
*Kala' Ber*  
*[Signature]*

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*Clarence K. Iwihikem*  
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