NO. SCAP-19-0000372

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE, Plaintiffs-Appellants, vs. STATE OF HAWAI`I, Defendant-Appellee.	CIVIL NO. 18-1-1376-09 GWBC ON APPEAL FROM: FINAL JUDGMENT Filed on APRIL 3, 2019 CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I The Honorable Gary Won Bae Chang, Judge

BRIEF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE STATE OF HAWAI`I

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BRIEF OF THE HAWAI`I STATE LEGISLATURE AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE STATE OF HAWAI`I

I. INTRODUCTION

The HAWAI`I STATE LEGISLATURE ("Legislature") files this brief as *Amicus Curiae* in support of the Defendant-Appellee State of Hawai`i and to affirm the primary holding in the circuit court's Order Granting Defendant State of Hawai`i's Motion for Summary Judgment Filed on October 9, 2018; and Order Denying Plaintiff's Cross-Motion for Summary Judgment Filed on October 25, 2018. Record on Appeal ("ROA") Part 2 ("2") at 226-228 and at 229-230. The Legislature contends that to reverse the decision of the circuit court would be to intrude upon the constitutional mandate granted to the Legislature.[1]

II. ISSUES PRESENTED

The primary issue presented in this appeal is whether the overruling of the decision of the circuit court would result with judicial intrusion upon a co-equal branch of government. The Legislature believes this appeal is about the separation of powers.

In addition, this appeal raises sub issues as to whether:

a) the Legislature acted within its authority under the ***Constitution***;

b) the Haw. Const. article III § 14 requires that the title of every **law** reflect its contents in detail; and/or

c) the Haw. Const. article III § 15 requires that only bills which have not been amended or modified can become law, unless the Judiciary finds to the contrary.[2]

III. ARGUMENT

A. Section 12 of Article III of the Constitution Empowers Each House To Enact Its Own Rules of Proceedings And Its Operations.

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[1] The Legislature does not concur with the Circuit Court's Order Granting Defendant's Motion for Summary Judgment as to paragraphs 3 and 4. In that Plaintiffs-Appellants filed their appeal from the Final Judgment, the Legislature as *Amicus Curiae* contends that it can also ask that this Court take note of paragraphs 3 and 4 as well. The Legislature does ask that this Court affirm the circuit court's Order Denying Plaintiffs Cross-Motion for Summary Judgement.

[2] The Legislature contends that this will be the result when though Plaintiffs-Appellants concede that the Legislature may make "germane" amendments without restarting the three reading requirements, the issue will be when is an amendment "germane" and how "germane" must an amendment be. The arbiter will be the judiciary, potentially for every amendment enacted.

The heart of Plaintiffs-Appellants' challenge of Act 84 (2018) is whether the Legislature can constitutionally enact its own rules of proceedings in its operations. The Legislature argues that it does.

Section 12 article III of the ***Constitution*** provides in relevant part "[e]ach house shall choose its own officers, **determine the rules of the proceedings** and keep a journal." (emphasis added). Though the case of ***Hussey v. Say,*** 139 Hawai`i 181, 384 P.3d 1282 (2016) addressed the first sentence of Section 12 article III of the ***Constitution*** which states, "[e]ach house shall be the judge of the elections, returns and qualifications of its own members," the Hawai`i Supreme Court found the *Quo Warranto* complaint against Representative Say to be a "non justiciable issue." This Court stated that "justiciability" was to ensure that the co-equal branches of government do "not intrude into areas committed to the other branches of government." It looks to whether the Constitution committed the issue to another political department. ***Id.***, 139 Hawai`i at 188, 384 P.3d at 1289. The Court stated this principle in ***OHA v. Yamasaki,*** 69 Haw. 154, 169, 737 P.2d 446, 455 (1987) as follows, "a textually demonstrable constitutional commitment of the issue to a coordinate political department." In ***Hussey***, the issue was whether Representative Calvin Say was qualified to be seated as a member of the House of Representatives. The Court ruled that due to the language of Section 12 of article III, it was a non-justiciable issue because the ***Constitution*** had committed the issue to the Legislative branch of government.

This should also have be the decision of the circuit court as to the "rules of proceedings" which has been committed to the co-equal branch of government and are at issue in this appeal.

The Legislature has complied with the ***Constitution*** and determined and passed its respective rules of proceedings. As with ***Hussey***, the decision here should be that the co-equal branch of government has complied with its constitutional mandate and the matter is non-justiciable.

B. <u>The Legislature's Enactments Are Presumptively Constitutional.</u>

The Hawai`i Supreme Court has set a very high standard to successfully challenge any law enacted by the Legislature. The Court has consistently held that "every enactment of the legislature is presumptively constitutional and a party challenging the statute has the burden of

showing unconstitutionality beyond a reasonable doubt." ***Schwab v. Ariyoshi,*** 58 Haw. 25, 31 564 P.2d 135, 139 (1977) ("***Schwab***"). The ***Schwab*** court went on to say that the violation alleged of the "subject-title requirements of the State Constitution" must be "plain, clear, manifest, and unmistakable." ***Id.***

Plaintiffs-Appellants rely heavily upon ***Taomae v. Lingle,*** 108 Hawai`i 245, 118 P.3d 1188 (2005) ("***Taomae***") to support their contention that Act 84 (2018) violated article III Section 14 of the ***Constitution***. They do so irrespective of the fact that the Hawai`i Supreme Court made very clear that ***Schwab*** was distinguishable from the facts of ***Taomae*** because "[i]n *Schwab,* this court considered the requirements embodied in article III alone . . . in this case [***Taomae***], we construe the requirements of article III as incorporated in the specific and separate provisions of article XVII." ***Taomae,*** 108 Hawai`i at 254, 118 P.3d at 1197.

Plaintiffs-Appellants have, therefore, failed to meet their burden of showing the enactment was unconstitutional "beyond a reasonable doubt."

C. In Analyzing Section 14, article III of the Constitution, The Governing Word is "law" And Requires That The Law Contain One Subject And It Be Expressed In The Title.

Schwab is the dispositive precedent for this argument in Plaintiffs-Appellants' Complaint. The 1950 Constitutional Convention proposed the language of Section 14 article III Haw. Const. which states, "[n]o law shall be passed except by bill. Each **law** shall embrace but one subject, which shall be **expressed in its title.**" (emphasis added). In ***Schwab,*** the Court was faced with the title, "A Bill for an Act Making Appropriations for Salaries and Other Adjustments, Including Cost Items of Collective Bargaining Agreements Covering Public Employees and Officers." The original intent was that it ratify the salary increases negotiated through collective bargaining. ***Schwab,*** 58 Haw. at 27, 564 P.2d at 137. When it was enacted, the law contained four parts and covered all employees' and officers' salaries, not merely those that were collectively bargained. ***Id.*** 58 Haw. at 27-28, 564 P.2d at 137-138. The Hawai`i Supreme Court in finding no constitutional violation stated:

> We hold that a liberal construction of this constitutional requirement, . . .leads to no other conclusion but that the title to **Act 58** fairly indicates to the ordinary mind the general subject of the act, . . . It is true that the provision of the Organic Act 'that each law shall embrace but one subject, which shall be expressed in its title' should be liberally construed, and that an **act** of the legislature should not be held void on the ground that it conflicts with this provision, except in a clear case.

Id., 58 Haw. at 34, 564 P.2d at 141 (emphasis added).[3]

The issue is what is required to have a **law** embraces but one subject which is expressed in its title. The point of contention is whether the title "Relating to Public Safety" covers the subject of this law. The general rule of statutory construction applies to the ***Constitution*** as well. That is to say if the words are clear and unambiguous, they are construed as written. ***Watland v. Lingle,*** 104 Hawai`i 128, 140, 85 P.3d 1079, 1091 (2004). Thus, Section 14 article III is saying that the **law** shall embrace one subject that is expressed in the law's title. It does not say that the bill as originally proposed or amended; but as it is enacted into law. There can be no doubt that the subject of SB 2858 SD2 HD1 CD1 as Act 84 (2018) is covered under Public Safety. The circuit court correctly found as such in paragraph 2 of its Order.

What Plaintiffs-Appellants are attempting to argue is that the title does not have enough detail. There is no such requirement set forth in the ***Constitution.***

D. The Constitutional Requirement Of Three Readings Was Not Violated And "If A Replaced Or Substituted Bill Is Adopted, Then The Legislature Is Not Required To Conduct Three More Readings."

The above statement in quotations is from the circuit court Order, paragraph 1. ROA 2 at 227. The circuit court correctly found that the three reading requirements were satisfied even if a replaced or substituted bill was adopted. The circuit court relied upon the adopted rules of the Legislature.

Both houses, in accordance with Section 12, article III of the ***Constitution*** have adopted their respective Rules of their houses. The Rules of both houses provide for three readings of the bill. The First readings in both houses are by title only.[4] Likewise, the respective

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[3] The emphasis was placed in this citation because the ***Schwab's*** Court analysis was as to when the bill became law as Act 58. The Constitutional provision is speaking to the final law and that what is contained therein fits the one subject and expressed in its title. There is no doubt that this is satisfied in Act 84 (2018).

[4] Rule 48 of the Senate (ROA 1 at 65) and Rule 34 of the House of Representative (ROA 1 at 73).

Rules provide that the Second and Third or Final readings of the bill can be by title only.[5] In addition, the Legislature adopted the *Mason's Manual of Legislative Procedure, 2010* for the 2017-2018 Legislative Session, hereinafter "***Mason's***"[6] to assist in the interpretation of their procedures. The two sections of ***Mason's*** specifically referenced in the circuit court's order are as follows:

> ***Mason's*** Sec. 617 entitled **Substitute Bills**, provides in relevant parts:
>
> 1. 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.
>
> 2. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute a new bill, recommending also any necessary changes in the title.
>
> ***Mason's*** Sec. 722 entitled **Three Readings of Amended Bills**, provides in relevant parts:
>
> 1. **The constitutional requirement that bills be read three times is not generally interpreted to apply to amendments**, so that bills are required to be read the specified number of times after amendment, . . .
>
> 2. When a bill that has been passed by one house has **been materially amended** in the other, and there passed as amended, it has been held that the constitutional provisions with reference to reading three times **does not require the bill as amended to be read three times in the house of origin** before concurring in the amendments of the other house. . . .
>
> 3. **Where a substituted bill may be considered as an amendment, the rules with reference to reading a bill on three separate days does not require the bill to be read three times after substitution.** One house may substitute an identical bill of its own for the bill of the other house without rereading of the substitute bill being required. . . .

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[5] Rules 49 and 50 of the Senate and Rules 35 and 36 of the House of Representatives. State Ex. "A" at 22 and State Ex. "B" at 33-34. Note that for Third or final readings, both houses require the final form to layover for 48 hours. ROA 1 at 64-66 and 73-75.

[6] The adoption of ***Mason's*** is found at Rule 88 of the Senate; and Rule 59 of the House of Representatives. ROA 1 at 66 and 75.

> 5. A bill that is **amended or redrafted by a conference committee is not a new bill in the sense that it requires three readings thereafter.**

Mason's at 494-495 (emphasis added).

If this Court reverses the circuit court then it would be adding its interpretation to Haw. Const. article III Section 15 by requiring a "form" that a bill can pass in. Stated another way, if Plaintiffs-Appellants complaint prevails, then a bill to become law must be in its final form throughout the three readings in each house; or alternatively, the Judiciary will be called upon to determine whether the bill qualifies to become law. This could not and was not the intent of the framers of the ***Constitution.***

The Legislature contends that the framers of the ***Constitution*** intended that it have the flexibility as practiced since the adoption of the ***Constitution.***

E. The Constitutional Convention Committee Reports and Debates Clarify That Amendments To A Bill, Including A Substitution Does Not Trigger Three Reading Process To Commence Again.

The Hawai`i Supreme Court has stated that the Constitution must be construed "with due regard to the intent of the framers and the people adopting it." ***Hanabusa v. Lingle,*** 105 Hawai`i 28, 31, 93 P.3d 670, 673 (2004). The intent is found in the "instrument itself." ***Id.*** citing ***Blair v. Harris,*** 98 Hawai`i 176, 178-179, 45 P.3d 798, 800-801 (2002).

The Constitutional Convention of 1968 addressed Section 16 article III Haw. Const. Committee of the Whole Report No. 12 stated that it had fully debated the Standing Committee Report No. 46 and reports and recommends that Section16 be adopted. The rationale was:

> 1. Requiring that a bill shall have been printed in the form to be passed on final reading and made available to the members of a house for at least twenty-four hours before it shall pass final reading in that house; the phrase "form to be passed" means the form in which a bill is either (a) passed on third reading in each house, (b) concurred to by one house after amendments have been made by the other, or (c) passed by both houses after a conference committee has agreed upon it; . . .

I *Proceedings of the Constitutional Convention of Hawaii of 1968* at 347 (1973).

The Standing Committee on Legislative Powers and Functions Report No. 46 referenced in Committee of the Whole Report No. 12, makes clear that it believed the twenty-four hour rule before the final reading is what assures the members of the Legislature and the

public the opportunity for informed action. ***Id.*** at 216. The examples listed as to how the Legislature gets to the "form to be passed" anticipates amendments and changes in the bill's contents and can be made by "one house," or after a conference committee. Act 84 in its final form is a result of a Conference Committee Draft.

The Standing Committee Report is most instruction when it defined the "form to be passed" as one "passed by both houses after a conference committee has agreed upon it." The definitions were listed with the conjunctive "or" meaning that any one of those conditions would satisfy the definition of the final form of the bill. It is critical to again note that changes were anticipated and was proper for final reading as long as it satisfied one definition. It was not anticipated that the bill had to be the same bill for the three readings in both houses. In fact it is expected that it would not be.

The debates among the delegates to the 1968 Constitutional Convention clarified that it was anticipated amendments and actual substitutions could occur without triggering the need to begin the three reading process. Relevant portions of the debates are:

> **DELEGATE HUNG WO CHING**[7]: . . . **The original intent of a bill having passed one house can be substantially changed in legislative conferences. A bill in final form can then pass third reading in both houses without a reasonable opportunity for members of the legislature and the public for review in its final form. To correct this situation, our proposal will require that a bill be printed in its final form and be made available to the legislators and to the public for at least 24 hours before final passage.** It is the committee's considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of the proposed legislation decisively overrides the possible problems in its adoption might create.
>
> . . .
>
> **DELEGATE DONALD CHING**: . . . [T]he committee discussed this procedure at length and what would happen if the passage of this amendment to the Constitution would mean to legislative processes would be that **the bulk of the amendments would come at the time of the second reading. In fact, all of the amendments should come at the time of the second reading on the bill. Then after the bill has been fully discussed on second reading by either house it shall then be printed up in the final amended form; be printed, be distributed to the members of that house and to the public, and then 24 hours shall elapse before final reading shall be taken. . . . Now, if it comes back**

[7] Mr. Hung Wo Ching was the Chair of the Committee on Legislative Powers and Functions.

from conference we have no problem there. This is only on third reading in either house.

. . .

DELEGATE KAUHANE: I just heard the statement when we go to conference, well, we'll have no problem there. This is where the problem exists, when we go to conference.

My next questions, Mr. Chairman, where a bill has been substituted for the original bill, the original bill having been read once, have passed first and second reading, and possibly third reading, and the bill is referred to conference because of a disagreement, **it becomes a conference-substituted** bill for the original bill in some instances; **will the substituted bill be required to pass three readings** because of a complete change of the substance of the bill?

. . .

DELEGATE DONALD CHING: . . . **The proposed amendment 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.** What it will mean is that the only change that will be brought about is that after the conference committee has deliberated and come up with its conference draft, **that draft will have to be printed and on the table for 24 hours or made available to the public for 24 hours before either house can act on it. That's the only change.**

II *Proceedings of the Constitutional Convention of Hawaii of 1968, Committee of the Whole Debates* (1973) at 145-146 (emphasis added).

The debates made clear that the intent of the framers of the Constitution was to reaffirm that the practice of the Legislature that if a new bill is substituted, it will not trigger a requirement that the three readings commence again.

F. The Mandate That Bills In Its Final Form Be Printed and Lay For 48 Hours Is To Ensure The Legislators and the Public Know What Is Being Voted On.[8]

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[8] Standing Committee Report No. 46 reported:

> Your Committee has included the twenty-four hour rule as a requirement for the passage of bills. The purpose of this rule is to assure members of the legislature an opportunity to take informed action on **the final contents** of proposed legislation. This is accomplished by requiring the printing and availability of each bill in the "form to be passed" to the members of a house and a twenty-four hour delay between such printing and availability before final reading in each house. "Form to be passed" means the form in which a bill is passed on third reading in each house, concurrence of one house to amendments

The then 24 (now 48) hour rule is what provides the Legislators and the public the opportunity to know what the bill contains. Plaintiffs-Appellants do not allege the houses failed to comply with the "printed copies" of the bill in its final form for at least "forty-eight hours"[9] prior to the final reading.

From the above referenced Constitutional Convention Debates, it is clear that the intent was not to change the practice of amending bills which could include its total substitution and three readings will not be required. Thus, the notification requirement was enacted for purposes of providing Legislators and the Public the opportunity to know what the final form of the bill contains.

G. <u>The Legislature Enacted Processes Which Keeps Itself and Public Informed.</u>

The Legislature does not disagree with Plaintiffs-Appellants' position that provisions were added to the ***Constitution*** to give the legislators and the public the opportunity to know what is being voted upon. The major amendments to Section 15, article III in 1968 and 1978 was to include the printing of the bill in the form to be passed and to lay it for 24 (then 48 in 1978) hours before the vote on third or final reading can take place. Notwithstanding the provision of the ***Constitution*** at issue here is Article III which is entitled the Legislature. This article does contain limited requirements as to public notification, however it is primarily focused on how the Legislature is to function, including the qualifications of its membership.

> <u>made by the other, and the form in which a bill is passed by both houses after conference on a bill</u>. The twenty-four hour rule not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage.

I *Proceedings of the Constitutional Convention of Hawaii of 1968* at 216 (1973) (emphasis added). The underlined portion of the report shows that the delegates appreciated that bills could undergo substantial revisions before becoming law.

[9] It was the 1978 Constitutional Convention which increased the period before the final vote can be taken to 48 hours. Though Plaintiffs-Appellants do not concede that technological changes and the ability to track bills on the internet has changed the ability of both Legislators and the general public to be aware what is transpiring, the fact is, it does. The description of the bills' contents changes as amendments are made. It is a better informed constituency due to the changes made by the Legislature on the use of the internet.

Plaintiffs-Appellants have at various points in their arguments, diminished the significance of the role of technology and how it assists the public in its participation and in transparency in the process. Attached to the Reply Memorandum is the December 7, 2007, Memo to Senators and staff on the Senate Paperless Initiative. Of relevance is the "Increased Public Access to the Legislative Process" found at 3-4 of Exhibit "B."[10] ROA 2 at 209-213. The Public is made aware of how to access documents and information on matters, including bills before the Legislature. Plaintiffs-Appellants' arguments as to the significance of the title in tracking a bill pales in comparison to the use of the website, registering for notification and the ability to do keyword searches. Note that Exhibit "C" and "D" to Defendant State of Hawai`i's Motion for Summary Judgment, contain descriptions of the Bill. ROA 1 at 77-83 and 84-86. It clearly states and informs the public that the bill has been amended. With the electronic technology available, this information would be immediately known to those who are interested, especially if they have availed themselves of the Real Simple Syndication ("RSS") which is attached the Legislature's Reply Memo as Exhibit "C." ROA 2 at 214-215.

In fact during the Constitutional Convention, Delegate Miyake addressed technology as follows:

> [I]t has been the procedure in the legislature that the motion for the passage on third reading includes the words "bill having been read throughout pass third reading." Now the words, or the phrase "having been read throughout" is used since we have now the modern technique of photostating our bills . . . Because of modern technical machinery, each bill on final reading, on third reading is on the desk of each legislator. Therefore, we go through the form of using the words "the bill having been read throughout pass third reading" or "pass final reading." And according to the interpretation of the Attorney General in the past, the inclusions of these words, "having been read throughout" is sufficient to meet the requirement of having the bill read.

II Proceedings of the Constitutional Convention of Hawaii of 1968, Committee of the Whole Debates at 170 (1973).

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[10] This Memo is available on the Legislature's Website, by clicking on to the Senate and the Archives at the bottom of the page. All steps of the initiative are accessible. The House of Representatives followed the Senate a few years later. The practice which the Senate established in 2007 is now common practice and most individuals who follow bills in the Legislature are able to receive notices of when the bills will be heard. The website is interactive and members of the public are able to do keyword searches, etc.

H. Standing Is An Issue of Justicibility.

The issue of standing can be raised *sua sponte*. The majority of this Court in the recent case of ***Tax Foundation of Hawai`i v. State***, 144 Hawai`i 175, 439 P.3d 127 (2019) (“***Tax Foundation***”) (which was decided two (2) months **after** the circuit court orally ruled on the motions which disposed of this case), spoke to “prudential concerns.” Specifically, the majority stated:

> Therefore, we preliminarily clarify that, in Hawai`i state courts, standing is not an issue of subject matter jurisdiction, but arises solely out of justiciability concerns based on prudential concerns of judicial self-governance, and is based on ‘concern about the proper-and properly limited-role of courts in a democratic society.”

Tax Foundation, 144 Hawai`i at 192, 439 P.3d at 144. The Chief Justice also stated:

> Because an “actual controversy” must be justiciable, each of these prudential rules, including standing, apply. As the Majority acknowledges, this provision “does not set out any actual standing requirements.” Opinion by McKenna, J. at 144 Hawai`i at 201, 439 P.3d at 153. Thus, it is up to the courts to determine whether prudential requisites, including standing, have been met, such that the matter constitutes an ”actual controversy” in which declaratory relief among other forms of relief may be awarded. Determining whether a plaintiff has “a personal stake in the outcome of the controversy.” See Reliable Collection Agency, Ltd. v. Cole, 59 Haw. 503, 510-11, 584 P.2d 107, 111 (1978) (“While we are not subject to the ‘case or controversy’ requirements of Article III of the United States Constitution, the prudential considerations which haven suggested in the federal cases on standing persuade us that a party should not be permitted . .. to enforce public law without a personal interest which will be measurably affected by the outcome of the case.”)

Tax Foundation, 144 Hawai`i 1at 212, 439 P.3d at 164.

What is the critical point in the concept of standing is its interrelationship with justiciability and the appropriate role of the Judiciary as a co-equal branch of government. In Hawai‘i courts, standing is solely an issue of justiciability, arising out of prudential concerns of judicial self-governance. As explained by Justice Nakamura in ***OHA v. Yamasaki***, 69 Hawai`i at 170-171; 737 P.2d at 455-456:

> Unlike the federal judiciary, the courts of Hawaii are not subject to a cases or controversies limitation like that imposed by Article III, § 2 of the United States Constitution. But like the federal government, ours is one in which the sovereign power is divided and allocated among three co-equal branches. Thus, we have taken the teachings of the Supreme Court to heart and adhered to the doctrine that the use of judicial power to resolve public

> disputes in a system of government where there is a separation of powers should be limited to those questions capable of judicial resolution and presented in an adversary context. And, we have admonished our judges that even in the absence of constitutional restrictions, they must still carefully weigh the wisdom, efficacy, and timeliness of an exercise of their power before acting, especially where there may be an intrusion into areas committed to other branches of government. (internal citations omitted)

Justice Nakamura could not emphasize enough the appropriate roles of the courts and how it should not render "advisory opinions." He also emphasized that the courts have a proper and properly limited role in the democratic society and warned the courts against intruding into areas reserved to the other branches of government.

Likewise in the prior decision of ***Schwab***, the Court also concedes that the threshold issue is whether it is "justiciable." ***Id.***, 58 Haw. at 37, 564 P.2d at 142-143. The Court reminds itself that:

> As a general rule, 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. We will not interfere with the conduct of legislative affairs in absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutionally guaranteed rights.

I. <u>Baker v. Carr Is The Dispositive Authority As To Political Question.</u>

The Legislature as *Amicus Curiae* requests leeway and permission to raise this argument. This is due to the fact that if the three-reading decision of the circuit court is not affirmed, the issue of who determines when and if three reading has been satisfied will be a political question which should not be addressed by this Court.

The discussion on what is a political question requires that, as in almost all courts, the adoption of the standard set forth in ***Baker v. Carr,*** 369 U.S. 186, 217, 82 S.Ct. 691, 710 (1962), as follows:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; **or** a lack of judicially discoverable and manageable standards for resolving it; **or** the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; **or** the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; **or** an unusual need for

> unquestioning adherence to a political decision already made; **or** the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
>
> Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence.

(emphasis added). Any one of the six criteria listed above would require dismissal because the complaint is non-justiciable. It is the Legislature's contention that its process is being challenged which the ***Constitution*** mandates that it adopts and enacts. The debates of the constitutional conventions require an adherence to the political decisions made by the Framers and the voters.

It is also noted that the circuit court stated that it is making its decision on only this case, the Legislature respectfully ask that this Court consider that a decision in favor of Plaintiffs-Appellants' Complaint would impact other Acts of the 2018 Legislature which this Court is without discoverable or manageable standards for their resolution.[11]

J. <u>Germaneness Is Not Required Under the Constitution.</u>

For almost half of their opening brief, Plaintiffs-Appellants make the argument on germaneness. It is important to note that the ***Constitution*** does not set forth in Article III the requirement that amendments be "germane." Plaintiffs-Appellants from pages 8-21 of their Opening Brief discuss germaneness but cannot point to any case on point. They cite to treatises but not to holdings of this Court on the issue. What complicates their argument is that Plaintiffs-Appellants concede that "[t]he State does not need to restart the readings every time there is any amendment." They then go on to say that if the substituted text is not germane to the text of the original bill, then the requisite three readings begin again. If their arguments are adopted, this

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[11] As set forth in footnote 5 of the Legislature's Amicus filed in the circuit court, this Court is also asked to take judicial notice of the fact that all Bills which became law (Acts) are in the public domain and listed as "2018 List of Acts" on the Legislature's Website, www.capitol.hawaii.gov/. A review of the bill titles that have become law or were enrolled, clearly supports the proposition that most titles are general or broad and would probably be considered unconstitutional by Plaintiffs. For example, there are: 7 Bills entitled "Relating to Health;" 4 Bills are "Relating to Environmental Protection;" 4 Bills are "Relating to Agriculture;" 4 Bills are "Relating to Taxation;" 3 Bills are Relating to the Environment" (1 Bill was vetoed), 3 Bills are "Relating to Education;" 3 Bills are Relating to "Medical Cannabis" (1 Bill vetoed), 3 Bills "Relating to Non General Funds," 2 Bills "Relating to Public Safety," 2 Bills "Relating the State Budget." There are other duplicative titles of Bills or general titles which are now laws in this State.

means the courts will be called upon to determine germaneness of bills. Plaintiffs-Appellants are relying on treatises and not the ***Constitution*** or authorities of this Court.

It is established law that the ***Constitution*** should be given its plain and ordinary reading. That is to say if the words are clear and unambiguous, they are construed as written. ***Watland v. Lingle, supra.*** Section 15 address three readings on separate days in each House. It does not state a requirement for germaneness, merely that it be read. This Court made clear in ***Taomae, supra***, that the decision was made based upon Haw. Const. article XVII and not article III. Thus, it is not an authority upon which Plaintiffs-Appellants can rely.

Again, the debates of the Constitutional Conventions referenced above, shows that the delegates debated the issue of the three readings and believed it could be completely changed and not require the three readings to begin again. All that would be required, for example, a bill amended and changed in the conference committee would be that it be printed and lay over for 48 hours before the final reading. This is the clear language of the ***Constitution.***

IV. CONCLUSION

The *Amicus Curiae* contends that what should be evident from the Constitutional Convention Debates and the reference in the ***Constitution*** to the words "law" and "reading" are what constitutes and satisfies these requirements before Act 84 (2018) was passed. The intent of the Framers was to leave it up to each chamber of the legislature. With technology as it was in 1968, the reference is to "photostating" was a statement by a Delegate Miyake that times were changing and the original need to "read" the bills so that the members knew what they were voting on is no longer required. In other words that fact that a printed version was available mooted whether it needed to be read throughout. This is why the requirement of Section 15, article III of the ***Constitution*** is as to "the form to be passed it shall have been printed and made available to the members of that house for at least forty-eight hours." There is no other requirement which states the bill to be read must be in the "form to be passed." As well, there is no requirement under Section 14 article III of the ***Constitution*** that the "law" must have a more detailed title. All that is required is that the bill law contain one subject and be covered by the title.

For the foregoing reasons, the Hawai`i State Legislature respectfully request that this Court:

1) Affirm the Circuit Court's decision in favor of Defendant-Appellee State of Hawai`i;

2) Alternatively this Court find the circuit court improperly rejected that separation of powers argument; and/or

3) Find that Plaintiffs-Appellants lacked standing to bring their action; and therefore this matter is non-justiciable.

DATED: Honolulu, Hawaii, March 10, 2020.

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NO. SCAP-19-0000372

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE Plaintiffs-Appellants, vs. STATE OF HAWAI'I, Defendant-Appellees.	CIVIL NO. 18-1-1376-09 GWBC APPEAL FROM: FINAL JUDGMENT FILED ON APRIL 3, 2019 CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII HONORABLE GARY WON BAE CHANG

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of the foregoing document was served on the following party(ies) electronically through JEFS:

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