



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 300
RELATING TO INFORMED VOTING**

January 31, 2013

Chair Rhoads and members of the House Committee on Judiciary, thank you for the opportunity to provide technical comments regarding House Bill No. 300. The purpose of this bill is to require the publication of information on proposed constitutional and charter amendments and to create a website to essentially serve as a public forum to discuss the proposed amendments.

We take no position on this bill, as it is a matter of policy, but we offer the following comments:

1. Historical Background

The Legislative Reference Bureau (LRB) previously used to draft voter educational materials in connection with proposed constitutional amendments and provide them to the Office of Elections at least 90 days prior to the General Election for dissemination. These materials included a summary, factsheet and digest, which would include the purpose and intent of the proposed constitutional amendment, along with argument for and against ratification of the proposed amendment.

Despite the best efforts of LRB, there were people who claimed that these informational materials were not objective enough or that overall they tended to support or oppose an amendment, and as such ratification of an amendment should be reversed. *Watland v. Lingle*, 104 Hawai'i 128 (2004) (The Hawaii Supreme Court found that the State had not published the text of a proposed constitutional amendment in 2002 as required by the Hawaii State Constitution,

and as such left unaddressed Plaintiffs' second contention that LRB's materials were incorrect and should serve as a separate basis to reverse the ratification of a proposed amendment.)

In 2003, the requirement for the creation of such documents was removed from the law and replaced merely by a statutory requirement simply restating that the Legislature publish the text of proposed constitutional amendments in accordance with Article XVII, Section 3 of the Hawaii State Constitution. Act 8, SLH 2003.

Currently, the Legislature provides us with the text of what should appear on the ballot, including the relevant translations required by the Voting Rights Act for minority language groups. Those languages are currently Chinese, Ilocano, and Japanese. The exact languages are subject to change every 10 years after the census is conducted and the Census Bureau performs a statutory analysis to determine what minority language groups will be covered by the law. The Legislature separately complies with Article XVII, Section 3 and publishes the full text of the proposed constitutional amendment in the newspapers in English and the covered languages.

2. Deadline to Submit English and Translated Summaries of Proposed Amendments

To the extent the summary is to be produced by the Legislature Reference Bureau, or if the text of the summary of the proposed constitutional amendment, is to be found in the bill itself, we would ask that the summary be provided at least by the 90th day prior to the General Election, including the translations in the covered languages. The same would be requested of the county clerks in regards to the summaries of the proposed charter amendments with translations in the covered languages.

As such, we would propose that an additional subsection (c) be added to the proposed HRS § 11-A, which would say the following:

(c) The legislature, or county council in regards to a charter amendment, in preparing the summary will ensure that it is translated into the covered languages required by the Voting Rights Act and it will provide the summary to the office of election by the ninetieth day prior to the general election.

3. Website Issues

a. Public Forum – First Amendment

The bill provides for “[a]n interactive destination where members of the public may express support, opposition, or comments on the proposed constitutional or charter amendments that are the subject of the ballot pamphlet.” HRS § 11-B(a)(2).

Such a website might be interpreted by some as creating a public forum. If so, the exact management of such virtual public forum is not clear. While, the bill provides that the Office of Elections may delete content that is obviously (1) an unsolicited advertisement for services, (2) irrelevant to the discussion of the proposed amendments, or (3) obscene, it is not clear against the background of freedom of speech under the First Amendment, what is permissible in our management of this forum.

We would defer to the expertise of the Attorney General, but assume as the content of such a virtual forum would be constantly changing, and such questions hinge on the specific facts of the situation, it would be difficult to always know how to manage the forum.

Additionally, the monitoring and deciding of what is appropriate and not appropriate free speech in the context of proposed amendments, may be seen by some as indirect advocacy for or against a proposed amendment, depending on our decisions. This would be inconsistent with the ministerial duties of the Office of Elections to conduct elections and to be impartial.

b. Translation

Voting material is required under the Voting Rights Act to be translated in the relevant covered minority languages. Voting material includes materials or information relating to the electoral process. 42 USC § 1973aa-1a. The United States Department of Justice’s federal regulations provide that “[t]he basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting connected activities.” 28 CFR § 55.15. While the written comments are not created by the Office of Election, we would arguably be operating the website for voter information purposes, and given the breadth of the federal law, there is an argument that the website comments would need to be translated. If so, we would need to develop procedures to translate comments and receive appropriate funding to permit such translations to occur at a speed faster than what can occur with traditional documents that are to be sent to the printers.

c. Hyperlinks to Legislative History

The bill seeks for hyperlinks to exist to testimony associated with the proposed constitutional amendment or charter amendment, and for the Office of Elections to distinguish for internet users whether testimony refers to a previous draft of a proposed amendment. HRS § 11-B(a)(3). We would suggest that the Legislature and county councils are in the best position to understand the legislative history of the bills that resulted in the proposed constitutional amendment or charter amendment appearing on the ballot. As such, we would recommend that the bill be amended to provide that the Legislature and the county clerks provide the Office of Elections a specific link to their website containing the relevant legislative history which would comply with the bill. The Office of Elections would then be required to provide a link on its website to the information on the Legislature's website or the relevant county council's website.

4. Appropriation

Given the need to disseminate materials provided to us by the Legislature and county councils, an appropriation of \$180,000.00 should be considered to effectuate the purposes of the bill. This appropriation is based on our previous experience with the Hawaii Votes brochure which is mailed to every household. The printing, production, layout, and postage for a mailing to over 374,000 households would be approximately \$180,000.

Furthermore, to the extent it is determined that we need to translate the interactive website envisioned by this bill, into the covered languages, we may need to ask for additional funding.

Thank you for the opportunity to testify on House Bill No. 300.

RICKY R. WATANABE
County Clerk

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JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

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ELECTIONS DIVISION
OFFICE OF THE COUNTY CLERK
4386 RICE STREET, SUITE 101
LIHU'E, KAUA'I, HAWAII 96766-1819

TESTIMONY OF RICKY R. WATANABE
COUNTY CLERK, COUNTY OF KAUA'I
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 300
RELATING TO INFORMED VOTING
January 31, 2013

Chair Rhoads and Committee Members:

Thank you for the opportunity to offer comments on House Bill No. 300. The purpose of this bill is to require the publication of information on the proposed constitutional or proposed charter amendments that appear on an election ballot.

Our office takes no position on House Bill No. 300 but has concerns with provisions requiring the county clerk or designee to prepare a summary of all proposed charter amendments.

Historically, the development of charter amendment information for voters has been the responsibility of the initiating entity. This arrangement works well for the County of Kaua'i and we would prefer to keep this process in place.

Thank you for this opportunity to offer comments on House Bill No. 300.

RICKY R. WATANABE
County Clerk



OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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TESTIMONY OF JEFFREY T. KUWADA
COUNTY CLERK, COUNTY OF MAUI
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 300
RELATING TO INFORMED VOTING

January 31, 2013

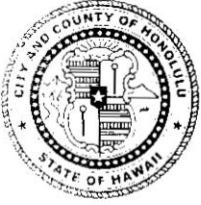
Chair Rhoads and members of the House Committee on Judiciary, thank you for the opportunity to offer testimony on House Bill No. 300. The purpose of this Bill is to require the publication of information on proposed constitutional or proposed charter amendments that appear on an election ballot.

The Office of the County Clerk, County of Maui, opposes House Bill No. 300.

While we understand the need to educate the voters on ballot issues, this bill will require the devotion of enormous personnel resources at the busiest period of the election cycle.

Historically, as well as in recent instances, the Office of the County Clerk, County of Maui, has refrained from producing informational materials concerning proposed Charter amendments in order to avoid the charge that we are advocating for or against a proposal.

Thank you for the opportunity to testify on House Bill No. 300.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
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Councilmember - District IV

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January 23, 2013
TESTIMONY OF STANLEY CHANG
COUNCILMEMBER FOR THE CITY AND COUNTY OF HONOLULU
On
H.B. No. 300, RELATING TO INFORMED VOTING
Committee on Judiciary
Thursday, January 31, 2013
2:05 p.m.
Conference Room 325

Dear Chair Rhoads and Committee Members:

Thank you for allowing me the opportunity to submit testimony in support of H.B. 300 Relating to Informed Voting as a Councilmember for the City and County of Honolulu.

H.B. 300, if adopted, would require the publication of information on the proposed constitutional or proposed charter amendments that appear on an election ballot.

The purpose of H.B. 300 is to assist voters in making more informed decisions in regards to constitutional and charter amendments. The Bill also requires the Office of Elections to publish ballot pamphlets containing "plain language" summaries on all proposed amendments and to maintain a website that incorporates information contained in the previously mentioned pamphlets including allowing the ability for the public to post pro and con arguments.

For these reasons, we respectfully ask for your favorable passage of H.B. 300 Relating to Informed Voting and thank the Committee for allowing me to provide testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "St Chang", is written over the typed name.

Stanley Chang
Councilmember, District IV



League of Women Voters of Hawaii

49 South Hotel Street, Room 314 | Honolulu, HI 96813

www.lwv-hawaii.com | 808.531.7488 | voters@lwvhawaii.com

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair and Rep. Sharon E. Har, Vice Chair

Thursday, January 31, 2013 2:05 p.m Room 325

HB 300, Informed Voting

TESTIMONY

Marian Wilkins, Legislative Committee Member, League of Women Voters of Hawaii

Chair Name/Names, Vice-Chair Name or Names, and Committee Members:

The League of Women Voters of Hawaii strongly supports HB300 that requires the publication of information on the proposed constitutional or proposed charter amendments that appear on an election ballot. Many voters are unaware of proposed constitutional amendments or proposed charter amendments. Recently, for example, the Hawaii County League of Women Voters staffed voter registration tables at our Kona K Mart. In preparation for this we also drew up a leaflet that listed ballot issues with short pros and cons. We proceeded to hand them out to all that we could as they exited the store. We found out that almost no one even knew that any issues were on the ballot. Unfortunately, since the League has no money for widespread distribution of such information, we were only able to provide enough leaflets for our local libraries and the handouts at our voter registration tables.

After the election, we had some feedback from poll workers who complained about how long it took people to vote because they had no idea there were ballot or charter measures on the ballot. They also had no idea how to vote on them on such short notice. Even our local newspaper had no mention of the ballot issues.

The ballot and charter education should explain what each proposed change means in simple, everyday language. Additionally, "pros and cons" for each change should be presented in a factual, nonpartisan fashion.



League of Women Voters of Hawaii

49 South Hotel Street, Room 314 | Honolulu, HI 96813

www.lwv-hawaii.com | 808.531.7488 | voters@lwvhawaii.com

For years, the League has advocated voter information, especially on issues, and has provided this information ourselves, when possible. But it would be better if this was a routine aspect of voter service provided to all Hawaii residents by the State Office of Elections in both online and paper formats. In recent years this office has sometimes told there was never "enough money." But what can be more important than an informed electorate? We strongly support this bill and urge you to do so too. Thank you for your consideration. Thank you for the opportunity to submit testimony.



House Judiciary Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Thursday 1/31/13 at 02:05PM in Room 325
HB 300 – Relating to Informed Voting

TESTIMONY

Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Rhoads, Vice Chair Har, and members of the House Judiciary Committee:

Common Cause Hawaii supports HB300, which requires the publication of information on the proposed constitutional or proposed charter amendments that appear on an election ballot.

Common Cause supports practices that encourage citizen participation in the electoral and legislative processes. We are aware that many voters are unaware of proposed constitutional amendments or proposed charter amendments. In other cases, some voters have explained to us that they feel they didn't have adequate information to comfortably make a decision – therefore they tend to leave this section blank. Because Hawaii follows a “blank vote is a ‘no’ vote” policy for constitutional amendments, the blank votes cast from those who felt unprepared can translate into skewed results.

We do believe the ballot and charter education information should explain each proposed change in “plain language”, and the “pros and cons” for each change should be written in an objective, factual, nonpartisan manner.

Thank you for the opportunity to testify in support of HB300.

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 11:42 AM
To: JUDtestimony
Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB300 on Jan 31, 2013 14:05PM*

HB300

Submitted on: 1/28/2013

Testimony for JUD on Jan 31, 2013 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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