NO. SCAP-19-000372

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs-Appellants-Petitioners, vs. STATE OF HAWAI`I, Defendant-Appellee-Respondent.	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 APPELLATE PROCEEDING No. CAAP-19-000372 INTERMEDIATE COURT OF APPEALS, STATE OF HAWAI`I

REPLY TO BRIEF OF *AMICUS CURIAE* HAWAI`I STATE LEGISLATURE

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Amicus curiae Hawai`i State Legislature seeks to distract the Court from the core issue in this case: whether the framers of the Hawai`i Constitution adopted the three readings and title provisions with the intention of permitting non-germane substitutions of bills so long as the title is vague. As Appellants outlined in the opening brief, every source of relevant constitutional history and guidance explains that the purpose of the title and three readings provisions are to provide public notice of proposed legislation and protect the public's ability to participate in an orderly legislative process. This can only happen if amendments remain germane to the bill as introduced. But, despite the opportunity to file a second, longer brief, the Legislature still does not attempt to explain how enactment of S.B. 2858 satisfied the constitutional intent, nor does it credibly address the 1950 constitutional history or earlier well-established constitutional traditions.

The Legislature blatantly misstates the relief sought in this case. Appellants have not claimed that bill titles must "reflect [a bill's] contents in detail," Dkt. 29 at 6[1]; Appellants only argued that bill titles cannot be so broad and ambiguous (such as "relating to public safety") that the title fails to "reasonably apprise the public of the interests that are or may be affected by the statute." ICA Dkt. 41 at 10, 26-31; *In re Goddard*, 35 Haw. 203, 208 (Terr. 1939). And Appellants have not claimed that bills cannot be amended during the legislative process, Dkt. 29 at 6; Appellants only argued that amendments must be germane as defined by the Territorial Supreme Court in its constitutional analysis of article III concerns. ICA Dkt. 41 at 10, 13-25; *Territory v. Kua*, 22 Haw. 307, 313 (Terr. 1914).

The Legislature does not have constitutional authority to trample the rights of Hawai`i citizens. Article III of our Constitution sets parameters for what the people of Hawai`i have agreed is a fair process for enacting laws that will govern what we can and cannot do in our community. That process is not simply a question of whether 26 Representatives, 13 Senators, and the Governor agree. In those instances where the

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[1] "ICA Dkt." identifies filings with the Intermediate Court of Appeals; "Dkt." identifies filings with this Court. Pinpoint citations reference the relevant PDF page of the filing.

Legislature deviates from the constitutional process that protects the public's right to meaningfully petition its elected representatives concerning legislation, it is the Judiciary's duty to protect citizens from the Legislature overreaching its authority. This case is not about taking away the Legislature's flexibility or about any laws other than Act 84.[2] This case concerns enforcing longstanding constitutional principles as the framers and the people of Hawai`i have intended for over a century.

I. The State Waived Any Challenge to Appellants' Standing.

Generally, an appellee cannot claim that the circuit court erred without filing a cross-appeal. *E.g.*, *First Ins. Co. v. A&B Properties*, 126 Hawai`i 406, 413 n.12, 271 P.3d 1165, 1172 n.12 (2012) ("Absent a cross-appeal, A&B cannot raise these points of error, and accordingly, they will not be addressed further."). Without a cross-appeal, appellate courts lack jurisdiction to review a party's assertions of error. *Id.* ("[A]n appellant's failure to file a timely notice of appeal is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion."). Here, the circuit court held that Appellants had standing. ICA Dkt. 26 at 228; ICA Dkt. 20 [1/24/19 Tr.] at 49. The State's failure to cross-appeal from the circuit court's judgment waived the ability to contest standing now.[3] *Clark v. Wodehouse*, 4

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[2] Appellants are not seeking a sweeping pronouncement that would automatically invalidate other past legislation. ICA Dkt. 92 at 4 & n.1. Each law has unique circumstances, and there is an open question whether statutes may be retroactively voided on constitutional procedural grounds years after enactment. This case only concerns Appellants' timely challenge to Act 84. Thus, there is no basis to take judicial notice of other bills enacted into law because those laws are not adjudicative facts relevant to this dispute. *See* HRE 201; *Territory v. Furubayashi*, 20 Haw. 559, 561 (1911) ("[E]ach case must be decided according to its own peculiar facts.").

[3] In *McDermott v. Ige*, this Court held that standing was not waived by failure to file a cross-appeal because standing is jurisdictional. 135 Hawai`i 275, 283, 349 P.3d 382, 390 (2015). As explained below, the Court subsequently held in *Tax Foundation* that standing is not jurisdictional, expressly noting that standing may be waived. *Tax Found. v. State* [*Tax Foundation*], 144 Hawai`i 175, 191 n.21, 439 P.3d 127, 143 n.21 (2019) ("a claim of lack of standing can be waived"). After the March 21, 2019 *Tax Foundation* decision, the State knew it could no longer rely on *McDermott* when it chose not to cross-appeal by May 16, 2019.

Haw. App. 507, 511, 669 P.2d 170, 173 (1983) ("Defendants failed to file a proper notice of appeal as required by Rule 73, Hawaii Rules of Civil Procedure (1981), to challenge the trial court's conclusion of law that plaintiffs had standing. Therefore, we do not consider defendants' contention on this point.").

And the Legislature, as *amicus curiae*, is not permitted to introduce issues on appeal that the State waived. It is well-settled that where a party waives its right to appeal an issue, *amicus curiae* cannot step into its place to raise the argument. *E.g.*, *Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1177 n.8 (9th Cir. 2009) ("An amicus curiae generally cannot raise new arguments on appeal, and arguments not raised by a party in an opening brief are waived."). Thus, both the State and the Legislature are procedurally barred from challenging standing in this appeal.

Even if the issue of standing had been cross-appealed, no viable argument exists to question Appellants' standing under HRS § 632-1. *See Ching v. Case*, 145 Hawai`i 148, 173 n.41, 449 P.3d 1146, 1171 n.41 (2019) ("[S]uits seeking retrospective declaratory relief based on an alleged constitutional violation that has already occurred are governed by HRS § 632-1."). In *Tax Foundation*, this Court clarified that plaintiffs need not satisfy the injury-in-fact test to demonstrate standing. 144 Hawai`i at 189, 439 P.3d at 141.

> [A] party has standing to seek declaratory relief in a civil case brought pursuant to HRS § 632-1(1) where antagonistic claims exist between the parties (a) that indicate imminent and inevitable litigation, or (b) where the party seeking declaratory relief has a concrete interest in a legal relation, status, right, or privilege that is challenged or denied by the other party, who has or asserts a concrete interest in the same legal relation, status, right, or privilege; and (2) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

Id. at 202, 439 P.3d at 154; *accord Ching*, 145 Hawai`i at 173, 449 P.3d at 1171. Notably, in *Tax Foundation*, the plaintiff had a concrete interest to bring suit to challenge the disbursement of taxes "based on its historical purpose as a government financial accountability watchdog." *Tax Foundation*, 144 Hawai`i at 202-03, 439 P.3d at 154-55. Appellants Common Cause and League of Women Voters of Honolulu are community groups dedicated to enhancing public participation in government. ICA Dkt. 26 at 96-134. Appellants have a well-documented interest in legislative procedure and

governance and consistently have communicated their concerns about the Legislature's circumvention of constitutionally-mandated procedure. *Id.*[4]

In the end, someone must have the right to speak out and seek redress when the Legislature violates our social compact. Neither the State nor the Legislature has identified whom they believe would suffer an "actual injury" from Act 84 under the federal injury-in-fact test. It is absurd to conceive that the procedural mandates in the Hawai`i Constitution do not apply because the Legislature successfully suppressed public notice and participation by violating those very mandates. The Legislature's process for Act 84 directly and adversely impacted Appellants' (and its members') ability to review, analyze, and speak to their elected representatives about S.B. 2858 before its passage.

The Court should disregard standing arguments because the State waived those arguments. But, in any event, Appellants had standing to seek declaratory relief under *Tax Foundation*.

II. History and Precedent Demonstrate a Clear Intent for Courts to Adjudicate this Dispute.

As with standing, the State similarly neglected to cross-appeal from the circuit court's decision on justiciability, yet the Legislature now asks for "leeway and permission" to revive the argument. Dkt. 29 at 17. The Court should dismiss the issue for the same procedural defect as above and because, on the merits, it is contrary to decades of precedent.

All sources of Hawai`i constitutional history as well as Hawai`i courts have treated these constitutionally mandated legislative restrictions as justiciable. *E.g.*, *Schwab v. Ariyoshi*, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977) ("[The subject in title provision] of the State Constitution is mandatory and a violation thereof would render an enactment nugatory."); *accord Taomae v. Lingle*, 108 Hawai`i 245, 256, 118 P.3d 1188,

[4] The State asserts that Appellants "lack a concrete interest in challenging this particular legislative measure." ICA Dkt. 80 at 34-35. That is not the standard set by *Tax Foundation*. Nonetheless, Appellants raised concerns about S.B. 2858 before it was enacted. *E.g.*, ICA Dkt. 26 at 131 (letter from Common Cause to the Governor).

1199 (2005) (rejecting argument that the court would "intrude upon the province of the legislature" by reviewing a challenge to the validity of a constitutional amendment); 2 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 190-91 [ICA Dkt. 26 at 177-78] (anticipating potential lawsuits over the three readings requirement). It is the Court's constitutional duty within the separation of powers framework to interpret the meaning of provisions that define the Legislature's powers and duties. "The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 5 U.S. 137, 176 (1803); *see also Bevin v. Commonw. ex rel. Beshear*, 563 S.W.3d 74, 81-85 (Ky. 2018) (rejecting nearly identical justiciability arguments to Kentucky's constitutional three readings provision). The Legislature has not proffered any relevant authority supporting its argument that compliance with constitutional provisions is a non-justiciable issue.

The Legislature relies heavily on *Hussey v. Say*. Dkt. 29 at 7. *Hussey* concerned a challenge to a state legislator's qualifications for office. 139 Hawai`i 181, 184, 384 P.3d 1282, 1285 (2016). The relevant constitutional provision reads: "Each house shall be the judge of the . . . qualifications of its own members." Haw. Const. art. III, § 6. The issue was nonjusticiable because the plain text of the constitution, and its history, expressly provided that the Legislature is the *exclusive authority* to determine qualifications for its members. *Hussey*, 139 Hawai`i at 187, 384 P.3d at 1288; 2 Proceedings of the Constitutional Convention of Hawai`i of 1950 at 190-91 [ICA Dkt. 26 at 177] ("Whether or not a person is qualified to sit in the legislature each house determines; it's a political question with which the courts cannot interfere."). No similar language provides that the Legislature is its own judge of compliance with the three readings and title mandates, nor are there any remarks from convention delegates that the matter is a political question.

Likewise, *Schwab* does not support the Legislature's position on justiciability. In *Schwab*, 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.). The *Schwab* court still reviewed the Legislature's compliance with

constitutional requirements about legislative procedure, while recognizing that any legislative rules of procedure not contained in the constitution remain the Legislature's own province. *Schwab*, 58 Haw. at 37-39, 564 P.2d at 143-144.

There is no "textually demonstrable constitutional commitment" of the three readings and title mandates to the Legislature here. The Legislature's general rule-making authority under article III, section 12 does not give the Legislature the power to ignore sections 14 and 15. *E.g.*, Haw. Const. art. III, § 1 (the Legislature's power includes "all rightful subjects of legislation *not inconsistent with this constitution*" (emphasis added)); 1 Norman J. Singer & Shambie Singer, Sutherland on Statutes and Statutory Construction [Sutherland] § 7:4 (7th rev. ed. 2014) ("The constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints . . . ."); ICA Dkt. 41 at 24 (quoting provisions of *Mason's Manual*—the Legislature's adopted parliamentary manual—that prohibit legislative rules from violating constitutional mandates, including specifically the three readings requirement). In keeping with this understanding of the interplay between section 12 and the constitutional mandates imposed on the Legislature, "the role of the court in supervising the activity of the legislature is confined to seeing that the actions of the legislature do not violate any constitutional provision." *Schwab*, 58 Haw. at 39, 564 P.2d at 143-144.

Moreover, to accept the Legislature's interpretation would significantly enlarge the Legislature's power contrary to basic principles of constitutional interpretation. *See Morita v. Gorak*, 145 Hawai`i 385, 395, 453 P.3d 205, 215 (2019) ("Under longstanding canons of statutory construction, if one construction would make it possible for a branch of government substantially to enhance its power in relation to another, while the opposite construction would not have such an effect, the principle of checks and balances would be better served by a choice of the latter interpretation."). The Legislature improperly seeks to expand its authority by sacrificing protections for the people of Hawai`i that are at the heart of the people's political power and the foundation for State government. Haw. Const. art. I, § 1 ("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.").

It is clear from both the plain text of constitutional provisions at issue here, and the history of their adoption, that the purpose was to serve as a check on the Legislature. This dispute is justiciable, and the Legislature must abide by the constitutional restrictions regulating its procedure.

III. Germaneness Is a Recognized Constitutional Standard in Hawai`i.

Appellants have outlined the long and continuing tradition that evaluates legislation for constitutional purposes under a germaneness standard. *E.g.*, ICA Dkt. 41 at 13-17; ICA Dkt. 92 at 5-7, 10 n.9, 11-12. The Legislature argues that article III of the Hawai`i Constitution does not reference any germaneness standard and that Appellants only cite treatises, not cases. Dkt. 29 at 18. The Legislature is correct that article III does not expressly use a germaneness standard. But, since at least 1914 with the Territorial Supreme Court, **Hawai`i courts** have applied a germaneness standard when analyzing constitutional issues under article III. *Territory v. Kua*, 22 Haw. 307, 313 (Terr. 1914) (defining "germane" analysis, "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."); *see also, e.g.*, *Schwab v. Ariyoshi*, 58 Haw. at 32-33, 564 P.2d at 140.

Germaneness is a fundamental principle of order for any parliamentary process. Regardless whether the State of Hawai`i and the Legislature choose to willfully disregard the germaneness principle now, it historically was a background assumption about all legislative action and—as reflected in all modern parliamentary manuals including the Legislature's preferred *Mason's Manual*—continues to be a foundational tenet for proper legislation. Otherwise, the legislative process becomes a chaotic free-for-all in which the public has no idea before final reading what law will be enacted. Seawalls? Fireworks? Prison reports? Hurricane shelters? Who knows what any bill will be about?

Irrespective of the Legislature's desire to do as it pleases without scrutiny, there must be some constitutional threshold that defines a "bill" for purposes of the three readings mandate consistent with its purpose. Case law and historical treatises from the time when the mandate was adopted all point toward the germaneness analysis.[5] As Appellants outlined in their reply brief, the standard is well-defined in case law and affords the State significant flexibility. ICA Dkt. 92 at 6-7. Ensuring germaneness serves the express objective of the three readings mandate to provide:

> 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 (emphasis in original). No one can openly debate the purpose of legislation when that purpose can radically change with every reading. The only problem with the germaneness standard here is that the State clearly violated it. This is not a close case.

IV. The 1968 Constitutional Convention Did Not Amend the Three Readings Requirement.

Contrary to the Legislature's assertions, the 1968 debates concerning the 24-hour [now 48-hour] final printing mandate did not change the intent of the three readings requirement. *See* Dkt. 29 at 11-14. The 1968 Constitutional Convention removed a comma from the three readings mandate with no explanation or other indication that the change was intended to be substantive. Stand. Comm. Rep. No. 46 *in* 1 Proceedings

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[5] A more mechanical analysis that focuses on the extent of the changes does not work. Wholesale *germane* substitute bills are consistent with the framers' intent, but small non-germane amendments would not be. As an example, a hypothetical bill that prohibits the sale of narcotics is modified slightly at the last minute to a bill that prohibits the sale of real property. Such a *non-germane* amendment—although amending only a few words—so radically changes the bill that it is no longer the same bill as before. A bill does not exist in a vacuum without any thought to its body and content. That is the focus of the germaneness analysis.

of the Constitutional Convention of Hawai`i of 1968 at 215-17 [ICA Dkt. 26 at 180-82];[6] *accord* 2 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 146 [ICA Dkt. 26 at 184] (remarks of Delegate Donald Ching) ("The proposed amendment [adding the final printing mandate] will not change the manner in which a bill is handled as under the present Constitution and the present legislative procedures as far as the conference committee draft is concerned."). For several reasons, the 1968 debates are not relevant to this case.

First, as a matter of interpretation, this Court has explained that the understanding of subsequent legislators does not change the meaning of existing law absent a substantive amendment to the law.[7] *See Peer News*, 138 Hawai`i at 73, 376 P.3d at 21; *accord* 2A Sutherland § 48:20 ("[C]ourts generally give little or no weight to the views of members of subsequent legislatures about the meaning of acts passed by previous legislatures").

Second, the Legislature misrepresents the nature of the discussion about three readings in 1968. During the debates, Delegate Kauhane expressed a concern about the constitutionality of significant amendments on final reading that do not receive adequate consideration, *but are still germane to the original subject*. *E.g.*, 2 Proceedings of the Constitutional Convention of Hawai`i of 1968 at 169 [ICA Dkt. 26 at 186] ("You may have intended to request consideration of the matter of caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are

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[6] *Peer News LLC v. City & County of Honolulu*, 138 Hawai`i 53, 71, 376 P.3d 1, 19 (2016) ("[I]t is the official committee reports that provide the authoritative expression of legislative intent.").

[7] The State seeks to circumvent this principle of interpretation by asserting that the 1968 delegates decided "to adopt the three readings provision, substantively intact from the 1950 Constitution"; in essence, *by doing nothing*, the 1968 convention made a substantive decision that makes the 1968 debates relevant. ICA Dkt. 80 at 17. No constitutional history reflects that the 1968 delegates understood that they were changing the intent of three readings. And there is no evidence that the voters who ratified the 1968 amendments understood that adding the 24-hour printing rule (or removing the comma from the three readings mandate) would substantively change the three readings provision.

voting on third reading for the passage of a completely new bill."). Such germane amendments were the concern underlying the 24-hour final printing mandate. ICA Dkt. 41 at 20-22 (describing the delegates' concerns about highly technical last-minute changes to legislation). By treating Delegate Kauhane's remarks as relevant to the issue presented here, the State and the Legislature incorrectly elide the distinction between germane and non-germane amendments when the difference is constitutionally significant. The dispute now before this Court concerns non-germane amendments.

Third, the 1968 Convention rejected Delegate Kauhane's concerns. Delegate Kauhane noted that application of the three readings mandate was not settled and that he was concerned about a constitutional challenge to the practice he described. ICA Dkt. 26 at 188 (repeating advice of a convention attorney that "[t]here is a question, he says, that this legal question has never been raised yet"). Before the Constitutional Convention rejected Delegate Kauhane's proposal, Delegate Donald Ching explained that the issue of late-session significant amendments to legislation was not the current practice in the Legislature and that Delegate Kauhane's suggestion—to change the 24-hour printing rule to 48 hours—would not cure the practice even if it existed. *Id.* at 187 ("[T]he practice that has been mentioned here has not prevailed in the legislature since the advent of Statehood. And secondly, that this amendment, even if this practice were prevailing in the legislature at the present time, the amendment that is suggested here would not cure the practice."). Obviously, if changing the deadline from 24 to 48 hours would not address issues with the three readings mandate, the adoption of the 24-hour deadline in 1968 did not change three readings as the State and Legislature argue. Moreover, contrary to the Legislature's argument, the 1968 Constitutional Convention did not broadly endorse gut-and-replace practices as described by Delegate Kauhane; rather, the delegates took no action because such practices were not presently occurring. *Id.* at 183-88.

Lastly, as a further matter of interpretation, conflicting positions in floor debates carry no interpretative weight. "Stray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body that voted on the bill." *Peer News*, 138 Haw. at 71, 376 P.3d at 19; *accord*

2A Sutherland § 48:13 ("[Statements by individual legislators] are not dispositive on the issue of legislative intent, and, more generally, have limited value to clarify the intent of an entire legislative body.").[8] Individual delegates do not always agree on the intent of a proposed law, and it should not be assumed that each delegate is an authority on the subject.

The discussions of the 1968 Constitutional Convention *about the 24-hour final printing mandate* do not vary the well-established purpose and meaning of the three readings requirement. Delegates did not discuss amending the existing provisions in any manner. Rather, they added a new restraint on legislative procedure to *bolster* the overarching purpose of protecting public transparency and participation in the legislative process. ICA Dkt. 41 at 17-22 (detailing the constitutional history and purpose for various provisions of Article III, including the final printing requirement); ICA Dkt. 26 at 148-154 (same).

V. No Distinction Exists Between "Law" vs. "Bill" in the Title Provision

The Legislature argues that the title requirement only matters once the "law" is enacted, not during the legislative process while the law is only a "bill". Dkt. 29 at 8-9; Haw. Const. art. III, § 14 ("Each law shall embrace but one subject, which shall be expressed in its title."). In the end, the distinction is irrelevant to this case because "public safety"—as law or bill—is too broad and amorphous to fairly apprise interested members of the public that it concerns hurricane shelters. But more fundamentally, the Legislature's position ignores the well-established purpose of the title provision to provide notice to the public concerning proposed legislation *before* it is enacted. ICA Dkt. 41 at 26-28; *Jensen v. Turner*, 40 Haw. 604, 608 (Terr. 1954) ("to apprise the people of

[8] Unlike the constitutional floor debates discussed by this Court recently in *Kaheawa Wind Power*, the debates between Delegates Kauhane and Ching did not result in any amendments to the constitutional proposal for the final printing mandate (and obviously did not change anything regarding the three readings requirement at issue here). ICA Dkt. 26 at 188; *E.g.*, *In re Tax Appeal of Kaheawa Wind Power, LLC*, 146 Hawai`i 76, 90-91, 456 P.3d 149, 163-64 (2020) ("We note that the final language of article VIII, section 3 was adopted only after deliberation by the Standing Committee on Local Government, floor debates, and deliberation by the Committee of the Whole.").

proposed matters of legislation" (emphasis added)); *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.").

Again, the constitutional tradition expressly undermines the Legislature's position:

> Whether the constitutional provision uses the word "act" or "bill," it is generally understood that the requirement applies to a bill during the enacting process as well as to the enacted statute. [I]t would violate the letter and spirit of the constitutional safeguard against stealthy legislation to hold that the subject of a bill must be clearly expressed in its title during the progress of the measure through the legislature, but that any misleading or delusive title may be attached to it when it is presented to the governor for approval.

1A Sutherland § 18:1 at 45.

The Legislature's purported distinction between "law" and "bill" in the title mandate is meritless.

VI. Technology Does Not Absolve the Legislature of Constitutional Obligations.

Technological advances are irrelevant to the Court's constitutional analysis. Appellants applaud the Legislature's efforts to make its work digitally accessible to the public. But, unless the Legislature is arguing that its technological efforts are constitutionally mandated, such voluntary improvements—revocable at the Legislature's whim—are not a substitute for complying with the Hawai`i Constitution.

First, technological advances do not change constitutional intent. *E.g.*, *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 532 (2009) ("The original meaning of the Constitution cannot turn on modern necessity."); *D.C. v. Heller*, 554 U.S. 570, 634-35 (2008) ("A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad."). There is no authority for the proposition that the Legislature can refuse to comply with a

constitutional mandate because it believes it does something similar that should be good enough.

Second, as a factual matter, the Legislature's efforts are not good enough to substitute for three readings of a bill *with only germane amendments*. The Legislature emphasizes that "[w]ith the electronic technology available, [bill amendments] would be immediately known to those who are interested, especially if they have availed themselves of the Real Simple Syndication ('RSS') . . . ." Dkt. 29 at 15. That statement only holds true for members of the public *interested in the original bill*, as reflected in the testimony for S.B. 2858. ICA Dkt. 24 at 316-24 (members of the public *interested in the recidivism reporting bill* complaining about the hurricane shelter amendments). The Legislature's technological efforts only keep an individual informed about changes for bills that a person initially flagged as of interest, not amendments to completely unrelated bills that are radically changed to become of interest. How is a person relying on the Legislature's technology to follow all seawall bills supposed to know that a fireworks bill was gutted and replaced with a seawall bill shortly before final reading? Moreover, even if technology provided notice of last-minute changes, it does not address the underlying purpose of the three readings mandate to prevent hasty adoption of legislation without full debate of its scope and consequences.

Lastly, undue emphasis on technology ignores the digital divide in our community. Whether it is because of economic status, disability, technological aptitude, or various other reasons, the benefits of technology on society do not reach everyone equally. The Hawai`i Constitution sets a floor by which the people of Hawai`i have agreed is the bare minimum for enacting laws that will govern all of us. That floor should not shift—stripping some citizens of their rights—based on the inherent inequalities of technological access and expertise.

VII. *Mason's Manual* Supports Appellants' Position.

The Legislature focuses on *Mason's Manual* because it has adopted the reference as its parliamentary manual by rule. Dkt. 29 at 10 & n.6. In that regard, it is irrelevant to the Court's analysis of the constitutional requirements. ICA Dkt. 41 at 22-24. Nevertheless, by quoting only two provisions without context from other relevant

sections, the Legislature misstates *Mason's Manual* as supporting its position that amendments will never restart the three readings. Dkt. 29 at 10. As explained in the opening brief—and not addressed by the Legislature—Section 616 expressly incorporates the germaneness standard for bill amendments explaining: "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." ICA Dkt. 41 at 25. Consistent with case law, historical treatises, and other modern parliamentary manuals, *Mason's Manual* requires that bill amendments be germane to the original purpose of the bill or be considered a new bill.

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, March 27, 2020

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