



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

Testimony to the House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Friday, March 15, 2024, 2:00 p.m.
Hawai'i State Capitol, Conference Room 325

By

Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2385, SD1, Proposing an Amendment to Article VI, Section 3 of the Hawaii Constitution to Place Procedural Restrictions on the Timing of Judicial Appointments and Confirmations.

Purpose: Proposes an amendment to the state constitution to place procedural restrictions on the timing of judicial appointments and confirmations. Establishes a window between September 1 and November 30 during which the judicial selection commission may not present a list of nominees to the Governor or Chief Justice. Provides that the Senate shall be called into no more than 2 special sessions during each interim between regular sessions of the Legislature to consent to a judicial appointment.

Judiciary's Position:

The Judiciary takes no position on this measure but offers the following comments.

If the constitutional amendment proposed by this measure passes and is approved by voters, it could leave judicial vacancies unfilled for an extended period of time, depending on when a vacancy occurs. We would note that the current process of filling judicial vacancies is already time-intensive, with the posting of notice of the vacancy, application deadlines,

candidate interviews, and the determination of qualified applicants in some cases taking more than a year after a vacancy occurs. The addition of the procedural restrictions this measure proposes could prolong the period of vacancy and thereby impair the Judiciary's ability to deliver services to the public.

Additionally, the Chief Justice has the authority to designate district court judges to temporarily fill circuit court vacancies, and retired judges can be called back to temporarily fill vacancies at the Intermediate Court of Appeals. As drafted, this bill appears to preclude the use of that authority. Accordingly, we suggest the following amendments to Page 2, Lines 1-2 and Page 3, Lines 9-11 of the bill, deleting the following phrase: "and the position shall remain vacant until after November 30, when the governor [or chief justice] may be presented with a list of nominees."

Thank you for the opportunity to testify on Senate Bill No. 2385, SD1.

Testimony to the House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Friday, March 15, 2024, 2:00 p.m.

State Capitol, Conference Room 325 & Videoconference

by

Kamani B. Kuala'au

Chair, Judicial Selection Commission,

And Members of the Judicial Selection Commission

WRITTEN TESTIMONY ONLY

SB2385, SD 1: PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3 OF THE HAWAII CONSTITUTION TO PLACE PROCEDURAL RESTRICTIONS ON THE TIMING OF JUDICIAL APPOINTMENTS AND CONFIRMATIONS.

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Judicial Selection Commission respectfully opposes the proposed amendments in SB2385, SD1.

The Judicial Selection Commission believes that the proposed constitutional amendments in SB2385, SD1 are unnecessary and can be achieved through collaboration between the Judicial Selection Commission, the Senate leadership, and the Senate Committee on Judiciary.

Bill No. SB2385, Proposing an Amendment to Article VI, Section 3 of the Hawaii Constitution to Place Procedural Restrictions on the Timing of Judicial Appointments and Confirmations.

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The Judicial Selection Commission believes that any concerns regarding the timing of nominations can be addressed through open dialogue and cooperation, rather than through the pursuit of a constitutional amendment as proposed in SB2385, SD1. By continuing to work collaboratively, the Judicial Selection Commission, the Senate leadership and the Chair of the Senate Committee on Judiciary can ensure an efficient and effective judicial selection process that upholds the principles of fairness, transparency, and accountability while still maintaining confidentiality.

We respectfully urge you to consider deferring SB2385, SD1 to allow for continued discussions between the Judicial Selection Commission, the Senate leadership and the Chair of the Senate Committee on Judiciary. We are confident that through collaborative efforts, we can address any concerns and maintain the integrity of the judicial selection process without the need for legislative intervention. We are committed to maintaining open lines of communication and coordinating with the Senate to align with its schedule.

Thank you for the opportunity to comment on this proposed legislation.