



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1187, S.D. 1, PROPOSING AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE HAWAII STATE CONSTITUTION, TO PROVIDE FOR THE ELECTION OF THE ATTORNEY GENERAL.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 22, 2011      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Charleen M. Aina, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Attorney General opposes amending the State Constitution to provide for an elected Attorney General.

The Attorney General's principal duties are to enforce the laws of the State of Hawaii, represent and defend the State, its officers, employees, and agencies in the state and federal courts, and give advice and counsel to the State's public officers to aid and assist them in performing their duties faithfully. It is important that the Attorney General perform these duties objectively, without regard to how a decision might affect the chances of his or her re-election.

Even if the Attorney General was elected in a nonpartisan election, as this bill proposes, we believe the risk of politicizing the work of the Attorney General and the Department of the Attorney General will increase.

An election is likely to disrupt the Department's operations every four years and distract the Attorney General and deputies from devoting their "entire time and attention" to performing the duties and responsibilities assigned them by the State Constitution, statutes, and the common law.

The present method for selecting the Attorney General is superior to what this measure proposes. It allows a person who is interested only in serving as the State's chief law enforcement officer and principal attorney, and has no political aspirations, to be selected by the Governor to serve as Attorney General.

Because, once confirmed, the Attorney General can only be removed with the consent of the Senate, the Attorney General is free to concentrate entirely on the administration of justice, and doing what is right, rather than what may be politically expedient.

Further, converting the office of Attorney General to an elected one will increase the instances when the Attorney General simply may not be able to serve as the Attorney General because of a conflict of interest. The United States Supreme Court's conclusion in Caperton v. A.T. Massey Coal Co., Inc., \_\_\_ U.S. \_\_\_, 129 S. Ct. 2252, 2263-64 (2009), is instructive in this regard. There, the Court described the concern that campaign contributions inject into our system of justice:

there is a serious risk of actual bias - based on objective and reasonable perceptions - when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.

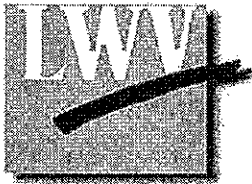
Although the Caperton case involved an elected judge's obligation to recuse himself from deciding a case that involved an individual who contributed substantial sums to the judge's

election, and thus is not directly on point, the concern of the U.S. Supreme Court is still applicable here.

Ultimately, it will be up to the State Ethics Commission and the Office of Disciplinary Counsel to determine whether an elected Attorney General has a conflict of interest that disqualifies him or her from acting as the State's principal attorney. Our present appointive means of selecting our Attorney General avoids this issue.

Finally, there is simply no basis to assert that an elected Attorney General would be more qualified than an appointed one.

We respectfully request that this bill be held.



## THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 1187 PROPOSING AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE HAWAII STATE CONSTITUTION, TO PROVIDE FOR THE ELECTION OF THE ATTORNEY GENERAL.

Committee on Judiciary

Date: Tuesday, March 22, 2011

Time: 2:00 p.m..

Place: Conference Room 325

Testifier: Jean Aoki, LWV Legislative Committee

Chair Keith-Agaran, Vice Chair Rhoads, members of the Committee on Judiciary,

The League of Women Voters of Hawaii supports SB 1187 which proposes an amendment to the Constitution of the State of Hawaii to provide for an elected attorney general but with an amendment.

League has always felt that Hawaii's Attorney General should be viewed as someone who would be the counsel for the state government as well as the state's chief law enforcement officer and administrator of the Office of the Attorney General. When the governor is given the power to appoint the attorney general, whether it is true in practice or not, the perception that the attorney general is the Governor's counsel persists. Of course, the AG is counsel to the governor, but is also the counsel for the whole state government.

Attorney Generals are elected in 43 states, all listed as Democrats or Republicans. Five AGs are appointed by their states' governors, one by their legislature, and one by the Supreme Court.

The nonpartisan nature of the position as provided by SB 1187 may make it less political in nature.

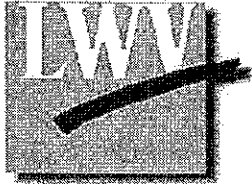
We really need another amendment to counter some of the possible problems arising from our campaign finance system. We need to keep the position free of any obligations to those who would contribute campaign funds to the candidates by providing public funding for qualified candidates.

As many states that elect their judges have found, the ever-increasing campaign financing needs are beginning to create problems as judges become dependent on large donors whose companies or organizations or as individuals make use of the judicial system.

On the other hand, it hasn't been that long since we were subjected to the drama of allegations of

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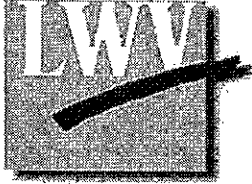
## THE LEAGUE OF WOMEN VOTERS OF HAWAII

of the politicization of the dismissal of U.S. Attorney Generals of different states because it was alleged that they were refusing to be used for the political advantage of the George W. Bush administration's Department of Justice. The U.S. Attorney Generals are all appointed by the President and confirmed by the Senate. These highly publicized cases and the hearings before Congress revealed how difficult it is to keep politics out of appointed positions.

With the public funding of qualified candidates to the position of an elected Attorney General, albeit it would have to be voluntary, we have a chance to realizing our goal of selecting a nonpolitical, qualified Attorney General with no obligations to any huge campaign donors or political parties.

We ask that you take this bold step and reach for the stars with us.

Thank you for this opportunity to testify on S 1187, SD1.



THE LEAGUE  
OF WOMEN VOTERS OF HAWAII

The enactment of laws that remain true to the principles in our constitution, and guided and enforced by a nonpartisan elected Attorney General would put Hawaii in the right direction for enlightened governance.

Thank you for the opportunity to testify in favor of SB 1187.