NO. CAAP-19-000372

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,

Plaintiffs-Appellants,

vs.

STATE OF HAWAI`I,

Defendant-Appellee.

ORIGINAL PROCEEDING
CIVIL NO. 18-1-1376-09 (GWBC)

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I

The Honorable Gary Won Bae Chang, Circuit Court of the First Circuit, State of Hawai`i

OPENING BRIEF

STATEMENT OF RELATED CASES

APPENDIX

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The Hawai`i Constitution constrains the process for the adoption of laws in the State of Hawai`i. For over 100 years, every iteration of the constitution has protected the citizens of Hawai`i from the hasty adoption of legislation without sufficient public notice. This appeal concerns the scope of two of those constitutional protections: (1) the "three readings" requirement;[1] and (2) the "subject in title" requirement.[2]

In the 2018 legislative session, S.B. 2858 started as a bill requiring annual recidivism reports by the State Department of Public Safety. At the end of session, S.B. 2858 required the State to consider hurricane shelter space when designing new public schools. The sole connection between the two bills was the bill number and title, Relating to Public Safety. The hurricane shelter bill received one reading in the Senate before its adoption as Act 84 (2018). In this instance, Defendant-Appellee State of Hawai`i failed to respect the constitutional limitations on the legislative process.

As it concerns the three readings requirement, the critical question presented by this appeal is: **When, if ever, do amendments to a bill so fundamentally change the proposed legislation that pre-amendment readings of the bill are not counted toward the three readings requirement?** The long-standing constitutional tradition behind the three readings provision requires that bill amendments remain "germane" to the original bill; if non-germane amendments are made, the three readings process must restart. Contrary to that constitutional tradition and the fundamental purpose of the three readings provision, the State argued below—and the circuit court concluded—that amendments *never* restart the three readings process, relying on the Legislature's rules of procedure. The lower court erred by using legislative rules to negate the intent of the Hawai`i Constitution and in its construction of those rules.

As it concerns the subject in title requirement, the critical question is: **When, if ever, is a bill's title too broad?** Again, long-standing constitutional tradition recognizes

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[1] "No bill shall become law unless it shall pass three readings in each house on separate days." Haw. Const. art. III, § 15.

[2] "Each law shall embrace but one subject, which shall be expressed in its title." Haw. Const. art. III, § 14.

that a bill's title is too broad when it fails to put affected citizens on notice that the bill would impact their interests. The State argued below—and the circuit court concluded—that "Relating to Public Safety" is constitutional. The record reflects that the same bill title has been used by the State for bills concerning Department of Public Safety reporting requirements, hurricane shelter space in public schools, inspections of shipping containers for fireworks, establishing a medical marijuana commission, installation of residential fire protection sprinkler systems, prohibitions on general contractors performing the work of specialty contractors without a license, repairs of a Waikīkī seawall, and imposing a tort duty on private landowners to mitigate rockfall dangers. The lower court erred in concluding that the overly broad "public safety" title satisfied the subject in title requirement.

Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause respectfully request that this Court construe the relevant provisions of the Hawai`i Constitution and reverse the judgment below as a matter of law based on the undisputed record.

I. STATEMENT OF THE CASE

A. The Recidivism Reporting Bill: Three Readings in the Senate and One Reading in the House

On January 24, 2018, the Senate introduced S.B. 2858, entitled "A Bill for an Act Relating to Public Safety." Dkt 24 at 183-89. As originally introduced, S.B. 2858 required the Department of Public Safety to prepare an annual report with performance indicators regarding community reentry efforts to improve recidivism rates and inmate rehabilitation (the recidivism reporting bill). *Id*.

On January 24, 2018, the recidivism reporting bill passed its *first reading* in the Senate. *Id.* at 192. The Senate Committee on Public Safety, Intergovernmental, and Military Affairs (PSM) heard the bill on February 6, 2018. *Id.* at 194. PSM recommended that the bill be passed with amendments to include information about pretrial detainees in the Department's annual report. *Id*. at 197-200. On February 9, 2018, PSM reported its amendments to the Senate, and the recidivism reporting bill passed its *second reading* in the Senate as amended (S.D. 1). *Id.* at 194, 203-12.

On February 23, 2018, the Senate Committee on Ways and Means (WAM) held a hearing on the recidivism reporting bill. *Id.* at 194. WAM recommended that the bill be passed with clarifying amendments about the Department's annual reports. *Id.* at 214-17. On March 6, 2018, WAM reported to the Senate its proposed amendments, and the recidivism reporting bill passed its *third reading* in the Senate as amended (S.D. 2). *Id.* at 194, 218-31.

On March 8, 2018, after crossover from the Senate, the recidivism reporting bill passed its *first reading* in the House. *Id.* at 194, 237, 240.

B. The Hurricane Shelter Bill: Three Readings in the House and One Reading in the Senate

On March 15, 2018, the House Committee on Public Safety (PBS) held a hearing on the recidivism reporting bill. *Id.* at 194. Testifiers provided PBS comments regarding the recidivism reporting bill. *Id.* at 281-303. PBS, however, recommended deleting S.B. 2858's content and replacing it with provisions that would require the design of all new State buildings to include hurricane shelter space (the hurricane shelter bill). *Id.* at 305-07.

On March 21, 2018, PBS reported its recommendation to the House. *Id.* at 194, 310. The House amended S.B. 2858 according to the PBS recommendation, and the hurricane shelter bill had its *first reading* in the House (H.D.1). *Id.* at 194, 310-14.

On March 28, 2018, the House Committee on Finance (FIN) held a hearing on the hurricane shelter bill. *Id.* at 195. This was the first and only chance for the public to testify concerning the hurricane shelter version of S.B. 2858. *Id.* at 316-24. The Office of Hawaiian Affairs and Young Progressives Demanding Action offered testimony asking legislators to revert the bill to its original subject as the recidivism reporting bill. *Id.* FIN recommended passing the hurricane shelter bill unamended. *Id.* at 326-28. On April 6, 2018, FIN reported its recommendation to the House, and the hurricane shelter bill passed its *second reading* in the House. *Id.* at 195, 331.

On April 26, 2018, the appointed conference committee recommended amendments to the hurricane shelter bill to only require that the State consider hurricane resistance criteria when designing new schools. *Id.* at 333-36. On May 1,

2018, the House adopted the recommendation of the conference committee, and the hurricane shelter bill passed its *third reading* in the House. *Id.* at 195, 339. The same day, the Senate adopted the recommendations of the conference committee, and **the hurricane shelter bill passed its *first reading* in the Senate**. *Id.* at 195, 342. S.B. 2858 became law on June 29, 2018, when signed by the Governor as Act 84. *Id.* at 344-48.

C. Circuit Court Proceedings

On September 5, 2018, League of Women Voters of Honolulu (LWV Honolulu) and Common Cause filed the Complaint seeking a declaration that the process of adopting Act 84 violated the Hawai`i Constitution and that Act 84 therefore is void as unconstitutional. *Id.* at 14-21.

On October 9, 2018, the State moved for summary judgment, arguing that Act 84 is constitutional and that the claims were not justiciable. *Id.* at 33-156. LWV Honolulu and Common Cause filed a cross-motion for summary judgment on October 25, 2018. *Id.* at 157-350. By oral ruling on December 19, 2018, the circuit court granted leave for the State Legislature to file *amicus curiae* memoranda supporting the State's position on the motions. Dkt. 22 [12/19/18 Tr.] at 45-50; Dkt. 26 at 217-20.

At a hearing on January 24, 2019, regarding the motions for summary judgment, the circuit court orally granted the State's motion and denied LWV Honolulu and Common Cause's cross-motion, holding that the process for adopting Act 84 complied with the court's interpretation of the three readings and subject in title requirements of the Hawai`i Constitution. Dkt. 20 [1/24/19 Tr.] at 46-50. That oral ruling was reduced to a written order on April 3, 2019. Dkt. 26 at 226-30. As it concerned the three readings requirement, the court held: "[T]he procedure of the legislature is such that if a replaced and substituted bill is adopted, then the legislature is not required to conduct three more readings because they have already had the three readings in each House and that suffices to meet the requirements of the constitutional mandate." *Id.* at 227. For the subject in title requirement, the court held: "When the legislature in the case at bar changed the topic of the bill or the language of the bill from recidivism to hurricane readiness, that was still within the ambit of public safety." *Id.* The circuit court also entered final judgment on April 3, 2019. *Id.* at 224-25.

LWV Honolulu and Common Cause timely filed their notice of appeal from the April 3, 2019 Judgment on May 2, 2019. Dkt. 1.

II. POINTS OF ERROR

1. Whether the three readings requirement—article III, section 15—of the Hawai`i Constitution requires that each chamber of the Legislature hold three new readings of proposed legislation after the Legislature removes a bill's content and replaces it with a proposal that is not germane to the intent of the original bill.

Error in the Record: Dkt. 26 at 227 (written order granting the State's motion for summary judgment), 229-30 (written order denying Appellants' cross-motion for summary judgment); Dkt 20 [1/24/19 Tr.] at 46-50; Appendix.

Preservation of Error: Dkt. 24 at 167-71 (Appellant's cross-motion for summary judgment); Dkt. 26 at 89-93 (Appellants' reply memorandum in support of their cross-motion), 144-48, 150-52, 158 (Appellants' response to *amicus curiae* memorandum); Dkt. 20 at 3-4, 16-17, 19-23, 39, 41-42 [1/24/19 Tr.].

2. Whether legislation broadly titled as "relating to public safety" reasonably apprises the public of the interests that are or may be affected by the statute and otherwise complies with the subject in title requirement—article III, section 14—of the Hawai`i Constitution.

Error in the Record: Dkt. 26 at 227 (written order granting the State's motion for summary judgment), 229-30 (written order denying Appellants' cross-motion for summary judgment); Dkt 20 [1/24/19 Tr.] at 46-50; Appendix.

Preservation of Error: Dkt. 24 at 171-74 (Appellant's cross-motion for summary judgment); Dkt. 26 at 93-94 (Appellants' reply memorandum in support of their cross-motion), 143-44, 149-50, 155-58 (Appellants' response to *amicus curiae* memorandum); Dkt. 20 at 4-6, 28-33 [1/24/19 Tr.].

III. STANDARDS OF REVIEW

"An order granting summary judgment is reviewed *de novo*, using the same standard as that applied by the circuit court: whether there were any genuine issues of material fact and whether the movant was entitled to judgment as a matter of law." *Blair v. Harris*, 98 Hawai`i 176, 178, 45 P.3d 798, 800 (2002).

"Issues of constitutional interpretation present questions of law that are reviewed *de novo*." *Id.*

IV. ARGUMENT

The subject in title and three readings provisions are two foundational building blocks of an interdependent network of protections in the Hawai`i Constitution to ensure the public can understand, and be heard during, the process for enactment of laws in Hawai`i. For over a century, constitutional framers have consistently adhered to the principle that the legislative process functions best when it is open, transparent, and allows for informed public input.[3] The Hawai`i Constitution contemplates an orderly process—that citizens can follow and understand—to change state law. These constitutional protections thus prevent the Legislature from playing a legislative shell game that confounds the public.

But the State interprets the constitutional protections as meaningless formalisms in which there are no limits on how generic a bill is titled or how radically a bill can be changed after its introduction. Bills are not fungible under the Hawai`i Constitution; the content of a bill, not just the bill number, matters for constitutional compliance. According to the State, it does not make a difference if the bill had completely different content every time it was read. One day, it is about prison inmates; the next reading, fireworks; the next day, hurricane shelters. Nor, according to the State's interpretation, would it matter that the public had no idea (nor opportunity to express an opinion) about the nature of the bill until final reading. For example, the State would claim that a bill about fireworks that goes to conference committee at the very end of the legislative session could be enacted as a law about seawalls without violating the

[3] These and other constitutional protections reflect the democratic principle that a representative government derives its authority from the people. The first principle of the Bill of Rights is: "All political power of this State is inherent in the people; and the responsibility for the exercise thereof rests with the people. All government is founded on this authority." Haw. Const. art. I, § 1. By outlining the bare minimum process for the enactment of laws, the Constitution defines what laws carry the authority of the people of Hawai`i. The Legislature has no independent authority to create enforceable law if it fails to abide by this agreed process.

Hawai`i Constitution. The State's and circuit court's proposed construction of the three readings and subject in title requirements is contrary to the history and purpose of those provisions. The people of Hawai`i deserve—and the Hawai`i Constitution requires—better than the chaos proffered by the State.

A. Rules of Constitutional Interpretation

The basic principles of constitutional interpretation are well-established:

> Construction of constitutional provisions is largely guided by the same principles that courts use in interpreting statutes. Because of the exalted position that constitutional provisions occupy in the constellation of laws that operate in our State, "we have long recognized that the Hawai`i Constitution must be construed with due regard to the intent of the framers and the people adopting it, and the fundamental principle in interpreting a constitutional provision is to give effect to that intent." Divining intent, however, always starts with the words of the constitutional provision, and it is an elementary precept that "if the words used in a constitutional provision are clear and unambiguous, they are to be construed as they are written." It is also a settled canon that "the words are presumed to be used in their natural sense unless the context furnishes some ground to control, qualify, or enlarge them." Given that our constitutional provisions exist under one instrument, construction of one provision must be in harmony "with other provisions of the instrument." Finally, the circumstances under which the provision was adopted and the "history which preceded it" inform judicial construction of the Hawai`i Constitution.

Mauna Kea Anaina Hou v. Bd. of Land & Natural Res., 136 Hawai`i 376, 407, 363 P.3d 224, 255 (2015) (citations omitted). To assess constitutional intent, courts may "look to the object sought to be accomplished and the evils sought to be remedied by the amendment." *Pray v. Judicial Selection Comm'n*, 75 Haw. 333, 343, 861 P.2d 723, 728 (1993); *United Pub. Workers v. Yogi*, 101 Hawai`i 46, 53, 62 P.3d 189, 196 (2002) ("A constitutional provision must be construed 'to avoid an absurd result' and to recognize the mischief the framers intended to remedy."). And in construing a constitutional provision, a court may consider constitutional treatises to understand the intent of the framers and the public that adopted the provision. *E.g.*, *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954); *Damon v. Tsutsui*, 31 Haw. 678, 693-94 (Terr. 1930); *Territory v. Kua*, 22 Haw. 307, 314-16 (Terr. 1914); *see also District of Columbia v. Heller*, 554 U.S. 570, 616-18

(2008) (considering, among other sources, constitutional treatises as relevant to the public understanding of the Second Amendment).

B. Three Readings: It Is Not the Same Bill After Non-Germane Amendments

The three readings requirement has protected the people of Hawai`i continually since 1894. The mandate provides for an orderly and informed legislative process to benefit both the public and legislators.

The three readings protection against hastily enacted legislation only exists, however, if a bill remains on topic. The constitutional test for whether a bill remains on topic is germaneness ("akin, closely allied"). When non-germane amendments radically change the topic of proposed legislation, it is no longer the same bill.[4] When proposed legislation is no longer constitutionally the same bill (even though it may have the same bill number), it must go through the three readings process again to ensure that the Legislature and public have the opportunity to fully debate the merits of the proposal, including its purpose, scope, meaning, and consequences.

The hurricane shelter amendments to Act 84 were not germane to the recidivism reporting bill. After the non-germane amendments, the Senate did not hold three readings to consider the hurricane shelter bill. Act 84 accordingly is void as unconstitutional.

1. *The History and Purpose of the Three Readings Mandate in Hawai`i*

A version of the three readings provision first appeared in the 1894 Constitution of the Republic of Hawai`i, reading: "A Bill, in order to become law, shall, except as herein provided, pass three readings in each House, the final passage of which in each House, shall be by a majority vote of all the elective members to which such House is entitled, taken by ayes and noes and entered upon its journal." Haw. Const. art. 64

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[4] Being the same bill for the constitutional analysis does not mean that the language of the bill cannot change during the legislative process. Appellants recognize that germane amendments to a bill's language—even if the amendments replace every single word in a bill—are constitutional. Germane amendments serve the democratic process of public input and participation to refine legislation before enactment. This case concerns the constitutional impact of non-germane amendments.

(Rep. 1894) (Dkt. 26 at 167). In furtherance of the requirement's purpose, the Organic Act specified that the three readings must be "on separate days." Organic Act § 46 (1900) (Dkt. 26 at 168). The 1950 Constitution reworded the requirement—making clear that it was not intended to change the meaning—to the current language: "No bill shall become law unless it shall pass three readings in each house, on separate days." Haw. Const. art. III, § 16 (1950) (Dkt. 26 at 170); Haw. Const. art. III, § 15 (comma removed in 1968 Constitutional Convention); Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 253 (Dkt. 26 at 174) ("Section 17 sets forth the requirement of passage on three readings in each house on separate days for any bill to become law, as is provided in section 46 of the Organic Act.").

The three readings requirement arises from a historical tradition in constitutional law.[5] This tradition emphasizes the importance of three readings to provide the public and legislators an opportunity to comment on proposed legislation. *E.g.*, 1 Norman J. Singer & J.D. Shambie Singer, Sutherland on Statutes and Statutory Construction [Sutherland] § 10:4 at 546 (7th ed. 2010) ("The practice of having bills read on three different days also serves to provide notice that a measure is progressing through the enacting process, enabling interested parties to prepare their positions."). "That it has such a purpose, that it is designed to prevent hasty and improvident legislation, and is therefore not a mere rule of order, but one of protection to the public interests and to

[5] Nothing in the constitutional history reflects an intent to change the nature of the three readings provision since its adoption in 1894. In the court below, the *amicus curiae* memorandum sought to muddle the issue by reference to the 1968 Constitutional Convention debates. In that convention, one delegate described purported legislative practices and proffered an amendment to a pending constitutional proposal, not to the three readings requirement. The 1968 Constitutional Convention rejected that delegate's description of legislative practices, rejected his proposed amendment to the other constitutional proposal, and made no substantive changes to the three readings provision (it removed a comma). The 1968 debates offer no insight into the framers' and public intent at the time the three readings mandate was adopted. *See Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 73, 376 P.3d 1, 21 (2016) (legislative history for a subsequent statutory amendment explains the intent of the amendment, but does not change the intent of the original statute). If necessary, Appellants will describe the irrelevance of those proceedings in more detail in future filings.

the citizens at large, is very clear." 1 Thomas Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union, [Cooley] at 288 n.1 (Walter Carrington ed., 8th ed. 1927); *accord* 1 Sutherland § 10:4 at 547 ("Reading requirements are supposed to facilitate informed and meaningful deliberation on legislative proposals, and refinement and modification of the text of a proposal is the natural and desirable product of deliberation."); *see also Mason's Manual of Legislative Procedure* § 720 ¶ 2 (2010 ed.) (*Mason's Manual*) ("The requirement that each bill be read on three separate days, prescribed by the constitution, legislative rules or statutes, is one of the many restrictions imposed upon the passage of bills to prevent hasty and ill-considered legislation, surprise or fraud, and to inform the legislators and the public of the contents of the bill.").

While discussing the process for constitutional amendments, the 1950 Constitutional Convention recognized the benefit of three readings in the Legislature, which had been the law in Hawai`i for over a half century:

> One of the necessary features of laws adopted by the legislature is the necessity for three readings and the opportunity for full debate in the open before committees and in each House, during the course of which the purposes of the measures, and their meaning, scope, and probable effect, and the validity of the alleged facts and arguments given in their support can be fully examined, and if false or unsound, can be exposed, *before* any action of consequence is taken thereon.

Stand. Comm. Rep. No. 47 *in* 1 Proceedings of the Constitutional Convention of Hawai'i of 1950 at 184. As summarized by the Hawai`i Supreme Court, "[t]he three-reading requirement not only provides the opportunity for full debate; it also ensures that each house of the legislature has given sufficient consideration to the effect of the bill." *Taomae v. Lingle*, 108 Hawai`i 245, 255, 118 P.3d 1188, 1198 (2005).

2. *Germaneness: When a Bill Is No Longer the Bill Previously Read*

The State does not need to restart the readings every time there is any amendment. *E.g.*, 1 Sutherland § 10:4 at 547 ("[I]t is generally agreed that germane amendments to the text of a bill made at the stage of second or third reading are valid even though the amended version is not read three times on three days."). However, "if new provisions which are not germane to the text of the original bill are substituted

after one or more readings, the new version of the bill cannot be validly enacted without the requisite readings following the substitution." *Id.* at 547-48. The test is whether the amendments are germane to the bill as previously read. *Id.*; 1 Cooley at 289 ("Where a bill has been read twice and referred to a committee who have reported a substitute, which is so germane to the original bill as to be a proper substitute, such substitute need not be read three times; a single reading will suffice."); Earl T. Crawford, The Construction of Statutes [Crawford] § 41 at 65 (1940) ("And in the case of substituted bills, so long as they are germane to, or concerned with the same subject matter or embrace the same general principles of the original, a re-reading is not necessary." (footnotes omitted)); *accord Giebelhausen v. Daley*, 95 N.E.2d 84, 94 (Ill. 1950) ("In order to come within the rule that an amendment need not be read three times in each House, it must be germane to the general subject of the bill as originally introduced."). Germaneness delineates whether a bill for final enactment is the same bill previously read in the Legislature.

The Territorial Supreme Court dealt with the related germaneness question of whether a bill is properly one bill or two bills under the single-subject provision of the Hawai`i Constitution ("Each Law shall embrace but one Subject"). The Court adopted the following understanding of germaneness for constitutional analysis of legislation:

> Literally, 'germane' means 'akin', 'closely allied.' It is only applicable to persons who are united to each other by the common ties of blood or marriage. When applied to inanimate things, it is, of course, used in a metaphorical sense, but still the idea of a common tie is always present. Thus, when properly applied to a legislative provision, the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs. Any provision not having this tendency, which introduces new subject matter into the act, is clearly obnoxious to the constitutional provision in question.

Territory v. Kua, 22 Haw. 307, 313 (Terr. 1914); *accord Washington v. Dep't of Public Welfare*, 188 A.3d 1135, 1151-52 (Pa. 2018) ("In other words, the subject of the amendments and the subject of the original bill language must constitute 'a unifying scheme to accomplish a single purpose.' In making this determination, a reviewing court may hypothesize a 'reasonably broad' unifying subject; however, such a

hypothetical subject cannot be unduly expansive, lest the purpose of the constitutional provision be defeated." (citation omitted)); *Giebelhausen*, 95 N.E.2d at 95 ("It is in order, therefore, to examine the language of the original bill to ascertain whether the one finally adopted is the original bill, properly amended, or a substituted bill, dealing with a new subject matter.").

Here, the original object and purpose of S.B. 2858 concerned revising the Department of Public Safety's reporting about its inmate population. The amendments erased all reference to those reporting requirements and instead focused on hurricane shelters at public schools. There is nothing akin or closely allied about the two versions of S.B. 2858, and the hurricane shelter provisions do nothing to promote issues regarding the Department of Public Safety's inmate reporting. The amendments to S.B. 2858 fail the germaneness test in spectacular fashion. And it is undisputed that the Senate had only one reading of the hurricane shelter bill. In other words, some elected representatives were seeing the hurricane shelter bill for the first time shortly before it was enrolled to the Governor. Act 84 is void as unconstitutional for violating the three readings mandate.

3. *Requiring Germane Amendments Is Consistent with Other Constitutional Restrictions on the Legislative Process*

The State has never claimed that the hurricane shelter amendments were germane to the recidivism reporting bill. *E.g.*, Dkt 24 at 352-53. Instead, the State argued that the Legislature can make whatever amendments that it wants to a bill without ever running afoul of the three readings requirement. *Id.* "The same bill, Senate Bill 2858, a bill for an act relating to public safety, passed three readings in each house as well as final reading of the conference draft in each house." Dkt. 20 [1/24/19 Tr.] at 11. The simplicity of the State's "bill number" analysis defies not only the purpose of three readings requirement, but undermines other constitutional restrictions on the legislative process that depend on a meaningful construction of the three readings mandate. *E.g.*, *Washington*, 188 A.3d at 1149-50 & n.32 ("we initially reject any contention that, merely because a bill designated 'H.B. 1261' was considered by each

House on three separate days, [the three readings requirement] was necessarily satisfied.").

All of the constitutional limitations on the legislative process are an interdependent set of protections that benefit the public with greater oversight of and ability to participate at the Legislature. As constitutional framers recognized, proposed legislation had become increasingly technical and prolific in the second half of the 20th Century, and it was necessary to build on the three readings mandate that had protected the voice of the people of Hawai`i—the true political power—for over fifty years. The new restrictions added since Statehood are empty formalism if the foundational protection of the three readings requirement does not ensure that members of the public can readily monitor the progress of bills through the legislative process.

Three examples of constitutional restrictions on the legislative process enervated by the State's proposed interpretation of the three readings mandate would be: (1) the bill introduction deadline; (2) the mid-session recess; and (3) the final printing requirement. These other constitutional limitations recognize that the State cannot give necessary consideration to the consequences of proposed legislation without informed public input. It disregards every constitutional protection for public participation if the State may enact legislation without holding three additional readings after gutting a bill with content not germane to its original intent. Constitutional framers sought to build on the understanding that the State cannot circumvent an orderly legislative process through last-minute shenanigans. But without a meaningful construction of the three readings requirement, the public participation envisioned by these other constitutional requirements is reduced to meaningless formality, and warnings against hasty and ill-conceived legislation become mere words.

Bill Introduction Deadline. The 1978 constitution required the State to limit the period for introducing bills. Haw. Const. art. III, § 12 ("By rule of its proceedings, applicable to both houses, each house shall provide for the date by which all bills to be considered in a regular session shall be introduced."). The convention delegates explained that the intent of the deadline was to ensure that the public could "review

every bill that will ever be introduced in that legislative session." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 (Dkt. 26 at 190); 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) (Dkt. 26 at 191) ("[T]his amendment should further aid the public in its attempts to actively follow and participate in the legislative process."). And in 1984 the deadline provision was amended further with the express intent to give the public more time to review bills.[6] The 1984 amendment allowed the Legislature to set an earlier deadline for bill introduction and focus on prefiling bills before the session started. Stand. Comm. Rep. No. 417-84, in 1984 House Journal at 1031 (Dkt. 26 at 194). "This allows the public to familiarize itself with legislation, prepare testimony, and consult with legislators, before the legislators' time is taken up by committee meetings. It allows the public more time to research the issues and prepare more detailed and thoughtful testimony." *Id.* The amendment was expected "to allow for a more deliberative, open, and rational legislative process. The result should be better legislation." *Id.* at 1032.

The bill introduction deadline, however, does not serve its constitutional function if the bills do not remain germane to their original purpose as introduced. *E.g.*, Crawford § 37 at 60 ("if the amendment or substitution is not germane or has no relation to the purpose of the bill as originally introduced, it must fall, for it is in substance a new measure." (footnotes omitted)). Citizens cannot "review every bill that will ever be introduced" if the State can radically amend bills to something that bears no reasonable relationship to the original content of the bill.

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[6] The 1978 Constitution provided that new bills could be introduced for at least the first 20 days of the legislative session, but included a minimum 5-day recess after the cutoff date for public review of the proposed legislation. Haw. Const. art. III, §§ 10, 12 (1978); Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 (Dkt. 26 at 190) ("This is to allow the public the use of the mandatory 5-day recess to review every bill that will ever be introduced in that legislative session."). But the minimum 20 days for bill introduction adversely limited the public's ability to timely review all proposed legislation because the Legislature would start taking action on bills during the 20-day period while bills were still being introduced.

Mid-Session Recess. In 1978, the Constitutional Convention also required that the Legislature hold a five-day mandatory recess between the twentieth and fortieth days of the legislative session. Haw. Const. art. III, § 10 ("Each regular session shall be recessed for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution."). The constitutional convention delegates intended the recess

> to provide both legislators and the public an opportunity to review during the recess all bills that have been introduced in both houses, and an opportunity for legislators and constituents to communicate on matters before the legislature at about the midpoint of the session. . . . [It] will also afford the public an opportunity to become acquainted with and follow the bills through the legislature more intelligently.

Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 (Dkt. 26 at 190); *accord* 2 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) (Dkt. 26 at 191) ("This recess will afford members of the legislature, as well as the public, a review period to study the bills submitted and to provide input.").

Again, citizens cannot "become acquainted with and follow the bills through the legislature more intelligently" if the bills do not remain on topic. The constitutional rationale for holding a mid-session recess falls apart without a meaningful construction of the three readings requirement that incorporates the germaneness test.

Final Printing Requirement. In 1968, the Constitutional Convention added a requirement that, at the end of the legislative process, bills be printed and made available for final review. *See* Haw. Const. art. III, § 15 (as amended) ("No bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least forty-eight hours."). This provision allows interested persons who have been following a bill to see all the amendments that have been made and raise concerns before the final vote.

The intent of the mandate was straightforward because it "not only aids the legislator but also gives the public additional time and opportunity to inform itself of

bills facing imminent passage." Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 216 (Dkt. 26 at 181). At the time, the constitutional convention delegates debated concerns about impeding the flexibility of the Legislature and increasing the possibility of constitutional challenges for procedural violations. *Id.* But the 1968 Constitutional Convention concluded that with the "complexity of modern legislation" on issues that are "highly technical in nature yet far-reaching in effect," the mandate gives legislators and the public the opportunity to understand the impact of last-minute amendments. *Id.* The report emphasized:

> The importance of interest groups and their representatives to the legislative process as sources of information and barometers of public support for proposed legislation is unquestioned. By giving notice that a measure is coming up for final reading and by providing an opportunity to study the measure in its final form, the twenty-four hour rule enhances the functions served by these groups. Moreover, the delay better enables those concerned to marshal their forces in favor or against the matter under consideration.
>
> In deliberating on the merits and demerits of the twenty-four hour rule, your Committee was guided by the belief that any change in procedure must be evaluated in terms of its contribution to the two principal legislative functions of representing people, groups and communities and of rendering decisions which can be accepted as carefully weighed and fairly made. It is our considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of proposed legislation decisively overrides the possible problems latent in its adoption.

Id.

Ten years later, the 1978 Constitutional Convention increased the delay to 48 hours.

> In view of the increasing numbers of bills being introduced in the legislature and the public concern expressed on the difficulty of following the many bills through the legislature in the closing days of the session, your Committee believes that enlargement of time from 24 hours to 48 hours, during which a legislator or a constituent could review a bill before third or final reading, would help both legislator and constituent to avoid hasty decisions and surprises regarding the bill.

Stand. Comm. Rep. No. 46 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1978 at 603 (Dkt. 26 at 190); 2 Proceedings of the Constitutional Convention of

Hawai`i of 1978 at 278 (remarks of Delegate Nishimoto) (Dkt. 26 at 191) ("It was felt that the additional time, especially at the closing days of the session, would afford the legislators and members of the public more time to review and therefore make better decisions on the bills.").

If the State entirely changes the object and purpose of proposed legislation with non-germane amendments, it does not matter whether the public and legislators have 48 hours to review bills. The legislative process does not "avoid hasty decisions and surprises" and provide laws that may be "accepted as carefully weighed and fairly made" without a robust three readings requirement to maintain order and focus for bills.

Over the last century, the constitutional framers designed a legislative process with the title, single subject, three readings, bill introduction deadline, mid-session recess, and final printing provisions that makes it possible for the public to follow and understand the process for enacting laws. If those constitutional limitations work as designed, any ordinary person would be able to identify and monitor all bills of interest as soon as the bill deadline passes and meaningfully participate in the legislative process through enactment. With such proper notice, no law would be enacted that surprises an interested person who reviewed every bill after introduction.

The Hawai`i Constitution plainly reflects an overarching design, rooted in part in the three readings mandates, to protect rights of public participation in the legislative process and oversight of the Legislature. Delegates to the 1968 and 1978 conventions chose to supplement and *bolster* the public's access, to help protect against deceptive closed-door tactics by the legislature that would frustrate the public's ability to participate. This covenant with the people of Hawai`i regarding how laws are enacted cannot be ignored.

4. *The Legislature's Rules Are Irrelevant to the Interpretation of the Three Readings Requirement, But Those Rules Also Require Germane Amendments*

The Legislature's power to enact laws is expressly subject to constitutional limitations. Haw. Const. art. III, § 1 ("The legislative power of the State shall be vested

in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation *not inconsistent with this constitution* or the Constitution of the United States.") (emphasis added); *accord State v. Nakata*, 76 Hawai`i 360, 379, 878 P.2d 699, 718 (1994) (rejecting separation of powers argument because the court "independently determines whether [the Legislature's use of a label with constitutional significance] is justified"). And the courts are the "ultimate interpreters" of the constitution. *E.g.*, *Nakata*, 76 Hawai`i at 370, 878 P.2d at 709 ("Above all is the constitution."); *accord AlohaCare v. Dep't of Human Serv.*, 127 Hawai`i 76, 87, 276 P.3d 645, 656 (2012); *see generally Marbury v. Madison*, 5 U.S. 137, 180, (1803) (laws repugnant to the U.S. Constitution are void). Thus, this Court is empowered to void any legislation that is deficient under any provision of the Hawai`i Constitution. *Id.*

It would be entirely incongruous if the State could adopt rules that redefine constitutional restrictions. In *Schwab v. Ariyoshi*, the Hawai`i Supreme Court distinguished between constitutional claims and claims based on the Legislature's rules by observing: "the power of the legislature should not be interfered with *unless it is exercised in a manner which plainly conflicts with some higher law*." 58 Haw. 25, 39, 564 P.2d 135, 144 (1977) (emphasis added). The *Schwab* court reviewed the constitutional claims on the merits based on its own interpretation of the constitutional provisions at issue. *Id.* at 30-39, 564 P.2d at 139-44. But summarily rejected other claims: "the alleged violations of its own legislative rules remain the province of the legislature itself."[7] *Id.* at 39, 564 P.2d at 144.

In this case, the circuit court, however, read the Legislature's rules as overriding the constitutional restrictions on the State.[8]

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[7] The "alleged violations of its own legislative rules" concerned an effort to enforce legislative rules requiring public committee meetings, not constitutional standards. Defendants-Appellees' Answering Brief, *Schwab v. Ariyoshi*, No. 6179, at 2 (Haw.).

[8] This case is not one in which there is a "textually demonstrative constitutional commitment of the issue to a coordinate political department." *Hussey v. Say*, 139 Hawai`i 181, 188, 384 P.3d 1282, 1289 (2016). *Hussey* involved a challenge to a state legislator's qualifications for office, alleging his place of residence was not in the district

> [W]hat sways the Court on [three readings] is the fact that the Legislature adopted rules of procedure and, in the course of doing that, adopted as part of its procedures the Mason's Manual. . . . [I]f a replace and substituted bill is adopted, then under Section 722, the Legislature is not required to conduct three more readings because they have already had in each house the three readings.

Dkt. 20 [1/24/19 Tr.] at 47.

The circuit court erred by defining constitutional rights according to the whims of legislative rules. *See, e.g.*, *Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 66, 376 P.3d 1, 14 (2016) (rejecting the argument that the Legislature has an "exclusive role to 'define'" the constitutional right of privacy even when the Hawai`i Constitution expressly requires that the Legislature "take affirmative steps to implement this right", but recognizing that the Legislature may provide greater protections than constitutionally required); *see also Mason's Manual* § 4 ¶ 4 ("For example, where the constitution requires three readings of bills, this provision controls over any provision of adopted rules, statutes, adopted manual or parliamentary law."), § 6 ("A constitutional provision regulating procedure controls over all other rules of procedure."), § 10 ("The power of each house of a state legislature to make its own rules is subordinate to the rules contained in the constitution."), § 12 ("A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do by indirection what it cannot directly do."). But the lower court further erred in its reading of the rules adopted by the Legislature. *Mason's Manual*—consistent with all other authority—also requires that amendments must be germane to be considered the same bill for purposes of a constitutional three readings analysis.

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he represented. 139 Hawai`i at 184, 384 P.3d at 1285. The constitutional provision as relevant in *Hussey* read: "each house shall be the judge of the . . . qualifications of its own members." Haw. Const. art. III, § 12. The bill introduction deadline is another constitutional provision that illustrates that constitutional framers knew well how to commit particular issues to legislative discretion. *E.g.*, Haw. Const. art. III, § 12 ("By rule of its proceedings, applicable to both houses . . . .").

The circuit court referenced sections 617 and 722 of *Mason's Manual*. Properly read, section 617 recognizes a legislative body's authority to gut and replace proposed legislation as long as the substitute bill is germane to the original topic. Section 617 discusses substitute bills, which as *Mason's Manual* elsewhere explains "[s]ubstitution is only a form of amendment and may be used, *as long as germane*, whenever amendments are in order." *Mason's Manual* § 415 (emphasis added). Section 617 provides: "A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted *as long as the new matter is relevant to the title and subject of the original bill*. A substitute bill is considered as an amendment and not as a new bill" *Id.* § 617 ¶ 1 (emphasis added). That provision is consistent with section 616 concerning amendments to bills: "There is no limit to the number of amendments that may be proposed to a bill *as long as the amendments are germane to the original purpose of the bill*. Amendments may be so numerous as to amount to a substitute version of the bill." *Id.* § 616 ¶ 3 (emphasis added). *Mason's Manual* thus restricts the understanding of a "substitute bill" to germane amendments.

With that understanding, section 722 clearly supports Appellants' construction of the three readings provision. Section 722 concerns whether a constitutional three readings requirement would require additional readings for amended bills. It provides: "*Where a substituted bill may be considered as an amendment*, the rule with reference to reading a bill on three separate days does not require the bill to be read three times after substitution." *Id.* § 722 ¶ 3 (emphasis added). In the context of the other provisions, the conditional clause of section 722 is not met if the changes in the substitute bill are not germane to the original purpose of the bill. Thus, even if—contrary to all authority—*Mason's Manual* defined the scope of the constitutional three readings mandate, the exception for substitute bills does not apply unless the amendments are germane.

Act 84 did not have three readings in the Senate after non-germane amendments. The State committed a plain, clear, manifest, and unmistakable violation of the three readings requirement of article III, section 15.

C. Subject in Title: Titles that Fail to Fairly Apprise the Public of the Interests Impacted by Legislation Are Unconstitutionally Broad

A version of the subject in title requirement has protected the people of Hawai`i continually since 1852. The mandate is a constitutional notice provision, requiring that the subject of proposed legislation be fairly expressed in its title.

As first adopted in the 1852 Constitution of the Kingdom of Hawai`i, the requirement read: "To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title." Haw. Const. art. 102 (Kingdom 1852) (Dkt. 26 at 164); Haw. Const. art. 77 (Kingdom 1864) (Dkt. 26 at 165); Haw. Const. art. 77 (Kingdom 1887) (Dkt. 26 at 166). In 1894, the opening clause was removed to read: "Each Law shall embrace but one Subject, which shall be expressed in its Title." Haw. Const. art. 63 (Rep. 1894) (Dkt. 26 at 167); Organic Act § 45 (1900) (Dkt. 26 at 168). The 1950 Constitution kept the title requirement unmodified, and the language has remained unchanged. Haw. Const. art. III, § 15 (1950) (Dkt. 26 at 170); Haw. Const. art. III, § 14; Stand. Comm. Rep. No. 92 *in* 1 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 252 (Dkt. 26 at 173) ("This section further requires that each law shall embrace but one subject, which is required to be expressed in its title, as is provided by section 45 of the Organic Act.").

The Hawai`i Supreme Court first construed the purpose of the title provision in 1887. *Hyman Bros. v. Kapena*, 7 Haw. 76, 77–78 (Kingdom 1887). The Court relied on the constitutional treatise Cooley on Constitutional Limitations to explain the purpose of the title provision: "[F]irst, to prevent hodge-podge or log-rolling legislation; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation; and third, to apprise the people of proposed matters of legislation." *Id.* at 77-78 (voiding legislation for violating the title requirement); *accord Schwab v. Ariyoshi*, 58 Haw. 25, 30-31, 564 P.2d 135, 139 (1977); *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954); 1 Cooley at 296; 1A Sutherland § 18:2 at 45 ("The primary purpose of the constitutional requirement that the subject or object of a legislative act be

expressed in its title is to insure reasonable notice of the purview to members of the assembly, and to the public.").

The subject in title mandate does not require that a legislature summarize every provision of proposed legislation in the title.

> It may be stated as a general proposition that the expression of subject in the title of an ordinance is sufficient if it calls attention to the general subject of the legislation. It is not necessary that the title refer to details within the general subject, nor those which may be reasonably considered as appropriately incident thereto, and the title is sufficient if it is germane to the one controlling subject of the ordinance. The crucial test of sufficiency of title is generally found in the answer to the question: Does the title tend to mislead or deceive the people or the municipal board as to the purpose or effect of the legislation, or to conceal or obscure the same? If it does, then the ordinance is void; if not, it is valid.

Territory v. Dondero, 21 Haw. 19, 25 (Terr. 1912);[9] *accord* 1A Sutherland § 18:2 at 48-52 ("The general test is whether the title is uncertain, misleading, or deceptive to the average reader. . . . The title to a bill need only indicate the general contents of the act. The title cannot, however, be so general that it tends to obscure the contents of the act."); 1 Cooley at 297-300 ("The generality of a title is therefore no objection to it . . . . But the title must be such as to reasonably apprise the public of the interests that are or may be affected by the statute."); 26 Am. & Eng. Encyclopedia of Law at 582 (2d ed. 1904) ("But while generality is not objectionable so long as the subject of the legislation is fairly suggested, yet where the title is so very vague and general as not to furnish any intimation at all of the actual contents of the act, and is therefore calculated to mislead the legislature and the public, it will be declared unconstitutional.").

Keeping in mind the intent of the title requirement to apprise the public of proposed legislation, titles are unconstitutional if "too broad and amorphous." 1A Sutherland § 18:2 at 45; *see Jensen*, 40 Haw. at 608. "[T]he title must be such as to

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[9] Although *Dondero* concerned the title requirement in the City Charter, the Hawai`i Supreme Court has used the same standard for interpreting the Hawai`i Constitution. *E.g.*, *Villon v. Marriott Hotel Servs., Inc.*, 130 Hawai`i 130, 140 306 P.3d 175, 185 (2013) (citing *Dondero* for interpretation of the constitutional title requirement); *Schwab v. Ariyoshi*, 58 Haw. 25, 33-34, 564 P.2d 135, 140-41 (1977) (same).

reasonably apprise the public of the interests that are or may be affected by the statute." *In re Goddard*, 35 Haw. 203, 208 (Terr. 1939) (citing 1 Cooley at 300); *Taomae*, 108 Hawai`i at 252, 118 P.3d at 1195 ("The titles of those bills provided the public with clear notice concerning the nature and context of the legislation and, thus, alerted the citizenry to the opportunity to legislatively comment and debate those bills in a meaningful way."). A title is thus too broad and misleading if it fails to put a reasonable person on inquiry notice if that person is interested in the subject.[10] *Schwab*, 58 Haw. at 34, 564 P.2d at 141 (title constitutional if it "fairly indicates to the ordinary mind the general subject of the act"); 1A Sutherland § 18:2 at 48 ("All that is necessary is that anyone interested in or affected by the subject matter be put on inquiry"); 26 Am. & Eng. Encyclopedia of Law at 580-82 ("But the title must at least give a reasonable intimation of the subject dealt with, and the courts do not hesitate to declare void an act whose title is misleading in that it does not express the real subject of the act so as to put the legislature and those persons who are to be affected thereby on inquiry into its contents.").

The words "public safety" tell the public nothing about the content of S.B. 2858. As reflected in the history of S.B. 2858—changing from a recidivism reporting bill to a hurricane shelter bill—such a title can ostensibly include an unlimited range of topics. The same title has been used in past legislative sessions to cover bills about: shipping container inspections for fireworks (H.B. 7, 2017); establishing a medical marijuana commission to make recommendations about dispensaries (H.B. 2534, 2016); installation of residential fire protection sprinkler systems (S.B. 2170, 2016); prohibiting general contractors from performing the work of a specialty contractor without a license (H.B. 130, 2015); appropriating funds for the repair of a Waikīkī seawall (H.B. 84, 2011); imposing a tort duty on private landowners to inspect and mitigate where there is a potential danger of falling rocks (H.B. 1261, 2003).

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[10] Consistent with Hawai`i precedent and constitutional treatises, the State's legislative drafting manual explains: "The drafter should take care, however, to avoid a title that is so broad or general that it fails to fairly express the one subject of the bill." Legislative Reference Bureau, Hawai`i Legislative Drafting Manual (10th ed. 2012) at 5, *at* http://lrbhawaii.org/reports/legrpts/lrb/2012/legdftman12.pdf.

"Public safety" is so broad that it obscures and conceals the contents of a bill. A person interested in hurricane shelters is not fairly apprised that a "public safety" bill may affect the person's interests. A member of the public cannot know whether a "public safety" bill concerns fireworks, medical marijuana, seawalls, inmate recidivism, hurricane shelters, or any number of other topics. Public safety is effectively meaningless to the average person and only obscures from the public rather than apprise them as to the contents of the bill. The overly broad title flouts the constitutional intent of the subject in title requirement.

The circuit court here correctly observed that legislative titles have evolved to be broader in scope. In *Jensen*, for example, the bill was titled: "An Act to Provide for the Use of Voting Machines in Elections, Amending Chapter 6 of the Revised Laws of Hawaii 1945, as amended, by Adding Thereto A New Subtitle Pertaining To Voting Machines and Making an Appropriation Therefor; Making Certain Acts a Misdemeanor or Felony, and Providing Penalties." 40 Haw. at 607. In *Schwab*, the title was: "A Bill for an Act Making Appropriations for Salaries and Other Adjustments, Including Cost Items of Collective Bargaining Agreements Covering Public Employees and Officers." 58 Haw. at 27, 564 P.2d at 137. The circuit court thus remarked:

> [I]t was so interesting to read some of the old cases and some of the materials that were attached to see in earlier times that these bills and ordinances had extremely long and detailed titles. They appear to have been given way to the more modern, very generic and brief titles.

Dkt. 20 [1/24/19 Tr.] at 47-48. Because of this historical practice of longer legislative titles, prior Hawai`i cases concerning the subject in title mandate focused on when a title is too narrow to permit the scope of its content.[11] As reflected in the case law and

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[11] A Hawai`i case that addressed a short legislative title was *Gallas v. Sanchez*, 48 Haw. 370, 405 P.2d 772 (1965). The Hawai`i Supreme Court did not analyze the issue at length. For a bill concerning the civil service status of certain government positions, titled "Relating to Public Service," the entire holding was to "adopt the statement of the lower court on this point: 'Although the title of Act 207 [relating to public service] does not refer with particularity to the amendments included herein, it clearly refers to the general subject matter of such amendments, the chapters of the Revised Laws amended is not misleading and does not embrace more than one subject.'" *Id.* at 376, 405 P.2d at 776. "Public service" is synonymous with civil service employment in common usage.

constitutional tradition, however, there must be a constitutional limit to when a legislative title is too broad.

The circuit court failed to examine whether the title provided the public with constitutionally sufficient notice of the bill's content. Instead, the court applied a germaneness test that has no support in the precedent or constitutional tradition. Dkt. 26 at 227 ("On the question of the title of the bill, the change from recidivism to hurricane preparedness was germane to the title and the subject of the original Senate Bill No. 2858."). The subject in title requirement as challenged here is an analysis of whether "public safety" is an appropriate label to give fair notice to someone who has not read the bill that Act 84 concerns hurricane shelters—not whether the content of the bill fits within the ambit of a broadly congruous topic.[12] If the circuit court's interpretation were law, then virtually every bill could be titled "relating to government" because the proposed legislation would have some connection to government operations or regulation. 1A Sutherland at 93 ("[T]he words 'economic development' were too broad and amorphous to describe the subject of a pending bill

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E.g., Random House Unabridged Dictionary (2019), *available at* www.dictionary.com (defining "public service" as, among other things, "government employment; civil service"); *accord Schwab*, 58 Haw. at 32, 564 P.2d at 140 ("courts should not embarrass legislation by technical interpretations based upon mere form or phraseology."). "Public safety" is not synonymous with hurricane shelters.

[12] A germaneness analysis similar to that used by the circuit court is appropriate for the *single subject* mandate of article III, section 14 when proposed legislation is challenged for addressing two or more disparate issues. *E.g.*, *Schwab*, 58 Haw. at 32-33, 564 P.2d at 140 ("All parts of the act embrace one general subject, to wit: salaries; and these parts are so connected and related to each other, either logically or in popular understanding, as to be parts of or germane to that general subject."). The single subject, subject in title, three readings, and other constitutional requirements necessarily scrutinize different aspects of proposed legislation toward common objectives. The circuit court erred in its particular analysis because there is no single subject challenge here. Moreover, Appellants note that, under the circuit court's analysis, the State could have log-rolled hurricane shelters, the Department of Public Safety's recidivism reporting, fireworks regulation, seawalls, and many other incongruous subjects into one bill without violating the single subject rule. As addressed in the three readings context, germaneness requires a "closely allied" relationship that does not exist between the hurricane shelters and recidivism reporting.

with the precision necessary to provide notice of its contents."). This Court should not construe the Hawai`i Constitution as so absurdly meaningless. Titles must be constitutionally examined from the perspective of the public faced with the daunting task of reviewing thousands of bills after the bill introduction deadline to determine whether their interests will be impacted. The circuit court did not consider the proper issue here—public notice.

"Relating to Public Safety" does not fairly apprise the public that proposed legislation concerns hurricane shelters, as opposed to seawalls, fireworks, medical marijuana, sprinklers, contractors, or any of an infinite number of other topics. In the end, if a legislative title is—as here—so vague that citizens must read the content of the bill to even begin to determine whether their interests may be impacted, then the title has not served its constitutional purpose. Act 84 is a plain, clear, manifest and unmistakable violation of the subject in title requirement of article III, section 14.

D. This Court Should Define the Scope of the Constitutional Restrictions on the Legislative Process in the Three Readings and Subject in Title Mandates of the Hawai`i Constitution

The people of Hawai`i deserve the robust legislative process intended by the constitutional framers for over a century. Case law and long-established constitutional authority set workable minimum standards for the orderly enactment of laws in Hawai`i. The State did not comply with those standards for Act 84. If the State may validly enact laws after last-minute amendments that radically change the purpose of proposed legislation as previously read, members of the public need to know to monitor every bill—regardless whether it affects them—because at any minute it could be amended to impact their interests. If legislative titles need not provide fair notice of the bill's contents, the public needs to know that titles simply can be ignored as irrelevant. That begs the question why does the Hawai`i Constitution require these procedural complexities if they serve no purpose.

The Hawai`i Constitution outlines the enactment of legislation as a deliberate and collaborative process. Changing the laws of Hawai`i requires more solemnity than introducing half-baked legislation in the middle of session when few citizens have the

opportunity to learn about the bill, much less provide thoughtful comments. Properly interpreted, the three readings and subject in title requirements are foundational principles that ensure that all citizens may access basic information to understand the progress of and participate in the legislative process. In that process, bills move toward a logical end with steady refinement by reasonably germane amendments. If that is not the law as set forth in the Hawai`i Constitution, the people of Hawai`i need to know what to expect. Appellants only hope that it is not the chaotic free-for-all of unfettered amendments and misleadingly vague titles that the State seeks to defend in this case.

CONCLUSION

Appellants League of Women Voters of Honolulu and Common Cause respectfully request that this Court reverse the circuit court's grant of summary judgment to the State and declare that Act 84 is void as unconstitutional for violating the three readings and subject in title requirements of article III, sections 14 and 15 of the Hawai`i Constitution.

DATED: Honolulu, Hawai`i, September 4, 2019.

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STATEMENT OF RELATED CASES

Plaintiffs-Appellants League of Women Voters of Honolulu and Common Cause are not aware of any related cases.

Dated: Honolulu, Hawai`i, September 4, 2019

Respectfully submitted,

/s/ Robert Brian Black

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