



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.C.R. 69, H.R. 60, ESTABLISHING A TASK FORCE TO REVIEW THE RETIREMENT AGE FOR STATE COURT JUSTICES AND JUDGES; THE TERMS OF AND POSSIBLE TERM LIMITS FOR STATE COURT JUSTICES AND JUDGES; THE POSSIBILITY OF ESTABLISHING A SENIOR JUDGE SYSTEM FOR STATE COURT JUSTICES AND JUDGES; JUDICIAL ACCOUNTABILITY AND FITNESS IN THE STATE OF HAWAII; AND RELATED MATTERS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 25, 2008 **TIME:** 4:05 PM

LOCATION: State Capitol, Room 325

Deliver to: , Room 302, copies

TESTIFIER(S): Mark J. Bennett, Attorney General

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The Department of the Attorney General supports this bill.

The purpose of this bill is to establish a task force to collect relevant data, including practices in other jurisdictions; and to identify public policies promoted or impeded by, and make recommendations on the repeal, amendment, or retention of, the mandatory judicial retirement age, lack of judicial terms limits, lack of a senior judge system, current system of judicial accountability, and current means for determining judicial fitness.

During the present legislative session, at least two bills were introduced proposing to amend the State Constitution to retroactively extend the mandatory retirement age for state court justices and judges. Only two years ago, a similar amendment to eliminate mandatory judicial retirement entirely was overwhelmingly rejected by the electorate. After such an unequivocal mandate from the voters, this type of amendment should not be proposed again without first conducting a thoughtful study.

When Hawaii's Constitution was originally adopted in 1959, article V, in addition to establishing a retirement age of 70 for judges, also provided: "The term of office of a justice of the supreme court shall be seven years and that of a judge of a circuit court six years." The framers were clearly concerned about lengthy judicial terms. Since then, the terms of justices and judges have been extended, but not the mandatory retirement age, so that the current retirement age serves both to limit tenures (there is no other absolute limit) and to ensure that there are opportunities for lawyers to be appointed to the bench through vacancies, and for judges of the lower courts to be appointed to higher courts through retirements.

It should be noted that when judges who are now nearing the mandatory retirement age were appointed, there were significantly fewer judicial opportunities for women, and to a certain extent for minorities. The proposed amendment would perpetuate reduced judicial opportunities, especially for women and minority lawyers. The serious consequences of such a change are made clear by the testimony of the Hawaii Judicial Selection Commission - the body tasked with merit selection of judges in Hawaii - on the 2006 proposal to eliminate mandatory retirement at age 70:

We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many attorneys from applying for judicial openings, and will, therefore, impede the introduction of new ideas and ways of looking at the law.

A New York blue ribbon "Task Force on Mandatory Retirement of Judges" reported similar conclusions:

[C]ontinuation of judicial service beyond age 70 [should] not [be] at the expense of reduced judicial opportunities or delayed entry into the judiciary for women and

minority lawyers. Regular turnover invigorates the judiciary by bringing fresh ideas and greater diversity to the bench . . . [We note] the relatively high diversity [among judges, in the last] five years, and the relatively low diversity among the group of Justices most recently certificated for service beyond age 70.

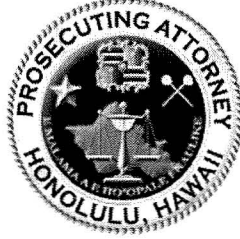
The New York task force conducted many months of careful study on the issue of mandatory judicial retirement, including examination of alternatives to a mandatory retirement age -- for example, a senior judge system, which would allow judges to take reduced caseloads with reduced pay after a certain age and simultaneously foster more opportunities for judicial service by women, minorities, and younger lawyers. In Hawaii, in contrast, no thoughtful examination has been done.

Such a fundamental change in the judicial system should not proceed without careful study. We respectfully urge the Committee to pass this bill.

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**THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawai`i**

March 25, 2008

**RE: H.R. 60/ H.C.R. 69; ESTABLISHING A TASK FORCE TO REVIEW THE
RETIREMENT AGE FOR STATE COURT JUSTICES AND
JUDGES; THE TERMS OF AND POSSIBLE TERM LIMITS FOR
STATE COURT JUSTICES AND JUDGES; THE POSSIBILITY
OF ESTABLISHING A SENIOR JUDGE SYSTEM FOR STATE
COURT JUSTICES AND JUDGES; JUDICIAL
ACCOUNTABILITY AND FITNESS IN THE STATE OF
HAWAII; AND RELATED MATTERS.**

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in support of H.R. 60 and H.C.R. 69.

The purpose of these resolutions is to create a task force to study various issues relating to the retirement of state court justices and judges. Specifically, these resolutions ask that the task force study of the practices of other jurisdictions, identify relevant public policies, and collect data; the findings and recommendations of the task force are to be presented to the 2009 Legislature.

The issue of changing or repealing the mandatory retirement age for justices and judges has been discussed in previous and current legislative sessions. A constitutional amendment to repeal the mandatory retirement age for judges was rejected by the electorate in November 2006, with 57.8% of voters voting against repeal and 34.8% of voters in favor of repeal. A constitutional amendment to increase the retirement age prospectively is presently moving through the legislature. However, we note there are other options besides a complete repeal or an increase in the retirement age that have not yet been widely discussed or considered. These other options are in used in other jurisdictions and the federal system.

The judicial retirement age impacts several important policy considerations such as the loss of able jurists who may be forced to retire. But this loss should be considered against the need to ensure a diversity of perspectives in our courts and a mechanism to encourage the best and the brightest to the bench. Delaying or doing away with a mandatory retirement age,

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many deny or restrict the opportunity for previously underrepresented groups such as women and minorities to enter the judiciary or to advance their careers. It may also discourage the best and the brightest legal minds from entering judicial careers or may delay their advancement. Given the importance of a strong and healthy judiciary and the significant policy issues involved in the discussion of the retirement age, we strongly support the passage of H.R. 60 and H.C.R. 69.

Thank you for this opportunity to testify.

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BY FAX: 586-9456

Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, March 25, 2008, 4:05 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in support of HCR 69

Dear Chair Waters and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of HCR 69.

The ACLU of Hawaii supports the establishment of a task force to review the retirement age for state court justices and judges and other issues. **Further, we would like be included as a member of the task force.** We are well-qualified to participate in the task force given that our organizational mission is to protect the constitution from injudicious amendments as well as to support amendments that increase individuals' civil rights. As constitutional watchdogs, we would like to participate in the task force to ensure that all policy considerations are taken into account and the sanctity of our state constitution is respected.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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