THE SENATE THIRTY-FIRST LEGISLATURE, 2021 STATE OF HAWAII

S.C.R. NO. 99

MAR 1 1 2021

## SENATE CONCURRENT RESOLUTION

RATIFYING A PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES GIVING THE CONGRESS OF THE UNITED STATES POWER TO LIMIT, REGULATE, AND PROHIBIT THE LABOR OF PERSONS UNDER EIGHTEEN YEARS OF AGE.

1 WHEREAS, unregulated child labor has detrimental effect on 2 the health and welfare of children; and 3

WHEREAS, the 1900 census revealed that approximately two
million children were working in mills, mines, fields,
factories, stores, and on city streets across the United States,
which helped spark a national movement to end child labor in the
United States; and

10 WHEREAS, in 1916, the Congress of the United States (Congress) passed its first child labor bill, the Keating-Owen 11 Child Labor Act of 1916, which attempted to regulate child labor 12 by prohibiting the interstate shipment of goods produced by any 13 factory, shop, or cannery that employed children under the age 14 of fourteen; any mine that employed children under the age of 15 sixteen; and any facility where children under the age of 16 17 sixteen worked at night or for more than eight hours during the day; and 18

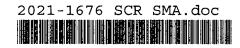
WHEREAS, Congress cited to the federal government's ability 20 21 to regulate interstate commerce as its authority to pass the Keating-Owen Child Labor Act, however, the Supreme Court of the 22 United States in Hammer v. Dagenhart, 247 U.S. 251 (1918), 23 delineated between the Congress's power to regulate production 24 and commerce, and ruled that the law was unconstitutional as it 25 overstepped the purpose of the government's powers to regulate 26 interstate commerce; and 27

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29 WHEREAS, in 1918, Congress passed its second child labor 30 bill as part of the Revenue Act of 1919, also called the Child



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1 Labor Tax Law, which took an indirect route to regulate child 2 labor by using the government's power to levy taxes; and 3 4 WHEREAS, the Child Labor Tax Law was also found to be 5 unconstitutional by the Supreme Court of the United States in 6 Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922), which 7 reasoned that the power of Congress to regulate interstate 8 commerce does not extend to curbing the power of the states to 9 regulate local trade; and 10 WHEREAS, despite the nation's apparent desire for federal 11 laws against child labor, the rulings by the Supreme Court of 12 the United States left little room for federal legislation, and 13 therefore, Congress proposed a constitutional amendment through 14 15 a joint resolution to give itself the power to regulate labor of persons under eighteen years of age; and 16 17 WHEREAS, House Joint Resolution 184, approved by the Sixty-18 19 Eighth Congress, First Session (House Joint Resolution 184), reads as follows: 20 21 22 "JOINT RESOLUTION 23 24 Proposing an amendment to the Constitution of the 25 United States. 26 27 Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-28 thirds of each House concurring therein), that the 29 30 following article is proposed as an amendment to the Constitution of the United States, which, when ratified by 31 the legislature of three-fourths of the several States, 32 shall be valid to all intents and purposes as a part of the 33 Constitution: 34 35 36 "ARTICLE 37 38 The Congress shall have power to limit, Section 1. regulate, and prohibit the labor of persons under eighteen 39 years of age. 40 41



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1 Section 2. The power of the several States is 2 unimpaired by this article except that the operation of 3 State laws shall be suspended to the extent necessary to 4 give effect to legislation enacted by the Congress.""; 5 6 and 7 8 WHEREAS, House Joint Resolution 184 was submitted to the 9 state legislatures for ratification; and 10 11 WHEREAS, ratification of House Joint Resolution 184 stalled 12 after 1925, due to an effective campaign to discredit it, including traditional states' rights arguments against increases 13 14 in the power of the federal government and accusations that the 15 amendment was a communist-inspired plot to subvert the United States Constitution; and 16 17 WHEREAS, by 1937, when the most recent state ratified House 18 19 Joint Resolution 184, only twenty-eight states had ratified it, which fell short of the required three-fourths threshold 20 21 required for a constitutional amendment; and 22 23 WHEREAS, the proposal for the constitutional amendment is 24 still outstanding since Congress did not set a time limit for its ratification, and ratification by ten more states is 25 required to add the amendment to the United States Constitution; 26 27 and 28 WHEREAS, fifteen states have rejected and refused to 29 30 subsequently ratify House Joint Resolution 184, and Hawaii is one of the five states that have no record of taking action on 31 32 the proposed constitutional amendment; and 33 34 WHEREAS, federal regulation of child labor in the United States is now provided under the Fair Labor Standards Act of 35 36 1938, as amended, however, ratification of the constitutional 37 amendment set forth in House Joint Resolution 184 would put 38 Hawaii on the right side of history; now, therefore, 39 40 BE IT RESOLVED by the Senate of the Thirty-first 41 Legislature of the State of Hawaii, Regular Session of 2021, the House of Representatives concurring, that the Article proposed 42



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as an amendment to the Constitution of the United States as set 1 forth in United States House Joint Resolution 184, dated June 2, 2 1924, be hereby ratified by the Legislature of the State of 3 Hawaii; and 4

BE IT FURTHER RESOLVED that certified copies of this 6 7 Concurrent Resolution be transmitted to the Administrator of the United States General Services Administration, President of the 8 9 United States Senate, Speaker of the United States House of Representatives, and members of Hawaii's congressional 10 delegation. 11

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OFFERED BY:

