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CAAP-19-0000372

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.

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

ON APPEAL FROM THE:
A) FINAL JUDGMENT, filed April 3, 2019

CIRCUIT COURT OF THE FIRST CIRCUIT

HON. GARY W.B. CHANG, Judge

STATE OF HAWAII'S ANSWERING BRIEF

CERTIFICATE OF SERVICE

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INTRODUCTION

Plaintiffs-Appellants League of Women Voters and Common Cause challenge S.B. No. 2858, 29th Leg., Reg. Sess. (2018),[1] as violating the "subject-in-title" and "three readings" requirements set forth in Article III, sections 14 and 15 of the State Constitution. Plaintiffs argue that the title of S.B. No. 2858, "a bill for an act relating to public safety," is not specific enough to satisfy the "subject-in-title" provision of section 14, even though this Court's longstanding precedent expressly instructs that "broad" bill titles are in constitutional compliance with section 14. They also argue that the evolution of S.B. No. 2858 into a hurricane safety-focused bill effectively transformed S.B. No. 2858 into a "new" bill, triggering anew section 15's requirement that every bill must receive three readings in each house prior to adoption.

In its amended final form, S.B. No. 2858 requires that "the State shall consider hurricane resistant criteria when designing and constructing new public schools for the capability of providing shelter refuge." (ICA 24 at PDF 92-93 [S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1 (2018)].) It is undisputed that the "relating to public safety" title of the bill encompasses the hurricane safety requirement. It is also undisputed that S.B. No. 2858, as identified by its bill number and title, received three readings in the Senate, and three readings in the House. It also received a final reading in each house, in its "final form." The record reflects that a public hearing was scheduled, and testimony accepted, after S.B. No. 2858 was first amended to set forth the hurricane safety requirement. No party or amicus to this case disputes any of this.

The Legislature has discretion to amend bills. This includes its discretion to "gut" the contents of pending bills, and to "replace" it with new language. The process of amending and changing bills is intrinsic to the law making process and, as such, Plaintiffs' challenge to this process is a challenge to the heart and foundation of our representative democracy. The very concept of separation of powers demands that our Legislature must have the discretion to perform its legislative functions without interference from other branches of government. In this case, the plain language and constitutional history of section 15, as well as the Rules of the Hawai‘i Senate and House of Representatives, all support our Legislature's understanding that "three readings" of a bill means three readings. That is, whatever amendments and changes are

[1] S.B. No. 2858, as amended, was enacted into law as Act 84. 2018 Haw. Sess. Laws Act 84, at 432-433. Plaintiffs ask the Court to declare Act 84 void, on grounds that the process for adopting Act 84 (i.e., the Legislature's passage of S.B. No. 2858) was unconstitutional.

made to a particular bill, as it wends its way through the legislative process, these changes do not reset the three readings requirement.

The above interpretation of section 15's "three readings" requirement fits hand in glove with the subject-in-title requirement set forth in section 14. The title of a bill must continue to embrace its subject *because* the legislative process contemplates that its content will change and evolve between the time it is introduced and the time it passes final reading. In interpreting compliance with section 14, this Court has long considered whether a bill's language bears "some relation" to its title, *not* whether the title is "too broad." Indeed, a bill's title should be broad enough to encompass whatever changes the Legislature, exercising its lawmaking function, may make to the content of the bill. This Court has long interpreted section 14 with due respect for our Legislature's ability to adopt amendments that are limited only by their continued relation to the original title of the bill. Plaintiffs' subject-in-title challenge thus asks this Court to overturn longstanding precedent that embodies a deep respect for, and adherence to, separation of powers principles.

As the record demonstrates, it is undisputed that the Legislature knew precisely what it was passing (i.e., the language of S.B. No. 2858 in its final form), and that the public had notice of, and the opportunity to testify on, S.B. No. 2858 after it first acquired a hurricane safety focus. The record reflects no evidence of confusion regarding the changes made to S.B. No. 2858. What the record *does* reflect is the Legislature's use of "gut and replace" to secure the timely passage of critically important public safety legislation. As the conference committee for S.B. No. 2858 explained, the final hurricane safety language was "essential" because "ensuring that state buildings are capable of withstanding extreme weather-related events and emergencies is essential for maintaining public welfare." (ICA 24 at PDF 95, 96 [Conf. Comm. Rpt. No. 93].)

For all the reasons discussed in this brief, S.B. No. 2858 is constitutional. This Court should thus affirm the circuit court's summary judgment in favor of the State.

STATEMENT OF THE CASE

I. Nature of the Case / Facts

S.B. No. No. 2858, "A Bill for an Act Relating to Public Safety," was introduced in the Senate on January 24, 2018. (ICA 24 at PDF 77 [S.B. No. 2858].) As it was originally introduced, S.B. No. 2858 added new sections to HRS chapter 353 (Corrections), to require the department of public safety to submit an annual report to the Legislature that tracked the rehabilitation and re-entry performance outcomes for individuals released from prison.[2] *Id.* at 77-83. The parties do not dispute that S.B. No. 2858's original prison rehabilitation reporting requirement relates to public safety. In this form, S.B. No. 2858 passed three readings in the Senate, and, upon crossing over, passed its first reading in the House. (ICA 24 at PDF 87-88 [Measure Status Rpt.].) These readings took place on January 24, 2018 (first Senate reading), February 9, 2018 (second Senate reading), March 6, 2018 (third Senate reading), and March 8, 2018 (first House reading). *Id.*

On March 15, 2018, the House Committee on Public Safety heard S.B. No. 2858, S.D. 2. *Id.*; ICA 24 at PDF 242-303. The Committee amended S.B. No. 2858, S.D. 2 by deleting its contents, and replacing them with the substantive provisions of H.B. No. 2452, H.D. 1, also titled "A Bill for an Act Relating to Public Safety." (ICA 24 at PDF 89, 90 [Stand. Com. Rep. No. 1255-18].) As amended, S.D. No. 2858, S.D. 2, H.D. 1, now required that State buildings constructed after July 1, 2018 include a hurricane shelter room.[3] (ICA 24 at PDF 84-85.) The Legislature accepted public testimony on S.B. No. 2858, S.D. 2, H.D. 1. (ICA 26 at PDF 59-62; 316-324.) The parties do not dispute that the hurricane shelter room requirement relates to public safety. S.B. No. 2858, S.D. 2, H.D. 1, passed second and third readings, and was transmitted to the Senate. (ICA 24 at PDF 87-88 [Measure Status Rpt.].)

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[2] S.B. No. 2858 required the department "to establish key performance indicators or measures to be incorporated in reports that evaluate the department's efforts to improve offender reentry and rehabilitation," and to "consolidate into one report other specified reports of the department of public safety." (ICA 24 at PDF 77, 78 [S.B. No. 2858].)

[3] S.B. No. 2858, S.D. 2, H.D. 1, added a new paragraph to HRS § 107-27, requiring that: "For state buildings constructed on or after July 1, 2018, the design of state buildings shall include a shelter room or area that is capable of protecting individuals from category 3 hurricanes. The new construction shall be consistent with standards issued in the Report of Recommended Statewide Public Hurricane Shelter Criteria, Hurricane Shelter Criteria Committee, State Civil Defense, June 24, 2014." (ICA 24 at PDF 84, 85.) The first sentence of S.B. 2858, S.D. 2, H.D. 1, was taken verbatim from H.B. No. 2452, H.D. 1 (2018).

The Senate disagreed with the House amendments, and a conference committee of House and Senate members met to confer. *Id.* The conference committee recommended that S.B. No. 2858, S.D. 2, H.D. 1, be amended, to delete the hurricane shelter room requirement, and to instead provide that the State must consider hurricane resistant criteria when designing and constructing new public schools. (ICA 24 at PDF 89-90 [Stand. Com. Rep. No. 1255-18]; ICA 24 at PDF 92-93 [S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1].) The parties do not dispute that the hurricane resistant design requirement relates to public safety. S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1 passed final reading in both the House and Senate on May 1, 2018, with all members voting "aye" in both chambers. (ICA 24 at PDF 87, 88 [Measure Status Rpt.].)

The bill S.B. No. 2858, titled relating to public safety, thus received three readings in the Senate, and three readings in the House, with a final (post-conference committee) reading in each house following forty-eight hours notice of S.B. No. 2858 in final form. *Id.* On May 1, 2018, the Senate President and Clerk of the Senate, and the Speaker of the House of Representatives and Chief Clerk of the House of Representatives certified that S.B. No. 2858 passed final reading in their respective Houses. (ICA 24 at PDF 99-100.) S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1 was then transmitted to the Governor on May 3, 2018, and was signed into law as Act 84 on June 29, 2018. (ICA 24 at PDF 88, 88 [Measure Status Rpt.]; 2018 Haw. Sess. Laws Act 84 at 432-433.)

II. Proceedings Below

Plaintiffs League of Women Voters of Honolulu, and Common Cause filed their Complaint on September 5, 2018, in the State First Circuit Court. (ICA 24 at PDF 14 [Compl.].) Plaintiffs' Complaint challenges the Legislature's "gut and replace" practice as "abhorrent to basic principles of democracy and unconstitutional under article III, sections 14 and 15 of the Hawai‘i Constitution." *Id.* Plaintiffs' Complaint set forth two counts. Count 1 alleged that the title of S.B. No. 2858, relating to public safety, "is an unconstitutionally broad title for legislation," in violation of article III, section 14. (ICA 24 at PDF 19.) Count 2 alleged that "the hurricane shelter version of S.B. No. 2858 did not have three readings in the Senate," in violation of article III, section 15. (ICA 24 at PDF 20.) Plaintiffs thus asked the court to enter an order declaring that "(1) the process for adopting Act 84 was unconstitutional; and (2) Act 84 is void." (ICA 24 at PDF 21.)

Defendant State of Hawai‘i filed its Answer to Plaintiffs' Complaint on September 26, 2018 (ICA 24 at PDF 25), and moved for summary judgment on October 9, 2018 (ICA 24 at

PDF 33). In its motion, the State argued that the title of S.B. No. 2858 is not unconstitutionally overbroad, and that S.B. No. 2858 received three readings in the House and three readings in the Senate. The State also argued that the separation of powers doctrine precludes courts from interfering with the Legislature's passage of bills. *Id.*

Plaintiffs filed their own cross-motion for summary judgment on October 25, 2018, which also served as its memorandum in opposition to the State's motion for summary judgment. (ICA 24 at PDF 157.) Plaintiffs argued that Act 84's passage did not satisfy the section 15 "three readings" requirement, and the section 14 "subject-in-title" requirement. *Id.* Plaintiffs also set forth their own policy arguments. In its opposition to Plaintiffs' cross-motion, the State additionally argued that Plaintiffs lack standing to challenge the constitutionality of S.B. No. 2858 and the Legislature's use of "gut and replace" in its passage of that law. (ICA 26 at PDF 48, 49-55.)

In November 2018, the Hawai‘i Legislature, represented by Colleen Hanabusa, filed its motion for leave to appear as *amicus* and file a memorandum in support of the State's motion for summary judgment. (ICA 24 at PDF 366.) The State joined the Legislature's motion. (ICA 26 at PDF 8.) Plaintiffs opposed the motion. (ICA 26 at PDF 12.) The circuit court heard the motion in December 2018, and granted the Legislature leave to appear.[4] (ICA 22 [Tr., Dec. 19, 2018].) The Hawai‘i Legislature filed its amicus memorandum in December 2018. (ICA 26 at PDF 64.) Plaintiffs filed their response in January 2019 (ICA 26 at PDF 136), to which the Legislature filed a reply (ICA 26 at PDF 197).

After hearing argument, the circuit court granted the State's motion for summary judgment on April 3, 2019. (ICA 26 at PDF 226.) In its Order, the court upheld the constitutionality of S.B. No. 2858 (and thus Act 84) on the following grounds:

1. There was no violation of the Hawai‘i Constitution with respect to the three readings. Based on sections 617 and 722 of *Mason's Manual of Legislative Procedure* (2010 rev. ed.), the 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.

[4] Although the circuit court's Order granting leave was filed on March 15, 2019, leave to file the amicus brief was granted at the hearing on December 19, 2018. (ICA 26 at PDF 217 [Order]; ICA 22 [Tr., Dec. 19, 2018].)

2. 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. There was no constitutional violation based on the title. 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. The court found no legal authority to overrule that process and conclude that that was an unconstitutional change.

(ICA 26 at PDF 227.)[5]

The circuit court denied Plaintiffs' cross-motion for summary judgment. (ICA 26 at PDF 227.) It filed its final judgment on April 3, 2019.[6] (ICA 26 at PDF 224.)

Plaintiffs filed their notice of appeal on May 2, 2019. (ICA 26 at PDF 221.)

III. Relevant Constitutional Provisions

The following provisions of article III of the Hawai‘i Constitution are relevant to this appeal:

Section 14 states, in pertinent part,

> No law shall be passed except by bill. **Each law shall embrace but one subject, which shall be expressed in its title.**

Haw. Const. art. III, § 14 (emphasis added).

Section 15 states, in pertinent part,

> **No bill shall become law unless it shall pass three readings in each house on separate days.** 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 members of that house for at least forty-eight hours.

Haw. Const. art. III, § 15 (emphasis added).

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[5] The circuit court also rejected the State's alternative standing and separation of powers arguments:

3. The court has no issue regarding Plaintiffs' standing. They are organizations that are dedicated to ensure [sic] integrity in the legislative process, and that is what this case is about.
4. Defendant State of Hawaii's separation of powers argument is rejected. The court has the power to adjudicate the constitutional validity of statutory enactments.

(ICA 26 at PDF 228 [Order].)

[6] The State points out that the circuit court's April 3, 2019 Order granting the State's motion for summary judgment (ICA 26 at PDF 226), April 3, 2019 Order denying Plaintiffs' cross-motion for summary judgment (ICA 26 at PDF 229), and April 3, 2019 Final Judgment (ICA 26 at PDF 224) are only in the record as exhibits to Plaintiffs' notice of appeal. While the State believes that Plaintiffs' exhibits represent true and correct copies of the order and judgment, they were not included in the record as stand-alone filings. It is Plaintiffs-Appellants' duty to perfect the record.

STANDARD OF REVIEW

The Hawai‘i appellate courts review questions of constitutional law *de novo*, under the right/wrong standard. *Hussey v. Say*, 139 Hawai‘i 181, 185, 384 P.3d 1282, 1286 (2016).

ARGUMENT

I. Framework For Review

The underlying issue in this case is whether the Legislature's passage of S.B. No. 2858, and the resulting enactment of Act 84, is in constitutional compliance with article III, sections 14 and 15 of the State Constitution. Plaintiffs are thus bringing a constitutional challenge to an enacted State law. While it is within this Court's jurisdiction to review the constitutionality of State statutes, it must do so within the well-established governing framework.

First, this Court must start with the presumption that Act 84 is constitutional. It is Plaintiffs' burden to overcome this presumption, by showing that Act 84 is unconstitutional beyond a reasonable doubt. *Schwab v. Ariyoshi*, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977). That is, Plaintiffs themselves must show that the constitutional infraction is "plain, clear, manifest, and unmistakable." *Id.* This is an extraordinarily high burden. It reflects the fact that lawmaking is within the bailiwick of the Legislative Branch, and that a State statute should not be stricken as unconstitutional absent an overwhelming showing that the statute in fact violates clear constitutional mandates.

Second, Plaintiffs' challenge is limited to the constitutionality of Act 84. The overarching question of whether the legislative practice of "gut and replace" is unconstitutional in all of its potential applications is a non-justiciable political question. The separation of powers doctrine limits this Court's ability to interfere with the Legislature's authority to make law. *Pray v. Judicial Selection Com'n of State*, 75 Haw. 333, 353, 861 P.2d 723, 732 (1993) (separation of powers doctrine "is intended to preclude a commingling of . . . essentially different powers of government in the same hands and thereby prevent a situation where one department would be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments") (citation omitted). It limits this Court's review to whether the process of enacting Act 84 (through the Legislature's passage of a specific bill, *S.B. No. 2858*), violated the "subject-in-title" and "three readings" rules. That is, this Court's jurisdiction is limited to review of whether S.B. No, 2858's passage is in compliance with the plain language, constitutional history, and Hawai‘i Supreme Court precedent interpreting sections 14 and 15.

To the extent that Plaintiffs ask this Court to define the scope of legislative authority to amend bills – i.e., to provide guidelines as to what constitutes permissibly "germane" amendments – Plaintiffs ask this Court to overstep the boundaries of its judicial role. A judicial

determination of how much the Legislature can change a bill is, by definition, a non-justiciable political question that must be reserved to the Legislature:

> **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.

Trustees of Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 170, 737 P.2d 446, 455 (1987) (emphases added). This Court cannot create arbitrary boundaries regarding the scope and parameters of bill amendment without interfering with the Legislature's discretion, and its authority to appropriately control its own political branch of government.

The Court's role in this case is thus clearly limited to determining the constitutionality of S.B. No. 2858's passage. This Court must go no further than to make this constitutional inquiry.

II. S.B. No. 2858's Passage Does Not Violate the Article III, Sec. 15 "Three Readings Rule"

S.B. No. 2858's passage clearly complies with Article III, Section 15's requirement that each bill must receive three readings in each house. This Court should thus affirm the circuit court's correct finding that it does.

A. S.B. No. 2858's Passage Is Compliant With the Plain Language Of Article III, Sec. 15

Article III, section 15 of the State Constitution reads, in pertinent part:

> **No bill shall become law unless it shall pass three readings in each house on separate days.** 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.

Id. (emphasis added).

If the Framers of our State Constitution had intended for a significant bill amendment to trigger an additional round of three readings in each house, they would have said so. *Pray v. Judicial Selection Com'n of State*, 75 Haw. 333, 341, 861 P.2d 723, 727 (1993) ("if the words used in a constitutional provision are clear and unambiguous, they are to be construed as written"). Instead of saying that passage of a bill requires "three readings in each house on separate days," our Constitution might say, as Pennsylvania's Constitution does, that "no bill

shall be so altered or amended, on its passage through either House, as to change its original purpose." Pa. Const. art. III, § 1.[7] Or it might say, as article IV, § 24 of the Michigan Constitution does, that "No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title." Mich. Const. art. IV, § 24. Or that, as article III, § 2(A) of the Louisiana Constitution did, prior to its amendment in 1994, that "No new matter intended to have the effect of law shall be introduced or received by either house after midnight of the fifteenth calendar day, except by a favorable record vote of two-thirds of the elected members of each house." La. Const. art. III, § 2 (1990, amended in 1994).

Section 15 provides no indication whatsoever that any amendment, or change to a bill, will "reset" the three readings process and trigger the need for an additional three readings in each house. Rather, the plain language of section 15 contemplates that each bill must be given three readings in each house, with an additional "final form" reading (assuming changes made after crossover or in conference committee).

The fact that S.B. No. 2858 received three readings in each house, plus a final reading following forty-eight hours notice of its final form, is entirely enough to satisfy section 15. Nothing in section 15 suggests that a significant change to S.B. No. 2858's content would require an additional three readings, and this Court has no basis for inferring this intent into the Constitution.[8] *Hanabusa v. Lingle*, 105 Hawai‘i 28, 31, 93 P.3d 670, 673 (2004) ("[T]he fundamental principle in interpreting a constitutional provision is to give effect to [the Framers'] intent. This intent is to be found in the instrument itself.")(citation omitted). The Legislature has plenary power to legislate, and "may enact any laws that state or federal constitutions do not prohibit." *Mason's Manual of Legislative Procedure*, § 7, para. 3 (2010 ed.). This Court thus need not go any further than the plain language to reach this holding.

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[7] The Pennsylvania Supreme Court's interpretation of Pennsylvania Constitution, article III, § 1, and the separate "three readings" requirement set forth in article III, § 4, is discussed *infra* at sec. IV.A.

[8] Indeed, this Court has never held the "three readings" requirement to mean that a change to the language of a bill to pass a law must or should restart the legislative process. Any reliance Plaintiffs place on *Taomae v. Lingle*, 108 Hawai‘i 245, 118 P.3d 1188 (2005), is entirely misplaced. In *Taomae*, the Hawai‘i Supreme Court, recognizing that "provisions of our Constitution are of a higher order of law than statutes," held that a proposed *constitutional amendment* must be read three times in each house, in the form of a constitutional amendment, in order to be validly adopted. *Id.* at 252-54, 118 P.3d at 1195-97 (citation omitted).

B. S.B. No. 2858's Passage Is Compliant With the Constitutional History of Section 15 And the Framers' Intent That Each Bill Be Read *Three Times* In Each House

As Plaintiffs themselves acknowledge, the Hawai‘i appellate courts "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." (Open. Br. at 7, *quoting Mauna Kea Anaina Hou v. Bd. of Land and Natural Resources*, 136 Hawai‘i 376, 407, 363 P.3d 224, 255 (2015)). The complete constitutional history of section 15 demonstrates the Framers' intent that changes to S.B. No. 2858 will not reset the "three readings" requirement.

The three readings provision was adopted as part of the 1950 State Constitution. *See* Section 16[9] of the 1950 State Constitution, ratified on March 18, 1959, and effective August 21, 1959 ("No bill shall become law unless it shall pass three readings in each house, on separate days.") The history of the 1950 Constitution does not provide any particular insight as to the Framers' thoughts regarding the permissible scope and extent of a bill's amendment during the legislative process.

The history of the 1968 Constitution is more informative.[10] The 1968 State Constitution modified the three readings provision through the inclusion of a second sentence that referenced the "Form To Be Passed" in the context of a bill's final reading. This new language implicitly contemplates that bills will be amended during the legislative process, and thus seeks to ensure that the Legislature has adequate time to review each bill in its *final form* prior to passage. *See* Haw. Const. art. III, § 16 (1968) ("No bill shall pass final reading in each house unless in the form to be passed it shall have been printed and made available to the members of that house for

[9] The "three readings" provision was contained in section **16** of the State Constitution until 1978, when section 16 was renumbered as section 15.

[10] Contrary to Plaintiffs' suggestion (open. br. at 9, n.5), the 1968 constitutional history is relevant to this Court's interpretation of section 15's three readings requirement. The delegates to the 1968 Constitutional Convention were tasked with reconstituting the State Constitution. The decision of the 1968 Framers to adopt the three readings provision, substantively intact from the 1950 Constitution, was an independent decision made within the scope of their role as convention delegates. Moreover, as explained *infra*, the additional "twenty-four hour" notice requirement modifies the three readings requirement; the history that explains the intent underlying Framers' twenty-four hour notice requirement is therefore relevant to interpreting the three readings requirement itself.

at least twenty-four hours."). The very references to a "final reading" of a bill "in the form to be passed" contemplates that it may be amended and changed during the legislative process.

As explained by Standing Committee report, the requirement of a mandatory notice period, prior to a bill's third or final reading, was meant to provide legislators with the time they needed to review bills *in their final form*:

> "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 made by the other, and the form in which a bill is passed by both houses after conference on a bill. **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.**

Stand. Comm. Rpt. No. 46 in 1 Proceedings of the Constitutional Convention of Hawaii of 1968, at 216 (1973) (emphasis added).

Several exchanges on the debate floor further elucidate the 1968 Framers' intent that the "final form" notice requirement would provide legislators with sufficient time to review amended legislation without any need for an additional three readings:

First, Convention Delegate Hung Wo Ching, Chair of the Committee on Legislative and Powers that proposed the "final form" amendments to section 16, expressly acknowledged that bills may be "substantially changed" during the legislative process, and that it is the advance notice to both houses of a bill's "final form," that ensures that the Legislature and public will know what is being passed:

> **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 proposed bill will require that a bill be printed in its final form and be made available to the legislators and to the public for a least 24 hours before final passage.**

Comm. of the Whole Debates in 2 Proceedings of the Constitutional Convention of Hawaii of 1968, at 145 (1972) (emphases added).

Second, an exchange between Delegate Charles E. Kauhane and Delegate Donald Ching clarified the Committee's understanding that even a significant change to the language of a bill would not require three additional readings,

> DELEGATE KAUHANE: . . . My next question, 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 [sic], 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 lay on the table for 24 hours or be made available to the members and the public for 24 hours before either house can act on it. That's the only change.** As to what is substituted or what will happen in there, there will be no change as from the present procedure.

Id. at 145-146 (emphases added).

Third, Delegate Kauhane expressly identified that providing legislators with adequate time to consider an amended bill's "final form" (*not* an additional three readings) constituted the constitutionally necessary safeguard:

> DELEGATE KAUHANE: . . . I'm for the principle of a bill having been reported out of the committee on third reading lay on the table for 24 hours. . . .
>
> The most important thing comes to third reading of the bill. **When the bill comes out of the committee, we send an elephant into the committee in the first instance**. The committee reports the bill entirely new in concept, not the changing of one figure when appropriation of dollars are needed, but a whole complete change with the contents in which the bill was originally introduced may contain one page. That bill comes out either 14 or 10 pages, different than the original. The committee recommends that the bill pass third reading in its amended form. You may have intended to request consideration of the matter of the caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill. . . .
>
> **[The 24 hour requirement is intended] to plug that loophole and to make sure that all of these actions undertaken by the legislature are legal and beyond any question of doubt have met the conditions under which those are to be considered, first, second and third reading.**

Id. at 168-169 (emphases added).

The constitutional history thus fully supports a natural reading of section 15: that a bill must receive three readings in each house, and a "final reading" after forty-eight hours[11] notice to the legislature of its "form to be passed."

C. S.B. No. 2858's Passage Is Compliant With the House and Senate Rules That Require "Three Readings" By Title, and Forty-Eight Hours Notice of A Bill "In The Form To Be Passed"

Article III, section 12 of the State Constitution instructs that "[e]ach house shall . . . determine the rules of its proceedings." Pursuant to this express constitutional authority, the Senate and House have each adopted their own rules governing the three readings process. In particular, the Legislature's rules set forth two requirements that, consistent with the plain language and constitutional history discussed *supra,* eliminate the need for three new readings to consider amendments: (1) each bill may be "read" by its identifying title only, such that this title identifies the bill throughout the legislative process;[12] and (2) prior to the third or final reading of a bill, legislators must be given forty-eight hours notice of the bill's "final form," identifying the third *or* final reading of a bill as the critically important reading.

The application of the above three readings rules to S.B. No. 2858's passage ensured that everyone knew precisely which version of S.B. No. 2858 passed final reading in both houses:

- **S.B. No. 2858 received three readings in the Senate.** S.B. No. 2858 was introduced on the Senate side in its prisoner rehabilitation and reporting form. (ICA 24 at PDF 77.) It

[11] The 1968 Constitution adopted a 24 hour "final form" notice period. That period was extended to 48 hours in the 1978 Constitution to add "a full day to the bill-review period prior to final reading." Comm. of the Whole Debates in 2 Proceedings of the Constitutional Convention of Hawaii of 1978, at 278 (1980).

[12] Pursuant to the Rules of the House of Representatives, Rules 34-36, all three readings of a bill may be by "title only." (ICA 24 at PDF 73-74 [House Rules 34-36]). Pursuant to the Rules of the Senate, Rules 48-50, the first Senate reading of a bill is "for information," with the second and third readings permissibly being by "title only." (ICA 24 at PDF 65-66 [Senate Rules 48-58].) *See also Mason's Manual of Legislative Procedure*, § 720, para. 4, "A reading of a bill by title is considered a reading of the bill, unless it is specifically required by the constitution that the bill be read at length or in full."

In addition to authorizing the Legislature to adopt its own procedural rules, the Framers of the 1968 Constitution specifically recognized that the reading of a bill by title on third reading would suffice. As Delegate Miyake explained: "The constitutional provision as proposed by the committee on Section 16 does not state that the bill has to be read throughout. Therefore, it would be permissive for the legislative bodies [to] provide the requirements as to how final reading will be interpreted in its own house or senate rules." Comm. of the Whole Debates in 2 Proceedings of the Constitutional Convention of Hawaii of 1968, at 145 (1972).

received three readings in the Senate, and proceeded to cross over to the House in this form. (ICA 24 at PDF 87.)

- **S.B. No. 2858 received three readings in the House.** After its first House reading, S.B. No. 2858 was referred to the House Committee on Public Safety. The committee, after hearing testimony, chose to "delete" its original language and "insert" new language requiring hurricane "shelter rooms" in new State buildings. (ICA 24 at PDF 89-90 [Stand. Com. Rep. No. 1255-18].) It passed out of committee in this form, and passed its second and third House readings by its title. (ICA 24 at PDF 87-88.)
- **S.B. No. 2858 was read by both houses in its "final form."** Upon S.B. No. 2858's third House reading, the Senate noted its disagreement with S.B. No. 2858's hurricane shelter amendments, and a conference committee met to confer. (ICA 24 at PDF 87, 88.) The conferees from both houses recommended that S.B. No. 2858 be passed, with further amendments, establishing a requirement "that the State should consider relevant hurricane resistant criteria when designing and constructing new public schools for the capability of providing shelter refuge." (ICA 24 at PDF 95, 96 [Conf. Com. Rep. No. 93-18].). S.B. No. 2858, S.D. 2, H.D. 1, C.D. 1, was made available to the Senate and House forty-eight hours prior to its final reading and passed its final reading in both the Senate and House. (ICA 24 at PDF 87, 88.)

The procedural history of S.B. No. 2858 demonstrates that its passage clearly complied with the constitutionally authorized House and Senate rules that safeguard an informed legislative process.

D. S.B. No. 2858's Passage Is Consistent With Other Sections of Article III

Plaintiffs argue that material amendments or changes to S.B. No. 2858's content will "interfere" with other sections of article III of the State Constitution, namely those provisions establishing a bill introduction deadline, mid-session recess, and final printing requirement. Haw. Const. art. III, §§ 10, 12, and 15. To the contrary, a natural reading of these other provisions further evidences the Framers' intent that article III represents the framework within which the Legislature must have discretion to freely amend bills, without having to start the process anew.

Article III, section 12 establishes a deadline for the introduction of bills during a legislative session. "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." *Id.* This provision furthers the goal of "deliberative, open, and rational legislative process" (*see* Open. Br. at 14), by creating a finite universe of bills that may be tracked, during the legislative session, by bill number. It also precludes Plaintiffs' interpretation that an amendment to a bill creates a "new bill." This Court's treatment of the amended S.B. No. 2858 as a "new bill" would run afoul of section 12's bill introduction deadline, making it impossible for the Legislature to materially amend *any* bill during session without violating the strict deadline for introducing a "new" piece of legislation. This cannot be what the Framers intended, and would severely restrict the Legislature's authority, as a co-equal branch of government, to properly perform its law-making functions.

Article III, section 10 provides that "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." Haw. Const. art. III, § 10. This requirement provides the Legislature with additional time to review the current language of bills that are still pending at mid-session. The very timing of this mandatory recess contemplates that the language of bills will evolve and change throughout the session. The legislative bill-making process is not static. Thus, section 10 also furthers the goal of "deliberative, open, and rational legislative process" by ensuring that both houses have adequate time to consider pending bills in their mid-session form.

Finally, article III, section 15 sets forth what Plaintiffs characterize as the "final printing requirement," that "[n]o 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." *Id.* As discussed *supra*, this requirement complements the three readings rule, by explaining why the Legislature will have adequate notice of the "final form" of each bill prior to its third (or final, if the bill is amended after crossover or in conference committee) reading in the Senate and House.

Contrary to Plaintiffs' suggestion, article III's bill introduction deadline, mid-session recess, and final printing requirement all operate in tandem to ensure that the Legislature will have adequate time to review each bill, throughout the entire process of its introduction, amendment, and, most critically, in its final form prior to third or final reading. Plaintiffs do not ever contend that the passage of S.B. No. 2858 violates the above article III safeguard

provisions. Indeed, these provisions helped to ensure the Legislature's informed passage of S.B. No. 2858.

E. The Legislature's Amendment of S.B. No. 2858 Is But One Example of Longstanding Legislative Practice That Is Not Unique To Hawai‘i

Plaintiffs' opening brief unjustifiably assumes the Hawai‘i Legislature's deceptive or nefarious intent in "gutting" S.B. No. 2858's prison rehabilitation reporting language, and "replacing" it with hurricane safety language. This inferred intent is entirely unsupported by the record. And it is further discredited by longstanding Hawai‘i legislative practice. The Hawai‘i Legislature often makes significant alterations to the language of bills in order to protect the Hawai‘i public, and to fulfill its duty of ensuring that critical legislation is timely passed.

During the Legislature's last session, for example, H.B. No. 1586 (2019), a bill relating to the structure of government, evolved from a bill creating a new State department of the environment, into a bill that, in its final form, established a new Aloha Stadium development district.[13] H.B. No. 1586, 30th Leg. Reg. Sess. (2019); H.B. No. 1586, H.D. 1, S.D. 2, C.D. 1, 30th Leg. Reg. Sess. (2019); 2019 Reg. Sess. Haw. Sess. Laws Act 268 731-734. This bill illustrates the importance of legislative discretion to amend and change bills. Like S.B. No. 2858, H.B. No. 1586 passed through one house (here, the House of Representatives) largely intact, but was substantially changed after crossing over to the Senate. As amended, H.B. No. 1586, H.D. 1, S.D. 2, set forth the purpose of the Act as being "to establish the stadium development district, which includes all state property under the jurisdiction of the stadium authority, under the jurisdiction of the Hawaii community development authority to expedite the redevelopment of Aloha stadium and the property around it to bring economic development to an area that is in need of renewal, renovation, and improvement."

The testimony submitted on H.B. No. 1586, as amended, reflects the important purposes underlying the bill's new language. As the University of Hawai‘i testified, the stadium redevelopment bill was a "means to resolve the stadium's condition." *See* https://www.capitol.

[13] The State asks this Court to take judicial notice of H.B. No. 1586, 30th Leg. Reg. Sess. (2019). H.B. No. 1586 and its legislative history are public record documents available at https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1586&year=2019 (last visited Nov. 13, 2019). This Court has discretion to take judicial notice of "matter[s] of public record" that are "easily verifiable." *Williams v. Aona*, 121 Hawai‘i 1, 11, n.6, 210 P.3d 501, 511, n. 6 (2009).

hawaii.gov/Session2019/Testimony/HB1586_SD1_TESTIMONY_EET-GVO-WAM_04-04-19_.PDF (last visited Nov. 13, 2019). It also furthered, as the Chamber of Commerce of Hawai‘i pointed out, the "optimal use of public lands for the economic, residential, educational, and social benefit of the people of Hawaii." *Id.* The legislative history of H.B. No. 1586 reflects that few submitted testimony substantively challenging the stadium redevelopment language of the bill.[14] Indeed, the weight of the testimony supporting H.B. No. 1586's stadium redevelopment focus demonstrates the importance of legislative discretion to amend and change bills. It also demonstrates the importance of the bill amendment process to Executive Branch agencies, and non-governmental entities and organizations. As the history of H.B. No. 1586 demonstrates, the ability to "gut and replace" has enabled the Legislature to pass important legislation in a timely manner, and with the benefit of meaningful public comment. Any holding that undercuts this ability would effectively prevent the Legislature from performing its critical law-making function.

Hawai‘i is not unique in allowing "gut and replace." Other jurisdictions also allow legislative bodies to materially amend bills, without the need for those amended bills to return to square one. To provide but one famous example, President Obama's signature legislation, the Affordable Care Act (ACA) or "Obamacare," began as a bill that provided military service members, who became first-time home owners, with a tax credit that enabled them to sell their home within three years of purchase without financial penalty.[15] H.R. 3590, 111th Cong., 1st Sess. (2009). For complex political reasons, that bill was transformed into health care reform legislation, during the legislative process, finally becoming what we know of as the ACA. H.R. 3590, 111th Cong., 2nd Sess. (2009). What is arguably the most famous piece of federal legislation in recent years was thus a product of "gut and replace." But it is rarely characterized

[14] The City and County of Honolulu's Department of Planning and Permitting submitted testimony that substantively opposed H.B. No. 1586's stadium redevelopment district form. The League of Women Voters opposed the stadium redevelopment district changes made to H.B. No. 1586, but on non-substantive procedural grounds.

[15] The federal procedure by which Congress carries out its law-making function is different from Hawaii's legislative procedure. The point, however, is that critically important pieces of federal legislation, such as the ACA, have been enacted using a form of "gut and replace."

that way,[16] perhaps due to a widespread acceptance (as described in *Mason's Manual*, *supra*) that legislative bodies have discretion to materially amend bills (without the need to "start over") and the universal respect for a legislative body's constitutionally derived law-making function.

As the above examples illustrate, a holding that restricts our Legislature's ability to amend its bills would severely handicap its ability to pass laws necessary to protect the health, safety, and welfare of the public. And it would be wholly contradictory to this Court's respect for legislative discretion and separation of powers.

III. There Is No Constitutional Requirement That Amendments Made To S.B. No. 2858 Must Be "Germane" to the Original Text of the Bill As Introduced

Plaintiffs argue that S.B. No. 2858 failed to satisfy section 15's three readings requirement because the changes made to this bill were not "germane" to the bill's original language. Under Plaintiffs' flawed theory, the "non-germane" changes made to S.B. No. 2858 effectively created a "new bill," triggering the need for an additional three readings in each house. There are three key reasons why Plaintiffs' "germaneness" argument fails: (1) the plain language and constitutional history of section 15, and the Legislature's rules, say *nothing* about an amendment of a bill needing to be germane to the bill's original language; (2) to the extent that an amendment must be "germane," it must be germane to the bill's subject-in-title, which is clearly the case here; and (3) important policy considerations counsel against defining "germaneness" in relation to the original language of a bill.

A. Plaintiffs Provide No Adequate Legal Support for Their Proposition that Any Amendment to S.B. No. 2858 Needed to Remain "Germane" to Its Original Language

As explained *supra*, the plain language and constitutional history of section 15, and the Hawai‘i Legislature's own constitutionally authorized rules, required a total of three readings of S.B. No. 2858 in each house. The text of section 15 does not use the word "germane," nor does it indicate in any way that a "non-germane" amendment to S.B. No. 2858 triggered the need for three additional readings in each house.

Plaintiffs' heavy reliance on a Pennsylvania case, *Washington v. Dept. of Public Welfare*, 188 A.3d 1135 (Pa. 2018), is misplaced. In *Washington*, the Pennsylvania Supreme Court held that Pennsylvania's own three readings provision requires three readings in each house of bill

[16] Indeed, when the ACA was challenged, it was not on gut and replace grounds. *NFIB v. Sebelius*, 567 U.S. 519 (2012) (holding that the ACA individual mandate exceeded Congress' power under the Commerce Clause, but was a "tax" within Congress' taxing powers).

language that is germane to the bill's "original subject." *Washington* is distinguishable because (1) the Pennsylvania Supreme Court reached this interpretation based on the language and history of its own State Constitution, and its own prior interpretation of its three readings rule; and (2) the decision was at least partially informed by the Pennsylvania Constitution's explicit provision that "no bill shall be so altered or amended, on its passage through either House, as to change its original purpose." Pa. Const. art. III, § 1. Unlike the Pennsylvania Constitution, the plain language of our State Constitution does not require that amendments or changes to a bill must be "germane" to the bill's original purpose.[17]

The Hawai‘i Legislature's interpretation of "three readings" is consistent with *Mason's Manual of Legislative Procedures* (2010 ed.),[18] which neatly sums up the common parliamentary understanding that "[t]he 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." *Id.* at § 722, para. 1. Moreover, "[w]hen 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 provision 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." *Id.* at § 722, para. 2.

B. "Germaneness" Is Properly Measured In Relation to A Bill's "Subject-In-Title"

Even assuming that article III, section 15 integrates an unspoken "germaneness" requirement, the amendments made to S.B. No. 2858 *are* properly germane. They are germane to the subject-in-title of the bill. *See*, *infra*, at sec. V. Thus, the final form of S.B. No. 2858 clearly remained "on topic," and Plaintiffs' argument fails for this additional reason.

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[17] Also misplaced is Plaintiffs' reliance on several out-of-context quotes taken from Thomas Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* (Walter Carrington ed., 8th ed. 1927), Earl T. Crawford, *The Construction of Statutes* (1940), and *Giebelhausen v. Daley*, 95 N.E. 2d 84, 94 (Ill. 1950). To the extent that these sources define "germane" as related to the language or subject matter of the original bill, they define that term inconsistently with how this Court has defined it. *See*, *infra*, sec. IV.B.

[18] The Hawai‘i Senate and House rules generally incorporate the provisions of *Mason's Manual of Legislative Procedure* (2010 ed.) into their respective rules. *See* Rules of the Senate (2017-18), Rule 88 (providing that "Mason's Manual of Legislative Procedures, 2010 edition, where not inconsistent with the Rules and practices of the Senate, shall govern."); Rules of the House of Representatives (2017-18), Rule 59 ("Mason's Manual of Legislative Procedure, 2010 Edition, is hereby designated as the adopted parliamentary authority of the House.").

In *Territory v. Kua*, 22 Haw. 307, 313 (Haw. Terr. 1914), the Territorial Supreme Court of Hawai‘i explained that an amendment is germane if it is "the tendency of the provision to promote the object and purpose of the act to which it belongs." *Id.* In *Kua*, the Court held that an act containing a proviso relating to the payment of personal and property taxes was not "related to, nor allied with, *the subject expressed in its title*," i.e., relating to the issuance of licenses. *Id.* at 307 (emphasis added). That is, "[t]he addition of the proviso requiring the payment of all taxes due from the applicant for the license is a new and independent matter, disconnected from the question as to who shall issue the license, and, therefore, is not germane to the subject of the act" as reflected in its title. *Id.* at 307.

Kua's instruction that a bill's amendment must remain faithful to its subject-in-title is consistent with *Mason's Manual*'s observation that, pursuant to common parliamentary understanding, a legislative body may substitute an "entire measure . . . for another," or adopt a "substitute version" of a bill, as long as the substitution remains germane to a bill's subject-in-title:

> **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. at § 617, para. 1 (emphasis added).[19]

Other jurisdictions have also defined "germane" in relation to the subject-in-title of legislation. *See, e.g.*, *D.M.C. Corp. v. Shriver*, 461 S.W.2d 389, 392 (Tenn. 1970)(agreeing that "on third and final reading a bill can be amended to any extent, even to striking the body of the bill and substituting the amendment therefore so long as the amendment is germane to and within the scope of the title"); *Common Council of City of Detroit v. Schmid*, 87 N.W. 383, 385-86 (Mich. 1901) (collecting cases that "uphold the general doctrine that, where the amendments are germane to the general objects stated in the title to the original bill, such amendments are valid").

[19] To the extent other sections of *Mason's Manual* obliquely measure germaneness in relation "to the same subject" (§ 402, para. 3), or "to the main purpose of the original proposal" (§ 402, para. 4), or "to the original purpose of the bill" (§ 616, para. 3), those sections must be read within the context of Hawaii's longstanding precedent that "germane" amendments are those that remain faithful to a bill's "subject-in-title." *See Kua*, 22 Haw. at 313.

The changes made to S.B. No. 2858 are thus clearly germane to its "related to public safety" title, as the term "germane" is defined by this Court and others, and consistent with the common parlance of parliamentary procedure.

C. Defining "Germaneness" In Relation to A Bill's Original Language Would Be Bad For the Legislature, the Judiciary, the Executive Branch Agencies, and the People of Hawai‘i

There are important policy reasons why the Legislature must have flexibility to decide, as the policy making body, what laws must be passed in order to protect and promote the public good. The process of enacting legislation is a quintessential political function. It has been aptly analogized with the sausage-making process: the neatly packaged product belies the often unavoidably messy politics of its creation. *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 311 (Minn. 2000) (Anderson, J., concurring in part and dissenting in part) (attributing to Otto von Bismarck the saying that "People who love sausage and respect the law should never watch either of them being made."). The "gut and replace" process is, effectively, a bill amendment process. Bill amendment is itself a core political function of elected legislators who are tasked with enacting important and necessary legislation, and who are also ultimately accountable to the people of Hawai‘i.

Plaintiffs agree that, even under their own construction of the three readings provision, not every amendment to a bill would trigger the need for three additional readings in each house. Under their theory, "germane amendments to a bill's language – even if the amendments replace every single word in a bill – are constitutional," and "[t]he State does not need to restart the readings every time there is any amendment." (Open. Br. at 8 n.4, 10.) But Plaintiffs contradict themselves by asking this Court to define what constitutes a "germane" amendment, thus advocating for arbitrary judicially-imposed limits on the Legislature's discretion to amend bills.

Taken to its logical conclusion, Plaintiffs' "germaneness" argument could require *all* amended bills to re-start the three readings process (which Plaintiffs themselves acknowledge would be untenable). This is because, as a practical matter, even a seemingly "small" amendment to the original language of a bill could effect a major policy change. For example, with respect to S.B. No. 2858 itself, what if the Legislature had amended the original language of the bill to require quarterly prison rehabilitation reports, instead of annual reports? Such a change would not have affected S.B. No. 2858's underlying prison rehabilitation reporting focus, and would thus have remained "germane," under Plaintiffs' theory, to the original language of

S.B. No. 2858. However, it would have quadrupled the yearly reporting requirement for the department of public safety, and thus also quadrupled the concomitant administrative resource demands. This hypothetical demonstrates the futility of setting arbitrary limits on "how much" a bill can be amended. It also reinforces why the separation of powers doctrine precludes this Court from attempting to set such limits.

The record contains additional concrete examples of the impossibility of defining "germane" in relation to the original language of a bill. For example, the Legislature amended S.B. No. 192 (2018), relating to the state budget, to include an appropriation "to the department of defense for disaster relief efforts in the county of Kauai and other areas of the State that have been adversely impacted by the extraordinary weather events that occurred in April 2018." (ICA 24 at PDF 110, 112 [S.B. No. 192, S.D. 1, H.D. 1, C.D. 1 (2018)].) The conference committee considering S.B. No. 192 explained that these appropriations were necessary to address a "severe, sudden, and extraordinary weather event" of "torrential rains" that "caused damage, losses, and suffering that affected the health, welfare, and living conditions of a substantial number of persons." (ICA 24 at PDF 116, 117 [Conf. Com. Rep. No. 1].) Because this catastrophic event occurred well after the 2018 bill introduction deadline, the only viable means of providing this necessary appropriation was through the amendment of existing legislation. Without the ability to substantially amend the existing S.B. No. 192, victims of the April 2018 flooding would have been without immediate relief.

Any attempt by this Court to define "germane" would open the door to a floodgate of litigation. It would provide a new avenue for individuals and entities to challenge validly enacted legislation, requiring the Hawai‘i courts to engage in fact-based examinations of each challenged bill's enactment process. And because establishing a universal definition of "germane" is a futile endeavor, as explained *supra*, there would be no concrete standards for reviewing courts to apply. Each court would thus be in the position of upholding or striking down legislation based on its own subjective determination of "germaneness." Allowing the courts to freely second-guess legislative actions would hamstring the Legislature's ability to timely pass critical pieces of legislation. Ultimately, the people of Hawai‘i would suffer.

Here, S.B. No. 2858 remained, in all of its iterations, a bill relating to public safety. All changes to its text were documented on S.B. No. 2858's updated "bill status" report, publicly accessible via the Legislature's Internet web site. The process by which S.B. No. 2858 evolved,

from a prisoner rehabilitation reporting focus to a hurricane safety focus, was therefore transparent. Indeed, as the record reflects, the Legislature accepted public testimony on the post-amendment "hurricane shelter" language of S.B. No. 2858. (ICA 24 at PDF 316-324.) The State Department of Accounting and General Services, the Office of Hawaiian Affairs, the Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai‘i, and the Young Progressives Demanding Action, all submitted written testimony. *Id.* Although some of that testimony expressed a preference for the prior recidivism reporting version of the bill, no testifier seemed caught off guard by the changes.[20] The public was thus heard after S.B. No. 2858 evolved into its hurricane shelter form, and, for this reason, the record itself rebuts Plaintiffs' contentions that S.B. No. 2858's enactment process somehow "confound[ed]" the public.

The considerable effort made to pass this hurricane safety bill underscores its importance to the Legislature. The committee articulated the critical underlying need for the final version's "hurricane resistant criteria" as follows:

> Your Committee on Conference finds that **ensuring that state buildings are capable of withstanding extreme weather-related events and emergencies is essential for maintaining public welfare.** Your Committee on Conference further finds **that public schools are particularly vulnerable to the effects of weather-related events and emergencies** and situated in areas easily accessible by community members and would therefore be the ideal initial sites for enhanced building design and construction. Accordingly, your Committee on Conference finds that **the State should consider relevant hurricane resistant criteria when designing and constructing new public schools for the capability of providing shelter refuge**.

(ICA 24 at PDF 95, 96 [Conf. Comm. Rpt. No. 93])(emphases added). No government body is better positioned than the Legislature to weigh the public policy considerations necessitating hurricane safety measures. Here, our Legislature determined that establishing a "hurricane resistant criteria" requirement was "essential" to address public safety concerns. This action, taken by our elected legislators, reflects the will of the people of Hawai‘i.

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[20] Plaintiffs contend that the State "would claim" that a bill could be significantly amended without any opportunity for public hearing (for example, during conference committee). *See* Open. Br. at 6, n.3. That did *not*, however, happen here. The record demonstrates that the public was given the opportunity to testify after the House deleted S.B. No. 2858's prison rehabilitation reporting language and first replaced it with hurricane safety language. And Plaintiffs themselves do not raise a due process challenge, or otherwise contend that they were denied the opportunity to be heard on changes made to S.B. No. 2858.

In sum, strong policy considerations preclude this Court from setting arbitrary rules on when an amended legislative bill must go back to square one in order to satisfy the constitutionally unnecessary formality of receiving an additional three readings in both houses. Such a reading would be at odds with the Framers' understanding of the Legislature's role in enacting laws, and this Court's prior interpretation that "germaneness" of a bill's amendment is measured in relation to its subject-in-title.

IV. S.B. No. 2858's Passage Does Not Violate the Article III, Sec. 14 Subject-In-Title Rule

A. The Purpose of Section 14, and the Application of Section 14 to S.B. No. 2858

Plaintiffs appear to argue that the title of S.B. No. 2858 is "too broad," and that it therefore violates section 14's subject-in-title requirement, both as originally drafted and as amended. That is, because "public safety" can refer to a variety of things, S.B. No. 2858's "relating to public safety" title must (according to Plaintiffs) "obscure[] and conceal[] the contents of [the] bill." (Open. Br. at 24.) Plaintiffs' argument has it backwards. As this Court has long recognized, the title of a bill may purposefully be broad, so that it may fairly and fully encompass the subject of the bill's text, as that text is amended and changed during the legislative process.

Article III, section 14 of the Hawai‘i Constitution provides that: "No law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title." *Id.* The Hawai‘i Supreme Court has long construed the "subject-in-title" requirement broadly:

> The term 'subject,' as used in the constitution is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. . . . All that is necessary is that act should embrace one general subject; and by this is meant, merely, that **all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject**.

Schwab, 58 Haw. at 33, 564 P.2d at 140 (quoting *Juhnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1894)) (emphasis added).

This requirement is intended: (1) to prevent "hodge-podge or logrolling legislation"; (2) "to prevent surprise of fraud upon the Legislature by means of provisions in bills of which titles give no intimation"; and (3) "to apprise the people of proposed matters of legislation." *Schwab*, 58 Haw. 25, 30-31, 564 P.2d at 139. It is *not*, however, meant to be an onerous restriction. It is meant to be "liberally construed." *Id.*

A bill title is not constitutionally invalid simply because its title could have been "clearer and more precise." *Id.* at 34, 564 P.2d at 141. A title need only "indicat[e] the scope and purpose of the [law]." *Id.* at 34-35, 564 P.2d at 141. It does not need to be the "most appropriate" title, and "[n]either is it necessary that the title inform the reader of the specific contents of the bill." *Id.* at 35, 564 P.2d at 141 (*quoting Schnack v. City & Cty. of Honolulu*, 41 Haw. 219 (Haw. Terr. 1955)). Indeed,

> If no portion of the bill is foreign to the subject of the legislation as indicated by the title, **however general the latter may be**, it is in harmony with the constitutional mandate.

Id. (emphasis added).

By its plain language, the title of S.B. No. 2858, "a bill for an act relating to public safety," has always fully and fairly encompassed its subject matter – i.e., both the original prisoner rehabilitation reporting version, as well as the amended bill's hurricane safety version. No party disputes that prisoner rehabilitation reporting and hurricane shelters are both matters relating to public safety. Thus, the "public safety" title of the bill cannot be overly broad, given that, "however general [it] may be," "no portion of [S.B. No. 2858]," in its original or amended form, has ever been "foreign to the subject of the legislation as indicated by the title." *Id.*

To the extent Plaintiffs take specific issue with the Legislature's changes to the content of S.B. No. 2858, the relevant question is whether the bill's amended content continues to relate to the original title. In *Villon v. Marriott Hotel Services, Inc.*, 130 Hawai‘i 130, 306 P.3d 175 (2013), the Hawai‘i Supreme Court recognized that bills "evolve" throughout the legislative process. As they evolve, "the title must continue to embrace the subject of the bill." *Id.* at 140, 306 P.3d at 185. Specifically alluding to "gut and replace," the *Villon* Court explained that "the legislature [cannot] validly delet[e] [a bill's] original contents without the replacement content continuing to bear some relation to the title." *Id.* at 141, 306 P.3d at 186. But conversely, as long as the bill's contents retain a connection with its title, there is no constitutional subject-in-title violation.

Plaintiffs do not argue that the title of S.B. No. 2858 was ever "misleading, deceptive, or obscure" as it relates to the evolving content of the bill. "It is sufficient if the title of an [act] fairly indicates to the ordinary mind the general subject of the act, is comprehensive enough to reasonably cover all its provisions, and is not calculated to mislead." *Schwab*, 58 Haw. at 34, 564 P.2d at 141.

For the above reasons, S.B. No. 2858 clearly satisfies section 14's subject-in-title requirement. The content of every house, senate, and conference draft of S.B. No. 2858 was clearly encompassed within its "relating to public safety" title.

B. Plaintiffs' Interpretation of Section 14 Would Require This Court To Overturn Longstanding Precedent

Plaintiffs ask this Court to completely change its approach to analyzing subject-in-title infractions. Instead of focusing on whether the content of a bill is fairly represented by the bill's title, Plaintiffs focus on whether the title itself, in isolation, is "too broad." Under Plaintiffs' theory, a "general" title, like "relating to public safety," does not provide enough notice of the bill's content. This theory is contrary to a century of binding subject-in-title precedent that expressly validates the Legislature's ability to introduce bills with broad titles. *Territory of Hawaii v. Kua*, 22 Haw. 307, 309 (Haw. Terr. 1914) ("the title of an act . . . may be broader than the act without violating [the subject-in-title] constitutional requirement"; "the title fixes the bounds of the act, beyond which the legislature may not go"); *In re Goddard*, 35 Haw. 203 (Haw. Terr. 1939) ("The generality of a title is . . . no objection to it so long as it is not made a cover to legislation incongruous in itself and which by no fair intendment can be considered as having a necessary or proper connection with the subject."); *Jensen v. Turner*, 40 Haw. 604, 608 (Haw. Terr. 1954) (the subject-in-title requirement "is satisfied if provisions of [a bill] are naturally connected and expressed in a general way in the title [and there is no] need [for] all the provisions [to] be referred to in the title"); *Schwab v. Ariyoshi*, 58 Haw. 25, 564 P.2d 135 (1977); *Villon v. Marriott Hotel Services, Inc.*, 130 Hawai‘i 130, 306 P.3d 175 (2013).

In order for this Court to find a subject-in-title infraction then, it must overturn precedent, something that this Court does only rarely and for compelling reason. As the Hawai‘i Supreme Court has recognized,

> **stare decisis acts not just to require obedience by inferior tribunals to the decisions of superior courts, but also as a principle of self-restraint on courts** with respect to the overruling of prior decisions. [The Hawai‘i Supreme Court] appl[ies] stare decisis in this respect with a view toward[:]
> the **desirability that the law furnish a clear guide for the conduct of individuals**, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and **the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments**.

Robinson v. Ariyoshi, 65 Haw. 641, 653 n.10, 658 P.2d 287, 297 n.10 (1982) (citation omitted, emphases added).

The Legislature has long relied upon this Court's interpretation of section 14's subject-in-title requirement. It has taken to heart this Court's recognition that "[t]he legislature must determine for itself how broad and comprehensive or how restrictive shall be the subject of a statute." *In re Goddard*, 35 Haw. at 208. A holding here that the title of S.B. No. 2858 is "overly broad" would turn *stare decisis* on its head by undoing precedent that has guided Legislative bill making practices for decades. And, in doing so, this Court would infringe upon the Legislature's authority, under the separation of powers doctrine, to properly control its own political, law-making branch of government.

In sum, this Court should not radically change its longstanding interpretation of section 14's subject-in-title rule. It should affirm the circuit court's correct judgment that S.B. No. 2858's title properly complied with this Court's longstanding, precedential interpretation of article III, section 14's subject-in-title requirement.

V. Plaintiffs Lack Standing to Challenge S.B. No. 2858

S.B. No. 2858 is constitutional, and that this Court should affirm the circuit court's judgment on those grounds. This Court could, however, alternatively decide this case based on Plaintiffs' lack of standing. *Poe v. Hawai‘i Labor Relations Bd.*, 87 Hawai‘i 191, 197, 953 P.2d 569, 575 (1998) ("An appellate court may affirm a judgment of the lower court on any ground in the record that supports affirmance.").

Although Hawai‘i courts broadly construe a party's standing to seek declaratory relief in a civil case, there are distinct limits. In order to establish standing, "antagonistic claims [must] exist between the parties," such that "a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." *Tax Foundation of Hawai‘i v. State*, 144 Hawai‘i 175, 189, 439 P.3d 127, 141 (2019). The party's claims must either "indicate imminent and inevitable litigation," or demonstrate that "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." *Id.*

Here, Plaintiffs lack standing because their lawsuit is a challenge to the specific constitutionality of S.B. No. 2858, and Plaintiffs clearly lack a concrete interest in challenging

this particular legislative measure. Indeed, Plaintiffs have no quarrel with S.B. No. 2858, except to the extent that the Legislature used "gut and replace" to change the bill's content during the legislative process. The separation of powers doctrine, however, precludes Plaintiffs' broader, more generalized challenge to a specific legislative practice. For this reason, Plaintiffs cannot use S.B. No. 2858 as a vehicle by which to bring their overarching procedural challenge to "gut and replace." Infringing upon the Legislature's constitutionally derived law making authority would be unwise for the important policy reasons discussed *supra.* For this reason, this Court should alternately find that Plaintiffs lack standing to challenge to the constitutionality of S.B. No. 2858.

CONCLUSION

For all of the reasons set forth in this brief, and in the record below, this Court should affirm the circuit court's judgment in favor of the State.

DATED: Honolulu, Hawai‘i, November 13, 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on November 13, 2019, the attached State of Hawaii's Answering Brief was served electronically (through the Court's JEFS system), or conventionally (by mailing copies via USPS, first class, postage prepaid), upon the following:

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