



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, March 3, 2011 TIME: 4:15 p.m.

LOCATION: State Capitol, Room 016

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

Chair Hee and Members of the Committee:

The Attorney General opposes enactment of this measure.

Electing the Attorney General to a four-year term, even by means of a nonpartisan election, will expose the office and the Department of the Attorney General to increased risk of being politicized. Elections will quadrennially disrupt the Department's operations, and distract the Attorney General and deputies from devoting their "entire time and attention" to performing the duties and responsibilities assigned them by the Constitution, statutes, and the common law.

The role of the Attorney General requires objective consideration of a broad spectrum of legal questions. As the State's chief law enforcement officer, the Attorney General must make difficult public safety and other decisions, and cannot and should not be concerned with how those decisions might affect him or her politically.

The Attorney General should and must consider these matters without regard to how they might affect the chances of re-election.

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

Because the Attorney General can only be removed with the consent of the Senate, once appointed, the Attorney General is free to concentrate entirely on the administration of justice, and doing what is right, rather than politically necessary or expedient. At the same time, if the Attorney General's actions exceed the expectations of the people, the Governor is fully empowered, with the consent of the Senate, to remove the Attorney General.

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. Although the case involves a 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 United States Supreme Court's conclusion in Caperton v. A.T. Massey Coal Co., Inc., ___ U.S. ___, 129 S. Ct. 2252, 2263-64 (2009), describes the concern that campaign contributions inject into our system of justice:

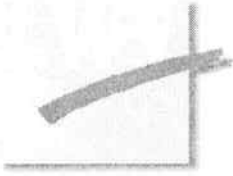
there is a serious risk of actual bias - based on objective and reasonable perceptions - when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case 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.

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, but it is a concern that our present appointive means of selecting our Attorney General, avoids.

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

LATE TESTIMONY

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 and Labor
Date: Thursday, March 3, 2011
Time: 4:15 P.M.
Place: Conference Room 016

Testifier: Jean Aoki, LWV Legislative Committee

Chair Hee, Vice Chair Shimabukuro, members of the Committee on Judiciary and Labor,

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.

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 makes it less political in nature. We should consider another provision to keep the position free of any obligations to those who would contribute campaign funds to the candidates and provide for public funding for qualified candidates. 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.