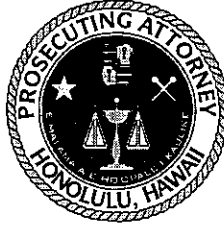


DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 11, 2008

**RE: S.B. 3202; PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO
EXTEND THE MANDATORY RETIREMENT AGE FOR STATE
JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF
AGE.**

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 3202.

The purpose of this bill is to amend article VI, section 3 of the state constitution to increase the mandatory retirement age for justices and judges from 70 years of age to 80 years of age.

The issue of changing or repealing the mandatory retirement age for justices and judges has been discussed in previous legislative sessions and 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. It is clear from the previous discussions that there are several options used by other jurisdictions to promote judicial accountability and to determine judicial fitness; these options include term limits, a senior judge system. It is also clear from previous discussions, that there are other issues such as whether any changes to the mandatory age of retirement should apply only to new judges or whether such changes should apply to judges presently serving who chose to serve knowing the mandatory age is age 70.

Given the number of issues involved, we believe there should be a study to examine the issues and to collect data so that an informed discussion can be facilitated and that no changes be made without such study. Specifically, we believe the study should look at: 1) the effects of the alteration or elimination of the mandatory retirement age and if any recommended changes should be applied prospectively only; 2) whether there should be term limits for state court

judges and justices; 3) whether there should be a senior judge system; and 4) whether there is sufficient judicial accountability and means for determining judicial fitness under the current system. Therefore, we prefer the passage of a resolution which proposes such a study rather than this bill; such resolutions were submitted last year and have again been submitted this year.

For these reasons, we oppose the passage of S.B. 3202 and respectfully request that it be held.

Thank you for this opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO
888 MILILANI STREET, SUITE 601 • HONOLULU, HAWAII 96813-2991



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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
February 11, 2008

**S.B. 3202 – PROPOSING AN
AMENDMENT TO ARTICLE VI,
SECTION 3, OF THE HAWAII
CONSTITUTION TO EXTEND THE
MANDATORY RETIREMENT STATE
JUSTICES AND JUDGES FROM
SEVENTY TO EIGHTY YEARS OF
AGE**

The Hawaii Government Employees Association supports the purpose and intent of S.B. 3202, which proposes a constitutional amendment to extend the mandatory retirement age of 70 for state justices and judges to 80 years of age. Each individual deserves consideration as an individual member rather than a stereotypic member of a certain group.

The mandatory retirement age of 70 automatically considers that all judges and justices unfit to perform their judicial duties beyond that point. The current age restriction precludes the state from utilizing the experience and ability of jurists who reach the age of 70, who are still highly productive. It makes good sense to increase the mandatory retirement age for justices and judges to 80 years of age.

Thank you for the opportunity to present testimony in support of S.B. 3202.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



**TESTIMONY OF ROBERT TOYOFUKU IN SUPPORT OF S.B. NO. 3202,
PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO
EXTEND THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES
AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE**

February 11, 2008

To: Chairman Brian Taniguchi and Members of the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am testifying as an individual in support of S.B. No. 3202.

The purpose of this bill is to extend the mandatory retirement age for state justices and judges.

The retirement mandatory age of 70 years for justices and judges is the only provision in our state constitution which requires a state employee to retire at a given age. Also, to the best of my knowledge there is no provision in the Hawaii Revised Statutes that requires a state employee to retire at a given age.

My opposition to mandatory age retirement provisions is twofold. First, I feel it is discriminatory to a class of individuals based on age. Second, I have personal knowledge of a judge who had to retire at age 70 and volunteered his services to the Hawaii State Judiciary for over 10 years to assist with various matters. It has been over 15 years since this judge had to retire and he is still as mentally alert and physically capable as ever.

Although I support the concept of no mandatory age limit, I do recognize that from a practical political view some age limit may need to be kept in this bill.

Thank you for the opportunity to testify on this bill.



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

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 3202,

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, February 11, 2008 **TIME:** 9:00 AM
LOCATION: State Capitol, Room 016
Deliver to: Room 219, 1 copy

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

:

The Department of the Attorney General strongly opposes this bill.

This bill proposes an amendment to the State Constitution to retroactively extend the mandatory retirement age for state court justices and judges from 70 to 80. This proposal represents poor public policy, perpetuates an underrepresentation of women on the bench, has been proposed without sufficient thought or study, and wrongly benefits only a few incumbent judges.

Only two years ago, the Legislature proposed a similar amendment to eliminate mandatory judicial retirement at age 70. That amendment was overwhelmingly rejected by the electorate, obtaining only a 34.8 percent Yes vote, with a 57.8 percent No vote. The No votes exceeded the Yes votes by 80,000. The amendment lost on every island, and we believe it lost in virtually every single one of the Hawaii's many hundreds of precincts. There is no justification for bringing this subject back only two years after such an unequivocal mandate from the voters. Moreover, it is possible for the public to conclude that the major reason for bringing this proposal back immediately, without any study or alternatives, is to preclude the present governor from appointing a

new chief justice to the Hawaii Supreme Court when the present chief justice reaches the age of 70 in 2010.

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.

Extending the mandatory retirement age will defeat these objectives to the detriment of the bench.

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 an examination should look at the retirement age of judges; whether a better system might be to require retirement at 70 but allow judges or justices to reapply for their positions; term limits; whether, if there is to be a change, it should be retroactive; and other related matters. In 2007, several resolutions were introduced to establish a task force to study this issue, but none received a hearing. Several have been reintroduced in 2008, including S.R. No. 30 and S.C.R. No. 58, which state:

WHEREAS, major concerns with the proposed amendment [to repeal mandatory judicial retirement at age 70] included the lack of any careful study of:

(1) The effects of a repeal of the retirement age on the Judiciary and the administration of justice, including a study of whether the retirement age should be retained, altered, or eliminated and, if so, whether prospectively only;

(2) Whether there should be term limits for state court justices and judges;

(3) Whether there should be a senior judge system for state court justices and judges; and

(4) Whether there is currently sufficient judicial accountability and means for determining judicial fitness; and

WHEREAS, a study:

(1) Reviewing the practices of other jurisdictions regarding: the regulation of judicial retirement, term limits for judges, a senior judge system, judicial accountability, and means for determining judicial fitness;

(2) Identifying public policies promoted or impeded by: the current Hawaii mandatory judicial retirement age or its alternatives, the lack of judicial terms limits in Hawaii, the lack of a senior judge system in Hawaii, the current Hawaii system of judicial accountability, and the current Hawaii means for determining judicial fitness; and

(3) Collecting data on the impact of changing any of the above;

would be valuable in facilitating an informed discussion of, evaluating the merits of retaining, repealing, or amending, the current Hawaii: mandatory judicial retirement age, including if there is to be a change whether it should be prospective only; lack of judicial terms limits; lack of a senior judge system; system of judicial accountability; means for determining judicial fitness

Such a fundamental change in the judicial system as proposed in S.B. No. 3202 should not proceed without careful study.

If this amendment is to be proposed regardless of the bad public policy it embodies, it should be materially amended to eliminate the strong perception that it is intended to benefit only a few sitting judges. Incumbent judges and justices were appointed

to the bench under a certain set of rules, and other lawyers chose not to seek appointment under the same rules. As a matter of fundamental fairness, the change should not apply to judges who have already been appointed. In its 2006 testimony, the Judicial Selection Commission pointed out:

[W]e feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges.

Thus, although we strongly oppose this bill, we urge the Committee to amend the relevant part of section 3 as follows, if the Committee passes the bill:

Justices and judges shall be retired upon attaining the age of seventy years[-], except that justices and judges first confirmed by the senate or appointed by the chief justice to their positions after November 4, 2008 shall be retired upon attaining the age of eighty years. They shall be included in any retirement law of the State.

If the title of the bill were broader, we would suggest the following as an alternative:

Justices and judges shall be retired upon attaining the age of eighty years[-], except that justices and judges first appointed to their positions before November 4, 2008 shall be retired upon the later of (1) attaining the age of seventy years or (2) serving fifteen years in their position. They shall be included in any retirement law of the State.

We urge the Committee to hold this bill.



JAPANESE AMERICAN CITIZENS LEAGUE OF HAWAII
HONOLULU CHAPTER
P.O. BOX 1291, HONOLULU, HAWAII 96807
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Working For A Greater America

LATE

**SB 3202: Proposing an Amendment to the Hawaii Constitution to Extend the
Mandatory Retirement Age for State Justices and Judges from Seventy to Eighty
Years of Age
Testimony in Support**

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Clayton Ikei
William Kaneko
Colbert Matsumoto
Alan Murakami

Hearing: Monday, February 11, 2008 at 9:00 a.m. in Conf. Rm 016

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair
Members of the Committee on Judiciary and Labor

Founded in 1929, the Japanese American Citizens League is the nation's oldest and largest Asian Pacific American civil rights organization made up of over 20,000 members across the U.S and in Japan. Locally, we are a strong civil rights organization committed to the protection of civil and human rights of all.

Before the November 7, 2006 general election, JACL Hawai'i encouraged its members to vote in favor of SB 995, SD1 proposing an amendment to Article VI, Section 3 of the Hawai'i State Constitution to remove the mandatory retirement age for judges and justices because mandating that all justices and judges must retire at any age constitutes age discrimination. We believe that Hawai'i would benefit from willing and able workers of all ages who have the wisdom, judgment, and institutional memory of experienced workers at all levels. As the bill recognizes, "[t]he wealth of knowledge and experience in interpreting Hawai'i's laws that is retained by these individuals is invaluable to the residents of Hawai'i."

Hawai'i provides an appropriate system of judicial review that operates regardless of age. Judges and justices are reviewed for their performance by the Judicial Performance program, which conducts periodic evaluations after soliciting comments from attorneys who practice before that judge or justice. The Hawai'i Commission on Judicial Conduct investigates reports of judicial misconduct and may recommend dismissal to the Hawai'i Supreme Court. Judges and justices are also referred to the Supreme Court's Attorneys and Judges Assistance program for disability or impairment. When a judge reaches the end of her or his term, the Judicial Selection Commission reviews performance. There are many checks to ensure judges and justices are qualified to remain on the bench.

We believe that increasing the mandatory retirement age for justices and judges from 70 to 80 is a step forward towards eliminating age discrimination in the judicial system. For these reasons, JACL Hawai'i is in SUPPORT to SB 3202. Thank you very much for this opportunity to provide testimony on this bill.

Sincerely,

David M. Forman
President, JACL Hawai'i, Honolulu Chapter
Japanese American Citizens League