

## Commission to Improve Standards of Conduct

Dear Chairman Tarnas and Members of the Judiciary and Hawaiian Affairs Committee,

Thank you for the opportunity to comment on bills recommended to the House of Representatives (House) by the Commission to Improve Standards of Conduct (Commission). The origin and justification of these bills is extensively discussed in the Commission's December 1, 2022 Final Report (Report) submitted to the House pursuant to HR 9.

The bills recommended by the Commission are a package that would increase transparency and accountability in state and county government and help restore public trust in government which has been severely eroded in the past few years by highly publicized instances of corruption and misconduct in state and county government.

With that in mind, I would like to comment on all the Commission bills in this testimony and submit it for each bill for your consideration.

First, I would like to commend the House for creating the Commission. It has been an honor to carry out the mandate of the House and serve with the distinguished and learned members the House appointed to the Commission. The members of the Commission worked very hard over a period of nine months, reaching out to public officials, community leaders, experts in various fields within the Commission's mandate and held extensive public hearings in drafting the bills recommended to the House. These public hearings are summarized in the Report at 13-18 and Appendix B of the Report which contains the Commission's minutes of these public meetings. The notice of the Commission's meetings with a link to a video recording of each meeting and testimony submitted and documents considered at each meeting can be found at the House webpage's a link to the Commission under House Special Committees.

The following is the list of bills recommended by the Commission with brief summaries and citations to the relevant parts of the Commission's Report where they are discussed.

HB 705 – Requires each house of the Legislature to post a report of the legislative allowance expenditures for each member of the respective house on the Legislature's website. The purpose of this bill is to "increase transparency and ease of access to information related to expenditure of taxpayer monies." Report at 28.

HB 706 – Requires all members of the Legislature to disclose certain relationships with lobbyists or lobbying organizations in their financial disclosures. The purpose of this bill is to "increase transparency and potentially uncover conflicts or self-dealing." Report at 28.

HB 707 – Makes it a class C felony to make false, fictitious or fraudulent claims against the state or a county, or any of their department or agencies, disqualifying a person from holding elective public office for a period of 10 years upon conviction of making a false, fictitious or fraudulent claim. This bill is modeled after the federal false claims statute. Report at 21. This bill comes

with two others – HB 710 (false statement) and HB 711 (fraud) which are also modeled after federal statutes. Federal, state and county law enforcement officials testified before the Commission that state and county law enforcement need statutes as their federal counterpart have to root out corruption in state and county government rather than always relying on federal enforcement to do this job.

HB 708 – Amends the information in the statement of expenditures reports that lobbyists and other individuals are required to file with the State Ethics Commission to include the identity, by bill number, resolution number or other similar identifier, of the legislative or administrative action that was commented on, supported by or opposed by the person filing the statement. Report at 28. As with other bills in the Commission’s package, this bill would increase transparency and expose any potential conflict of interest.

HB 709 – Requires a lobbyist training course to be designed and administered by the State Ethics Commission, makes the training course mandatory for all lobbyists who are required to register and renew their registration with the State Ethics Commission. The Commission found “that more education and training can be done to ensure that lobbyists have notice of the law, understand the application of the law, and comply with legal requirements.” Report at 29.

HB 710 – Is modeled after the federal false statement statute by establishing a class C felony offense for a person who dealing with state or county government to knowingly or willfully falsifies, conceals or covers up a material fact; makes materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document known to have materially false information; and disqualifies a person from holding public office for a period of 10 years upon conviction of making a false statement. Report at 20. As with HB 707 on false claims, federal, state and county law enforcement testified before the Commission this bill is necessary for state and county law enforcement to root out corruption and misconduct in state and county government rather than always relying on federal law enforcement to do this job.

HB 711 – Is the last of three bills recommended by the state and county law enforcement coalition and is modeled after the federal fraud criminal statute in making it a class B felony for a person to obtain financial benefit or other gain by means of false statements, misrepresentations, concealment of important information or deception, and prohibiting a person convicted of fraud from being a candidate for public office for a period of 10 years. Report at 20.

HB 712 – Would encourage public boards to maintain any electronic audio or visual recording of a board meeting as a public record on the board’s website regardless of whether written minutes of the meeting have been posted and to submit a copy of the recording to the State Archives. Report at 27. A similar bill in the last regular session of the Legislature was supported by the Commission, passed by the Legislature but vetoed by the Governor (SB 3172, SD 1, HD 2, CD 1). Report at 10. The Commission has attempted to address the concerns raised by the Governor in this bill.

HB 715 – Prohibits lobbyists from making prohibited gifts to legislators and state employees with administrative fines imposed for violations. Report at 33.

HB 716 – Requires the Office of Elections to prepare a voter information guide to educate voters on each candidate’s positions and their candidate statements and provide ballot question analyses and appropriates funds for the preparation and distribution of guides and analyses. The Commission found “Hawaii’s voter turnout is well below the national average for each election” and “registered voters may not have access to or be aware of information on the candidates or issues on the ballots.” Report at 34.

HB 717 – Prohibits under certain circumstances legislators and state employees from hiring or promoting relatives or household members and from making or participating in certain other employment-related decisions and from awarding a contract to or otherwise taking official action on a contract with a business if the legislator’s or employee’s relative or household member is an executive officer of or holds a substantial ownership interest in the business, and imposing administrative fines for violations. Report at 29.

HB 718 – Authorizes the Campaign Spending Commission to serve preliminary determinations of probable cause via first class mail instead of certified mail, establishes a presumption of receipt when mailed to the address contained in a candidate or committee organizational report. Report at 21.

HB 719 – Imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in electronic format; imposes a cap on charges for searching for, reviewing and segregating records; provides a waiver of fees when the public interest is served by record disclosure; and appropriates funds to carry out the provisions of this act. Report at 27. A similar bill was supported by the Commission and passed by the Legislature last regular session (SB 3252, SD2, HD2, CD1) and vetoed by the Governor. Report at 10. The Commission has attempted in this bill to address concerns raised by the Governor.

HB 720 – Increases the amount of partial public financing available for all offices up for election in varied amounts with a downward adjustment of the minimum amounts of qualifying contributions for county prosecuting offices. The Commission noted “that increased amounts of partial public funding of elections proposed in this bill are intended as a floor, or a minimum level. If fiscal resources are or become available, the Commission encourages the Legislature to be bold and devote additional fiscal resources to further the purpose of this bill and to seek additional permanent funding sources for future elections. Implementation of this proposal would assist in diminishing the impact and influence resulting from Citizens United.” Report at 32.

HB 721 – Eliminates the use of campaign funds to purchase up to two tickets for an event or fundraiser held by another candidate or committee. The Commission found “that this practice is commonplace amongst legislators and gives the appearances of impropriety since the

campaign funds of the purchaser/candidate are likely contributions made to the purchaser/candidate and not to the candidate holding the event or fundraiser.” Report at 33-34.

HB 722 – Expands the reach of the requirement to file a notice of intent to hold a fundraiser or fundraiser event by removing the current \$25 threshold. The Commission stated this bill would further public transparency and improve public confidence in campaigns. Report at 33.

HB 723 – Expands application of the Sunshine Law to legislatively appointed bodies, including task forces, working groups, special committees, and select committees. This bill would also require each chamber of the legislature to hold public hearings on its rules on a biennial basis. The Commission concluded given “the strict legislative timetable and deadlines mandated under Article III of the Hawaii State Constitution” it was not practical to apply the Sunshine Law to the Legislature. This bill would “better effectuate the spirit and intent of the Sunshine Law.” Report at 26.

HB 724 – Amends the prohibition against contributions to a candidate committee or noncandidate committee by state and county contractors by including state and county grantees and owners, officers and immediate family members of a state or county contractor or state or county grantee. Report at 33.

HB 725 – Establishes the Office of Public Advocate and codifies rights of the public with respect to the conduct and operation of the Legislature and its members. This bill would also specify procedures for the investigation and reporting of alleged violations of the public’s rights. “The Commission offers this proposal as an aspirational starting point for how the public and legislators can best engage with each other in a respectful and transparent manner during the legislative process. Collectively, the 13 rights of the public embody ideals of respect, fairness, openness, and dignity in the legislative process. The rights also require that official legislative business be conducted in a transparent and honest manner and that decisions be based on the merits of the legislation.” Report at 26-27.

HB 726 – Prohibits state and county elected officials from soliciting and accepting campaign contributions during any regular or special session of the Legislature, including any legislative recess days, holidays and weekends. This bill if enacted “would reduce the negative perception of legislators soliciting or accepting contributions from individual or organizations that have an interest in matters pending before the legislature during session.” Report at 32.

HB 727 – Limits the permitted uses of campaign funds to only those purposes that are directly related to the campaign of candidates. Report at 33.

HB 728 – Provides funds to county ethic boards “in an effort to ensure that these boards have adequate resources to continue their operations and pursue their respective missions.” Report at 30.

HB 729 – Requires the Campaign Spending Commission to publish on its website the names of candidate committees and noncandidate committees who fail to properly file an organizational report. The Commission found that this bill “would improve compliance and also bring awareness of noncompliance to the public.” Report at 28.

HB 730 – Limits the amount of cash contributions a candidate, candidate committee or noncandidate committee can accept in the aggregate in each election period to \$100 with a receipt required for each contribution. Report at 33.

HB 731 – Provides that a person waives the right to a contested case hearing if that person fails to request a contested case hearing within 20 days of the Commission’s preliminary determination. It would also allow the Campaign Spending Commission to file its final order with the Circuit Court of the First District for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in circuit court. Report at 21.

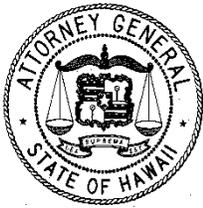
HB 732 – Authorizes the Campaign Spending Commission to presume that a violation of a campaign spending law has occurred if a respondent fails to explain or otherwise respond to a complaint alleging a campaign spending violation. Report at 21.

HB 733 – Increases the amount of fine for campaign spending law violations that may be assessed against a noncandidate committee making only independent expenditures and that has received at least one contribution of more than \$10,000 or spent more than \$10,000 in an election period. It authorizes the Campaign spending Commission to order that the payment of a fine assessed against a noncandidate committee, or any portion thereof, be paid from the personal funds of an officer of the noncandidate committee. Report at 34.

HB 796 – Proposes a constitutional amendment to prohibit a person from serving as a member of the Legislature for more than 16 years during that person’s lifetime. “The Commission discussed this proposal at great length and considered the testimony received and personal viewpoints of each commissioner. The Commission looked at similar provisions for guidance and debated the well-balanced pros and cons of this proposal, which was reflected in the slim 4-3 margin by which the Commission adopted the motion to adopt this proposal.” Report at 35. Despite a turnover in the House of Representative of over 50% and the Senate of more than 33% in the last decade, “people feel a proposal like this is necessary and that a limit on the duration of holding state elected office may reduce the potential for corruption and allow for the periodic infusion of fresh ideas and services to constituents.” Id.

A handwritten signature in black ink that reads "Daniel R. Foley". The signature is written in a cursive, flowing style with a large, stylized 'F' at the end.

Respectfully submitted, Judge Daniel Foley (ret.)



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 716, RELATING TO ELECTIONS..

**BEFORE THE:**  
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Wednesday, February 8, 2023      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Reese R. Nakamura, Deputy Attorney General

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Chair Tamas and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to implement recommendations of the Commission to Improve Standards of Conduct, established in response to House Resolution No. 9 (2022), regarding educating the electorate on candidates and ballot questions. This bill requires the Office of Elections to prepare a voter information guide that includes: (1) short statements by the candidates, (2) statements and arguments on proposed constitutional arguments prepared by the Attorney General in consultation with the Legislative Reference Bureau, (3) statements on proposed county charter amendments, initiatives, and referendum issues prepared by each corporation counsel in consultation with the office of county council services, and (4) arguments submitted by the public on proposed county charter amendments, initiatives, and referendum issues.

The Department is concerned that the proposed provisions on page 5, lines 3-21, that require the Attorney General to prepare “[a]rguments submitted by the public for and against the proposed constitutional amendment” will create a conflict of interest.

In drafting the public’s arguments for the voter information guide, unintended consequences such as misinterpretations of a member of the public’s

arguments or appearances of favoritism may arise. Pursuant to section 28-1, Hawaii Revised Statutes, the Attorney General represents the State in all the courts in which the State may be a party or be interested. Because the Department represents the State and not the public, if litigation over the Attorney General's drafting and/or publishing of the public's arguments arises, there may be a conflict of interest.

We therefore recommend deleting the amendments to section 11-118.5(b) (page 5, line 1, to page 5, line 21).

In light of the potential exposure to the State from misinterpretations or perceived unfairness in the information process and the publication of information and potential conflict of interest, we also suggest that the portion of the bill that tasks the Attorney General with preparing statements by the public be deleted from the bill. We suggest that the new provision on page 3, lines 13-15, be deleted:

~~[(2) The statement and arguments prepared by the attorney general, in consultation with the legislative reference bureau, pursuant to section 11-118.5(b);]~~

Thank you for the opportunity to provide comments.



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

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elections.hawaii.gov

SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
ON HOUSE BILL NO. 716  
RELATING TO ELECTIONS

February 8, 2023

Chair Tarnas and members of the House Committee on Judiciary & Hawaiian Affairs, thank you for the opportunity to provide comments on House Bill No. 716. This bill requires the office of elections to prepare a voter information guide that includes candidate statements and statements on ballot questions; appropriates funds to the department of the attorney general, legislative reference bureau, and counties for the preparation of the ballot analyses; and appropriates funds to the office of elections for the preparation and distribution of the voter information guides.

We believe an informed electorate is important for the health of our democracy, however, it is important for the integrity of the election that our office remain apolitical. As such, to compile a voter information guide, we would ask all candidates to submit their statement for inclusion in the voter information guide when they file their nomination paper. After the candidate filing deadline, we would translate and compile these statements to make them available on our website. The voter information guide would need to be available at least 45 days before each election to coincide with ballots being sent to uniformed and overseas voters.

We propose the bill be amended, as it relates to the ballot questions, to specify that the Department of the Attorney General and Corporation Counsel translate the ballot question statements into the same languages – Olelo Hawaii, Chinese, Ilocano, and Tagalog, and to provide the statements with translations to our office when questions are due, 75 days before the general election.

Our initial cost estimate totals \$143,280 for both elections. We would ask that the funding to the Office of Elections be provided in fiscal year 2023-2024 for the 2024 Elections.

	<b>Primary</b>	<b>General</b>	<b>Total</b>
Translations	53,280	0	53,280
Printed Instructions	30,000	30,000	60,000
Inserting Instructions	15,000	15,000	30,000
<b>Total</b>	<b>\$ 98,280</b>	<b>\$ 45,000</b>	<b>\$ 143,280</b>

We understand that the intent of the bill is to provide the voter information guide online and to provide a physical copy upon request by a voter. We would also propose that the bill be amended to allow for physical copies to be made available at state libraries for public viewing as an alternate option. This would allow our office to plan for and get a better cost associated with printing the voter information guide.

Thank you for the opportunity to provide comments on House Bill No. 716.

Charlotte A. Carter-Yamauchi  
Director

Shawn K. Nakama  
First Assistant

Research 808-587-0666  
Revisor 808-587-0670  
Fax 808-587-0681



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
415 S. Beretania Street  
Honolulu, Hawaii 96813

## Written Comments

### **HB716** **RELATING TO ELECTIONS**

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the House Committee on Judiciary & Hawaiian Affairs

Wednesday, February 8, 2023, 2:00 p.m.  
Conference Room 325 & Via Videoconference

Chair Tarnas and Members of the Committee:

Good afternoon Chair Tarnas and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau (Bureau). Thank you for providing the opportunity to submit written comments on H.B. No. 716, Relating to Elections.

The purpose of this measure is to:

- (1) Require the Office of Elections to prepare and disseminate a voter information guide, which shall include:
  - (A) A short statement of no more than one hundred fifty words for each candidate running for public office, to be prepared by the candidate; provided that the Office of Elections may uniformly limit the number of words for the candidate statement by applicable public office;
  - (B) A statement by the Attorney General, in consultation with the Bureau, in English and Hawaiian for each proposed constitutional amendment in language that is clear and that indicates the purpose, limitations, and effects of the proposed amendment;

- (C) Arguments submitted by the public for and against any proposed constitutional amendment on the ballot;
  - (D) A clear and concise statement, prepared by the appropriate county corporation counsel or county attorney, in consultation with the office of county council services, that indicates the purpose, limitations, and effects for each proposed county charter amendment, proposed initiative, and proposed referendum issue; and
  - (E) Arguments submitted by the public to the appropriate county corporation counsel or county attorney and office of county council services for and against each proposed county charter amendment, proposed initiative, and proposed referendum issue. The office of county council services shall establish a process to solicit arguments from the public, which may include a word limit.
- (2) Require the voter information guide to be posted on the Office of Elections website in:
- (A) Olelo Hawaii, Chinese, Ilocano, Tagalog, and any other language as required by federal or state law; and
  - (B) A screen-reader accessible format for persons with special needs who are unable to read standard print due to disability;
- (3) Amend section 11-118.5(b), Hawaii Revised Statutes (HRS), with respect to proposed constitutional amendments, to:
- (A) Require the Attorney General, in consultation with the Bureau, to prepare arguments submitted by the public for and against the proposed constitutional amendment; and
  - (B) Require the Bureau to establish a process to solicit arguments from the public, which may include a word limit;
- (4) Require certain information the Office of Elections makes available over the Internet pursuant to the measure to meet or exceed the most current, ratified standards under section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended, and the Web Content Accessibility Guidelines 2.0 adopted by the World Wide Consortium for accessibility; and
- (5) Appropriate unspecified sums of moneys to:

- (A) The Department of Attorney General for the preparation of the statement and arguments for the voter information guide;
- (B) The Office of Elections for the preparation and distribution of voter information guides;
- (C) The Bureau for the preparation of the statement and arguments for the voter information guide; and
- (D) The several counties for the preparation of the statement and arguments for the voter information guide.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

The Bureau has serious concerns with the measure as it relates to the Bureau, in that it provides little guidance on how to execute its intent. As an initial matter, the underlying language of section 11-118.5(b), Hawaii Revised Statutes, on its face, is vague, in that the term "consultation" provides no useful meaning in describing the interaction that must occur between the Bureau and the Attorney General when creating the statement and arguments. As drafted, the measure does not cure this inherent problem in the existing statute, but rather compounds it by including additional requirements of the Bureau without sufficient guidance. Notably, it is not clear by what means the Bureau is to "solicit arguments from the public" regarding proposed constitutional amendments. Further, it is not clear what is meant by the preparation of "arguments submitted by the public for and against the proposed constitutional amendment." For example, the measure does not specify whether the "arguments" are to be summaries of various arguments submitted by the public, or whether arguments are to quote the entirety of each public commenter's comments verbatim. Additionally, although the measure appropriates to the Bureau moneys "for the preparation of the statement and arguments for the voter information guide," it is not clear whether the moneys appropriated may be used to translate any "solicitation" materials that the Bureau would distribute to the public. We also note that the Bureau lacks sufficient personnel who are fluent in Olelo Hawaii and foreign languages, let alone personnel who are able to translate potentially complex legal issues to Olelo Hawaii or foreign languages.

More significantly, if the measure becomes law, the Bureau is concerned that, despite the Bureau making a good faith effort to comply with the new provisions imposed by the measure, certain factors beyond the Bureau's control may lead the Bureau to face civil liability, similar to the potential liability the Bureau faced under certain provisions of Act 173, Session Laws of Hawaii 1996. The Act, among other matters, inserted a new section (e) to section 11-2(e), HRS, which read as follows:

(e) Upon the certification of any bill that sets forth a question for vote by the electorate, the chief election officer shall coordinate the preparation of appropriate voter education materials with the legislative reference bureau. The legislative reference bureau shall be responsible for the interpretation of the bill and shall submit to the chief election officer, not later than ninety days prior to the general election, the following items in final form:

- (1) A summary, factsheet, and digest of the proposed constitutional amendment, which includes but is not limited to the purpose and intent of the proposed constitutional amendment, and **ramifications of the proposed constitutional amendment if ratified** by the electorate; and
- (2) **Arguments for and against ratification of the proposed constitutional amendment.**

(Emphasis added.) In October 2002, the American Civil Liberties Union (ACLU), acting on behalf of two plaintiffs filed suit against Chief Election Officer Dwayne Yoshina, as well as former Bureau Acting Director Wendell Kimura.<sup>1</sup>

In that case, *Watland v. Yoshina*, the plaintiffs sought a declaratory judgment that would state, in pertinent part, that voter education material prepared by the Bureau regarding a proposed constitutional amendment (to authorize information charging for the prosecution of certain crimes) was factually incorrect, misleading, and prevented an informed and deliberate vote by the plaintiffs and the electorate.<sup>2</sup> On October 25, 2002, the plaintiffs moved for a temporary restraining order before the election to enjoin tabulation of the vote of the proposed amendment. On November 1, 2002, the circuit court denied the plaintiffs' motion.<sup>3</sup> Voters subsequently approved the proposed amendment in the November 5, 2002 election.<sup>4</sup>

On November 22, 2002, the plaintiffs in the *Watland v. Yoshina* circuit court suit filed

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<sup>1</sup> Bruce Dunford, *ACLU Backs Suit to Ax Proposed Amendment*, HONOLULU STAR-BULLETIN, Oct. 24, 2002, at A8.

<sup>2</sup> *Watland v. Lingle*, 104 Haw. 128, 131-132, 85 P.3d 1079, 1082-1083 (2004), as clarified (Mar. 19, 2004) (summarizing *Watland v. Yoshina*, Civ. No. 02-1-2485-10, filed in the Circuit Court of the First Circuit on October 23, 2002).

<sup>3</sup> *Id.* at 132, 85 P.3d at 1083. On the same day, the plaintiffs filed a notice of appeal and an emergency motion for a temporary restraining order. On November 4, 2002, the Supreme Court of Hawaii denied the emergency motion based upon lack of jurisdiction. *Id.* (referring to *Watland v. Yoshina*, No. 25410, 2002 WL 31497546, at \*1 (Haw. Nov. 4, 2002)).

<sup>4</sup> *Id.*

with the Supreme Court of Hawaii an original proceeding, *Watland v. Lingle*.<sup>5</sup> The Complaint in the original proceeding alleged in part that the Chief Election Officer and the Acting Director of the Bureau:

**[D]id not properly discharge their responsibilities** under Hawaii Revised Statutes, Chapter 11 **to draft an objective, accurate, informative, and balanced presentation** of [the ballot question]. Specifically, the Voter Information Pamphlet prepared and disseminated by Defendants to every registered voter misrepresented the content of the amendment and wrongly presented future possibilities, as to how information charging might work, as present fact.<sup>6</sup> (Emphasis added.)

The Supreme Court of Hawaii determined that the proposed constitutional amendment was not validly ratified in the 2002 election.<sup>7</sup> The Court based its decision on the fact that the text of the amendment was not provided to the public libraries and not published in newspapers in accordance with Article XVII, sections 2 and 3 of the Constitution of the State of Hawaii.<sup>8</sup> Having held that the amendment was not validly ratified, the Court did not evaluate the contents of the voter education materials for the proposed amendment, or make a determination on whether the contents of the materials were in violation of any law.

Act 8, Session Laws of 2003, subsequently amended section 11-2, HRS, to repeal the then-existing provisions of subsection (e). Although not explicitly stated in the legislative record, it appears that the repeal was in response to the litigation over the attempted constitutional amendment ratification.

Although it remains unclear whether the Supreme Court of Hawaii would have invalidated the ratification of the 2002 proposed constitutional amendment based solely on an alleged shortcoming in the voter education material that the Bureau prepared, the Bureau nevertheless remains extremely concerned that the provisions of the present measure are sufficiently similar to the former section 11-2(e), HRS, to inspire other voters to pursue similar court challenges in the future. As previously noted, the current language of section 11-118.5(b), HRS, already imposes an ambiguous requirement upon the Attorney General to act "in consultation with" the Bureau to "prepare a statement . . . for each proposed constitutional amendment in language that is clear and that indicates the purpose, limitations, and effects" of

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<sup>5</sup> *Id.* at 133, 1084.

<sup>6</sup> Complaint at 2-3, *Watland v. Lingle*, 104 Haw. 128, 85 P.3d 1079 (2004) (No. 25487).

<sup>7</sup> *Watland v. Lingle*, *supra* note 1, at 141, 85 P.3d at 1092.

<sup>8</sup> *Id.*

a proposed amendment. This measure, while apparently well-intentioned, only adds to that current ambiguity.

As the Committee must certainly be aware, bills that propose constitutional amendments undergo numerous hearings during the legislative process. Potential arguments in favor of or against these measures are made available through testimonies submitted to the appropriate standing committees, and unlike before and during the early 2000s, these testimonies are readily available for public review on the Legislature's website. Therefore, the Bureau respectfully suggests that the measure's "statement and arguments" provisions in the new section 11- (b)(2) and section 11-118.5(b), HRS, with respect to constitutional amendments are unnecessary and may be removed, as may the Bureau's participation.

If the Committee still wishes to keep the "statement and arguments" provisions and the Bureau's involvement in this measure, we strongly recommend that the measure be amended to provide explicit guidance that specifically describes the role and responsibility of the Bureau and also makes the Attorney General responsible for representing the Bureau in any litigation arising therefrom.

Thank you again for the opportunity to submit written comments.



Committee on Judiciary & Hawaiian Affairs  
Chair David A. Tarnas, Vice Chair Greg Takayama

Wednesday, February 8, 2023, 2:00 P.M.

Room 325 and VIA VIDEOCONFERENCE

HB 716 RELATING TO ELECTIONS

TESTIMONY

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

Chair Tarnas, Vice Chair Takayama, and Committee Members:

**The League of Women Voters of Hawaii strongly supports HB 716 that requires the Office of Elections to prepare a digital voter registration guide to be posted on its website and requires the office of elections to prepare a voter information guide that includes candidate statements and statements on ballot questions. The bill appropriates funds to the department of the attorney general, legislative reference bureau, and counties for the preparation of the ballot analyses, and appropriates funds to the Office of Elections for the preparation and distribution of the voter information guides.**

Such voter education is long overdue in Hawaii but is now more compelling because it was a specific recommendation from the Commission to Improve Standards of Conduct. Elections are the primary way the voting public holds its elected officials responsible for their work as legislators as well as the manner in which they conduct themselves in public service.

Our research of digital voter education in four other Western states suggests that pro/con analysis of ballot proposals is also common, and we believe this feature should be included in the voter guide.

The Office of Elections website has begun providing its own YouTube videos for its voter education topics, and we heartily endorse this effort. Likewise certain logistical education can continue to be included with mailed instructions, such as deadlines, ballot drop-off locations and voter service center locations. To this list of mailed instructions, we like the idea in this bill to mail notice of the voter information guide with the ballot.

That leaves the question of how to reach eligible voters who don't have access to the Internet (or are not willing to use the Internet). It is worth permitting such voters to request a paper version of the voter guide by contacting the Office of Elections. We say this recognizing production and distribution of a paper guide is much more expensive than digital. Unfortunately, without a printed option, certain voters will not have the same access to voter information.

We respectfully suggest that the bill be amended to clarify how responsibility for voter education in Federal, State, and local elections is to be divided between the State and Counties. Sometimes an election is at the County-level only.

Thank you for the opportunity to submit testimony.

**HB-716**

Submitted on: 2/6/2023 2:08:35 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

**HB-716**

Submitted on: 2/6/2023 6:42:11 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB716.

**HB-716**

Submitted on: 2/7/2023 10:59:16 AM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Christopher Boscole	Individual	Support	Written Testimony Only

Comments:

Support HB 716. Provide voter information guide and encourage voter awareness and participation in voting and democracy

**HB-716**

Submitted on: 2/7/2023 11:19:39 AM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

This is long overdue.

**HB-716**

Submitted on: 2/7/2023 1:27:34 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Our Elections are Crooked this needs to Be FIXED FRIST!!!!!!

**HB-716**

Submitted on: 2/7/2023 12:32:42 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Susan Jaworowski	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill. The public is often in the dark on election issues, particularly with the proposed constitution and charter amendments. With an increasingly fragmented way that people get their news, the old-fashioned expectation that "everyone reads the paper" or watches the 5 pm news is not longer viable. setting out one authoritative explainer that will inform the public so that they can make their vote meaningful to them. Let's make it easier for our people to make informed choices.

**HB-716**

Submitted on: 2/8/2023 10:13:08 AM

Testimony for JHA on 2/8/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jessica Kuzmier	Individual	Support	Written Testimony Only

Comments:

Aloha, I am testifying in favor of HB 716. I am very much in favor of preparing a voter ballot with positions, in the name of transparency. Although many people vote by mail, many vote in person and I believe if people feel more informed about who they are voting for and why, more people will vote. Mahalo for your time.