

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
on SB141, Proposed SD1**

RELATING TO ELECTIONS (Requires presidential electors to take a pledge that they will vote for their party's nominee. Invalidates the vote of any faithless elector. Removes any faithless elector from the position of elector. Provides procedures for the replacement of electors. Updates rules for certification of electors and their votes to be in full compliance with federal law)

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 9, 2023, at 9:30 a.m.

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Rhoads, Vice-Chair Gabbard and Members of the Committee on Judiciary:

My name is Peter Hamasaki and I am a member of the State of Hawai'i Commission to Promote Uniform Legislation. Thank you for this opportunity to submit this testimony in support of Senate Bill No. 141, proposed Senate Draft 1 ("Proposed SD1") . Proposed SD1 incorporates provisions of the Uniform Faithful Presidential Electors Act ("UFPEA"), which as approved by the Uniform Law Commission in 2010.

UFPEA is intended to address the rare but historically persistent problem of presidential electors who do not adhere to their obligation to vote faithfully for their parties' candidates. The United States Supreme Court unanimously upheld in *Chiafalo v. Washington*, 591 U.S. ___(2020), state laws that remove or punish rogue presidential electors who refuse to cast their votes for the presidential candidate they pledged to support. In *Colorado Department of State v. Baca*, 591 U.S. ___(2020), which was decided on the same day as *Chiafalo*, the U.S. Supreme Court reversed a Tenth Circuit opinion that had declared Colorado's adoption of a statute materially similar to UFPEA to be an unconstitutional limit on elector discretion. In other words, the Supreme Court has made clear that states have the authority to bind their electors to the candidates they have pledged to support. By enacting legislation like UFPEA, states assure citizens that their votes will not be overridden by a single elector and protects the country from

the chaos that would ensue if a handful of electors could negate the will of the voters.

Proposed SD 1 and UFPEA propose a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge effectively constituting resignation from the office of elector. The proposed legislation provides a mechanism for filling a vacancy created for that reason or any other, with the substituted elector taking a similar pledge. After a full set of faithful elector votes is obtained, the proposed legislation further provides that the official notification of the identity of the state's electors that is required under federal law be officially amended by the Governor, so that the state's official list of electors contains the names of only faithful electors.

The possibility of later substitution is central to UFPEA's approach to the problem of elector faithlessness, and for that reason Section 4 of Proposed SD1, which reflects Section 5 of UFPEA, instructs the state executive to make explicit in the certificate of ascertainment that later substitution is possible and that where it has proved necessary a later amended certificate of ascertainment will be provided with a revised list of the state's electors. Section 2 of Proposed SD1, which reflects Section 8 of UFPEA, then provides for submission of any amended certificate of ascertainment that proves necessary.

UFPEA addresses a problem that, in practice, may only rarely arise but has the potential to inflict great harm to our electoral process. Uniform adoption of UFPEA will assure that the solution is consistent among the states, foreclosing attempts to "peel off" electors and helping states to secure their full complements of electoral votes.

Thank you very much for this opportunity to testify in support of this measure.

SB-141

Submitted on: 2/3/2023 6:22:58 PM

Testimony for JDC on 2/9/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawaii	Support	Remotely Via Zoom

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai‘i; Hawai‘i’s oldest and largest policy and political LGBTQIA+ focused organization fully supports the proposed SD 1 for SB 141.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair and SCC Representative
Stonewall Caucus for the DPH



COMMITTEE ON JUDICIARY
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice-Chair

Thursday, February 9, 2023, 19:30 a.m., Room 016 and Via Videoconference
SB 141 SD1 Proposed RELATING TO ELECTIONS

TESTIMONY

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 141, SD1 (Proposed) that would require Hawaii's presidential electors to take a pledge that they will vote for their party's nominee, invalidates the vote of any faithless elector, and removes any faithless elector from the position of elector. The bill provides procedures for the replacement of electors, and updates rules for certification of electors and their votes to be in full compliance with Federal law.

The Electoral College arises from Article II, Section 1, Clauses 2 and 3, of the U.S. Constitution which permits each state to "appoint electors" in such manner as the Legislature may direct." Hawaii has the right to prohibit "faithless electors" who do not vote for the candidate for whom they had pledged to vote.

This bill is important and will protect the choices for president and vice president made by the people of Hawaii during a presidential general election. A "rogue" elector such as the 2016 elector who broke the law by casting his vote for someone who did not win the popular vote in Hawaii's presidential election can subvert the will of the electorate if he or she casts a vote contrary to the winner of the popular vote. This is completely contrary to democratic principles.

Our current law does not say what will happen to an elector if they do not follow the law. This bill corrects this by requiring that if this occurs the vote would be invalidated, and a new elector would vote in place of the original elector. The bill also updates Hawaii rules for certification of electors and their votes to fully comply with Federal law. This makes the SD1 (proposed) version of this measure a significant improvement over the original version of the bill, which we also supported.

The League thanks the introducers of the measure for building a safeguard to address the "faithless elector" problem in the future. However, we believe that Electoral College should be abolished entirely because the national direct popular-vote method for electing the President and Vice-President is essential to representative government. ***If our country could achieve such direct election, bills like this would not be necessary.***

Thank you for the opportunity to submit testimony.

SB-141

Submitted on: 2/5/2023 2:18:48 PM

Testimony for JDC on 2/9/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

Thank you for the opportunity to testify. This is a no brainer.

Unfortunately, electors have abused the privilege and voted for others who were not on the ballot and thus we are here to make sure that does not recur.

Worse, alternate lists of delegates were submitted by the republican party in several mainland states in an attempt to subvert the 2020 presidential election. Those who signed those illegal papers are now under investigation. We must be sure these attempts never happen again.

SB-141

Submitted on: 2/8/2023 9:17:34 AM

Testimony for JDC on 2/9/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

I support this bill to conform the state's rules on presidential electors to the national standard. It is unfortunate that at this time, such a law needs to be in place. Please pass SB141.