

THIRTY-THIRD DAY

Monday, March 17, 2014

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Regular Session of 2014, convened at 11:41 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senator Wakai who was excused.

The President announced that she had read and approved the Journal of the Thirty-Second Day.

At this time, Senator Chun Oakland, on behalf of Senator Ige and Senator Nishihara, introduced Mr. Russell Minobe and the following outstanding students of Pearl City Elementary School who were visiting the Capitol to learn about the legislative process: Joanna Reid, Liah McKee, and Celeste Aguinaldo, all of whom were accompanied by their parents.

Senator Taniguchi welcomed a group of Cub Scouts from Noelani Pack 35, who were accompanied by their parents and friends.

Senator Tokuda recognized Department of Education Superintendent Kathryn Matayoshi who was present in the gallery, as well as board members of the Hawaii Association for the Education of Young Children (HAEYC), and updated the members on the morning's Education Week events related to early education.

Senator Tokuda, on behalf of Senator Hee and herself, recognized Dayna Hironaka of Kahalu'u Elementary School for having been designated as 2014 Windward District Teacher of the Year, and presented the following remarks:

"It is my honor to begin our floor introductions today on behalf of both Senator Clayton Hee and myself. Please join me in recognizing and honoring Ms. Dayna Hironaka. Dayna believes that teamwork and high expectations are important in the education of the students in her classroom at Kahalu'u Elementary School.

"Dayna received her bachelor's degree in education from the University of Hawai'i at Mānoa. She has taught third, fourth, and fifth grade and also served as the technology teacher and temporary vice principal. She became a National Board Certified Teacher as an early childhood/generalist in 2012. She is also very involved in the community while serving as a Kahalu'u 'ohana board member. Dayna truly believes that every child's learning experience is individualized and says, 'I build on each child's individual's strengths to maximize their learning.' She enjoys volleyball, traveling, and spending time with her family. She has an 11-year-old son and an 8-year-old daughter, and her husband is the computer teacher at Kahalu'u School.

"Again, on behalf of both Senator Hee and myself, please join me in welcoming and honoring, for all that she does for our Kahalu'u School, Dayna Hironaka. And I believe to support our 2014 Windward District Teacher of the Year, we have her husband, Ryan, in the gallery and, definitely important, her cheering squad – her son, Kalei, and her daughter, Mia."

Senator Slom honored Matthew Lawrence of Waikiki Elementary School for having been designated as 2014 Hawai'i State Teacher of the Year, and presented the following remarks:

"Good morning, Madam President and colleagues. It's 'Sammy O'Slom' to you, today. Thank you. I love Education Week and the chance and the honor to recognize our outstanding teachers. Today, I'd like to honor Matthew Lawrence.

"Matthew Lawrence is recognized as the state's premier educator by receiving the 2014 State Teacher of the Year award. He's taught for 13 years at Waikiki Elementary School. He's a National Board Certified Teacher. Matthew received his bachelor's degree in elementary education with middle school endorsement from Illinois State University and a master's degree in educational psychology from UH Mānoa. He encourages his students to use their creativity and higher level thinking skills and he integrates the philosophy of children-, concept-, and project-based learning to challenge his students in his everyday teaching.

"Matthew has served on the school community council as chairman from 2006 to 2011, and he currently is a mentor teacher with the University of Hawai'i undergraduate teaching program. Mr. Matthew Lawrence, and his support team up in the gallery: his lovely wife, Jessika, and daughter, Lily Ann Lawrence. Aloha."

Senator Hee recognized Teresa Cramer of Hale Kula Elementary School for having been designated as 2014 Central District Teacher of the Year, and presented the following remarks:

"Thank you, Madam President. It's my honor to introduce Teresa Cramer, the 2014 Central District Teacher of the Year. It's interesting; I have the privilege of representing districts that begin in Kahalu'u, and Teresa is in Hale Kula in Wahiawā, so the district has two districts within the Department of Education.

"Teresa Cramer began her career as a social worker who specialized in cases of high-risk children in shelters and outreach programs. After 10 years in the profession, she was inspired to become a schoolteacher to address the needs of at-risk children at an earlier age. At Hale Kula Elementary School in Wahiawā, Teresa created the co-teaching inclusion class, which utilizes the school's Hope Garden to teach hands-on learning and sustainability. She is also recognized by the parents of her students for teaching them to strive for excellence and to achieve their goals.

"Present in the audience to support her mother is Teresa's daughter, Tess Cramer. Thank you very much."

Senator English honored Anthony Williams of Pa'ia Elementary School for having been designated as 2014 Maui District Teacher of the Year, and presented the following remarks:

"Madam President, members of the Senate, I'm so pleased today to introduce the 2014 Maui District Teacher of the Year, Kumu Anthony 'Kamaka'eu' Williams.

"Kumu Kamaka'eu has received the honorable distinction as the 2014 Maui School District Teacher of the Year for his outstanding work as a fourth-grade Hawaiian language immersion teacher at Pa'ia Elementary School. He is an award-winning educator credited with helping to create the Hawaiian Aligned Portfolio Assessment, which is an assessment to determine if Hawaiian immersion schools have made adequate annual progress.

"Joining Kumu today are his guests in the gallery: Nanette Williams, Chihiro Ikezawa, and his sister, Sophia Amasol.

"Originally from Honolulu, Kumu Kamaka'eu has been a great asset to us in Maui; and I just want to say that in the sea of bureaucracy, he is a steady, steady light guiding our programs and guiding our students to make sure that the students are at the center of their education and making sure that the Hawaiian

language lives. So, I'd like to say mahalo and congratulations on this distinctive award. Thank you."

Senator Ruderman recognized Elizabeth Timbal of Kea'au High School for having been designated as 2014 Hawai'i District Teacher of the Year, and presented the following remarks:

"Thank you, Madam President. I rise to acknowledge the honor being given to the Hawai'i District Teacher of the Year for 2014, Ms. Elizabeth Timbal. Ms. Timbal is unable to be with us today because she is fighting a serious illness.

"Colleagues praise Elizabeth Timbal's classroom management skills and her genuine care. She has helped spearhead the implementation of advancement by individual determination at Kea'au High. She developed an extended learning opportunity program and continually strives to improve her craft, most recently by completing an English-language learner course to better understand her needs. One of her students wrote, 'You made me discover talents that I never knew I had. You are the only one who took a chance to give me a chance.' Her investment and dedication to her students has been an invaluable service to the Kea'au community.

"So, I'd like to recognize Ms. Elizabeth Timbal, 2014 Hawai'i District Teacher of the Year awardee, and will yield the floor to Senator Shimabukuro."

Senator Shimabukuro honored Terra Wight of Nanakuli High and Intermediate School for having been designated as 2014 Leeward District Teacher of the Year, and presented the following remarks:

"I also have the honor to acknowledge the 2014 Leeward District Teacher of the Year, who is Terra Wight of Nanakuli High and Intermediate School. Unfortunately, Ms. Wight was unable to join us today, but I do have written remarks to insert into the Journal in her honor. Thank you."

The Chair having so ordered, Senator Shimabukuro's additional remarks read as follows:

"In light of the importance of education, it is always a pleasure and a privilege of the Hawai'i State Senate to recognize those exceptional people who have taken on this great responsibility and who have made significant achievements in educating the young people of their community. The Senate of the State of Hawai'i believes that teachers impress upon young minds the foundation, standards and ideals that last a lifetime. Those individuals who choose to become educators have a special calling because they dedicate their life's work to the development of young and eager minds and are willing to lead the way in discovering life's mysteries and wonderful surprises.

"In this spirit, the Senate recognizes Terra Wight, teacher at Nanakuli High & Intermediate School, for having been designated 2014 Teacher of the Year for Oahu's Leeward District.

"Terra seeks to build strong bonds that inspire students. Her lessons blend rigor with relevancy and foster curiosity, allowing students to experience science in the world around them. She helped initiate an ecology club through which students and community members are partnering to restore native plants to Piliokahe Beach Park. On the Instructional Leadership Team, she helped develop new policies for tardiness, uniforms, and curriculum that improved attendance and student achievement.

"The Senate of the Twenty-Seventh Legislature, State of Hawai'i, congratulates Terra Wight, 2014 Teacher of the Year for Oahu's Leeward District, for her outstanding contributions to our young people through her tireless and inspiring work as a teacher at Nanakuli High & Intermediate School. The Senate further extends its gratitude and warmest aloha to Terra, along

with sincere best wishes for continued success in the years ahead."

At this time, Senator Kouchi recognized John DeSoto, former chair and member of the Honolulu City Council, who was present in the gallery.

Senator Kouchi then recognized Justin Yamagata of Waimea Canyon Middle School for having been designated as 2014 Kaua'i District Teacher of the Year, and presented the following remarks:

"The Kaua'i District Teacher of the Year is Justin Yamagata, and he's a science teacher at Waimea Canyon School. While he's not able to be here, I'd like to read just two bullet points. The first is when he joined Waimea Canyon School eight years ago, he was surprised to find out students were not competing in science fairs – and he's a science teacher. Today, about 100 student experiments are displayed in a science event, with several of them qualifying for state and international tournaments.

"And his nomination came on the heels of him taking top honors in March 2013 as the Hawai'i Academy of Science Teacher of the Year. So, our congratulations to Justin Yamagata, Kaua'i Teacher of the Year."

Senator Tokuda then rose and stated:

"Madam President, that wraps up our outstanding teachers. We want to thank them for all that they do in our classrooms and for our students."

At 11:56 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:02 p.m.

HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 387) was read by the Clerk and was disposed of as follows:

Hse. Com. No. 387, transmitting H.C.R. No. 17, H.D. 1, which was adopted by the House of Representatives on March 14, 2014, was placed on file.

By unanimous consent, action on H.C.R. No. 17, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE DEPARTMENT OF HEALTH DEVELOPMENTAL DISABILITIES DIVISION TO ESTABLISH A TASK FORCE TO REVIEW HAWAII'S STATUTORY DEFINITION OF "DEVELOPMENTAL DISABILITIES"," was deferred.

STANDING COMMITTEE REPORTS

Senator Gabbard, for the Committee on Energy and Environment, presented a report (Stand. Com. Rep. No. 2887) recommending that H.B. No. 2060, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2060, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TAXATION," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2888) recommending that H.B. No. 716, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Labor.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and

H.B. No. 716, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE DISCIPLINARY AUTHORITY OF THE BOARD OF PUBLIC ACCOUNTANCY," passed Second Reading and was referred to the Committee on Judiciary and Labor.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2889) recommending that H.B. No. 570 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 570, entitled: "A BILL FOR AN ACT RELATING TO CONTRACTORS," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2890) recommending that H.B. No. 2585 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2585, entitled: "A BILL FOR AN ACT RELATING TO FORECLOSURES," passed Second Reading and was placed on the calendar for Third Reading on Tuesday, March 18, 2014.

Senators Chun Oakland and Green, for the Committee on Human Services and the Committee on Health, presented a joint report (Stand. Com. Rep. No. 2891) recommending that H.B. No. 2053, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the joint report of the Committees was adopted and H.B. No. 2053, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGING," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Chun Oakland, for the Committee on Human Services, presented a report (Stand. Com. Rep. No. 2892) recommending that H.B. No. 1754, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1754, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PERSONS WITH DISABILITIES," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2893) recommending that H.B. No. 2257, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2257, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DEPARTMENT OF EDUCATION SUPERINTENDENT'S SALARY," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2894) recommending that H.B. No. 2276, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2276, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY CHILDHOOD EDUCATION,"

passed Second Reading and was referred to the Committee on Ways and Means.

Senator Tokuda, for the Committee on Education, presented a report (Stand. Com. Rep. No. 2895) recommending that H.B. No. 1676, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 1676, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO EARLY LEARNING," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Wakai, for the Committee on Technology and the Arts, presented a report (Stand. Com. Rep. No. 2896) recommending that H.B. No. 2051, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2051, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC WORKS OF ART," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Wakai, for the Committee on Technology and the Arts, presented a report (Stand. Com. Rep. No. 2897) recommending that H.B. No. 2539 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2539, entitled: "A BILL FOR AN ACT RELATING TO SAINT MARIANNE COPE DAY," passed Second Reading and was placed on the calendar for Third Reading on Tuesday, March 18, 2014.

Senator Wakai, for the Committee on Technology and the Arts, presented a report (Stand. Com. Rep. No. 2898) recommending that H.B. No. 2593, H.D. 1 pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Espero, seconded by Senator Slom and carried, the report of the Committee was adopted and H.B. No. 2593, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO URBAN ART," passed Second Reading and was referred to the Committee on Ways and Means.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2899) recommending that the Senate advise and consent to the nomination of JANET PRIMIANO to the Board of Dental Examiners, in accordance with Gov. Msg. No. 508.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2899 and Gov. Msg. No. 508 was deferred until Tuesday, March 18, 2014.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2900) recommending that the Senate advise and consent to the nomination of LEONARD LEONG to the Contractors License Board, in accordance with Gov. Msg. No. 534.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2900 and Gov. Msg. No. 534 was deferred until Tuesday, March 18, 2014.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2901) recommending that the Senate advise and consent to the nominations to the Real Estate Commission of the following:

ROWENA COBB, in accordance with Gov. Msg. No. 535; and

NIKKI SENTER, in accordance with Gov. Msg. No. 536.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2901 and Gov. Msg. Nos. 535 and 536 was deferred until Tuesday, March 18, 2014.

Senator Baker, for the Committee on Commerce and Consumer Protection, presented a report (Stand. Com. Rep. No. 2902) recommending that the Senate advise and consent to the nomination of REID SAITO to the Board of Examiners in Optometry, in accordance with Gov. Msg. No. 537.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2902 and Gov. Msg. No. 537 was deferred until Tuesday, March 18, 2014.

ORDER OF THE DAY ADVISE AND CONSENT

Stand. Com. Rep. No. 2883 (Gov. Msg. Nos. 513, 514 and 515):

Senator Shimabukuro moved that Stand. Com. Rep. No. 2883 be received and placed on file, seconded by Senator Hee and carried.

Senator Shimabukuro then moved that the Senate advise and consent to the nominations to the Island Burial Council, Island of Molokai of the following:

FRANCES COBB-ADAMS, term to expire June 30, 2015 (Gov. Msg. No. 513);

MICHELLE PESCAIA, term to expire June 30, 2016 (Gov. Msg. No. 514); and

EDWARD AYAU, term to expire June 30, 2017 (Gov. Msg. No. 515),

seconded by Senator Hee.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Wakai).

Stand. Com. Rep. No. 2884 (Gov. Msg. Nos. 516, 523, 524 and 525):

Senator Shimabukuro moved that Stand. Com. Rep. No. 2884 be received and placed on file, seconded by Senator Hee and carried.

Senator Shimabukuro then moved that the Senate advise and consent to the nominations to the Island Burial Council, Islands of Maui and Lanai of the following:

JOHANNA KAMAUNU, term to expire June 30, 2017 (Gov. Msg. No. 516);

IRMALEE POMROY MALY, term to expire June 30, 2017 (Gov. Msg. No. 523);

KAPULANI ANTONIO, term to expire June 30, 2016 (Gov. Msg. No. 524); and

DANE MAXWELL, term to expire June 30, 2017 (Gov. Msg. No. 525),

seconded by Senator Hee.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Wakai).

Stand. Com. Rep. No. 2885 (Gov. Msg. No. 579):

Senator Nishihara moved that Stand. Com. Rep. No. 2885 be received and placed on file, seconded by Senator Ihara and carried.

Senator Nishihara then moved that the Senate advise and consent to the nomination of KEONE KALI as the Chief Information Officer of the Office of Information Management and Technology, term to expire June 30, 2014, seconded by Senator Ihara.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Wakai).

At this time, Senator Nishihara introduced Keone Kali, who was accompanied by his parents in the gallery.

Stand. Com. Rep. No. 2886 (Gov. Msg. No. 580):

Senator Hee moved that Stand. Com. Rep. No. 2886 be received and placed on file, seconded by Senator Shimabukuro and carried.

Senator Hee then moved that the Senate consent to the nomination of MICHAEL D. WILSON as Associate Justice to the Supreme Court, State of Hawaii, term to expire in ten years, seconded by Senator Shimabukuro.

Senator Hee rose to speak in support of the nominee as follows:

“On March 6, 2014, your committee held a public hearing to consider the appointment of Judge Wilson to the position of Associate Justice of the Supreme Court of the State of Hawai‘i. At that hearing, your committee found, by unanimous vote, the appointee to be qualified for the position and recommended that the Senate consent to this appointment. The background testimony and conclusion reached by your committee on Gov. Msg. No. 580 was discussed at length and reported to you in Stand. Com. Rep. No. 2886.

“In response to a March 13, 2014 memorandum addressed to your committee from members of the Senate Women’s Caucus, your committee held a second public hearing for the consideration of this appointment on Saturday, March 15, 2014. The memorandum stated that during the hearing on March 6, 2014, the Senate Women’s Caucus believed that the testimony of the Hawaii Bar Association raised questions that warrant further inquiry by the Senate.

“Furthermore, your committee commented that following the hearing on March 6, a woman expressed concerns about the appointee, and your committee wanted the opportunity to investigate these concerns. Lastly, your committee offered Judge Wilson, officers and directors of the Hawaii State Bar Association, and anyone else the opportunity to come forward and comment again on the appointment.

“Your committee appreciates the input from all individuals who have appeared or participated, especially members of the Hawai‘i Judicial Selection Commission, Judge Wilson, and members of the Senate Women’s Caucus. This hearing provided your committee an opportunity for the appointee, Hawaii State Bar Association, Hawai‘i Judicial Selection Commission, and members of the legal community and public to engage in discussion on various topics including, but not limited to:

- The transferring of an employee back to her original position at the Office of State Planning while Judge Wilson was the Chairperson of the Board of Land and Natural Resources;

- The judicial rating process and procedures of the Hawaii State Bar Association;
- The judicial rating process and procedures of the Hawai'i Judicial Selection Commission;
- The Judicial Performance Program under Rule 19, Rules of the Supreme Court, State of Hawai'i; and
- Issues relating to sexual harassment and discrimination.

"Of the various topics discussed, your committee notes the following. Your committee notes that the appearance by two members of the Judicial Selection Commission to discuss the commission's judicial rating processes and procedures is unprecedented and appreciates their participation. In addition to serving on the commission as elected members of the Hawaii State Bar Association, these two members previously served as board members of the Hawaii State Bar Association. Thus, these two commission members are experienced and knowledgeable in the judicial rating processes and procedures of the Hawaii State Bar Association that existed during their respective tenures, as well as the existing processes and procedures of the Hawai'i Judicial Selection Commission.

"The commission members testified that the commission's judicial rating processes and procedures are confidential pursuant to Article VI, Section 4, of the Hawai'i State Constitution, but disclosed that the sources of information for judicial rating include the Office of Disciplinary Counsel, the Hawaii State Bar Association, and the Judicial Performance Program established pursuant to Rule 19, Rules of the Supreme Court of the State of Hawai'i. The Judicial Selection Commission members testified that in addition to its constitutional requirement, such information is confidential because many attorneys do not want others to know that they are considering a career track change and because the release of such information may discourage sitting judges from seeking retention.

"Your committee notes the testimony from a number of attorneys regarding Rule 19. Rule 19 establishes the Judicial Performance Program under the Hawai'i Supreme Court to periodically evaluate a judge's performance in order to promote judicial excellence and competence. Judges are evaluated according to legal ability, judicial management skills, comportment, and other criteria established by the special committee appointed by the chief justice to implement and administer the program and approved by the Hawai'i Supreme Court. All information, questionnaires, notes, memoranda, data, and reports obtained, used, or prepared in the implementation and administration of the program is confidential.

"The memorandum from the members of the Senate Women's Caucus requested that your committee ask the appointee to allow the Senate to review relevant information from judicial records, including materials gathered pursuant to Rule 19. However, testifiers, including retired Associate Justice James Duffy, indicated to your committee that the appointee is not authorized to allow your committee to review the performance evaluation summary that was furnished to the appointee. Your committee acknowledges the testimony of retired Associate Justice James Duffy regarding the reasons to maintain the confidentiality of information obtained pursuant to Rule 19. Your committee further notes that several lawyers – including Judicial Selection Commission member James Bickerton and private attorneys Michael Livingston, Brook Hart, and Judith Pavey – offered strong testimony that the nominee was not permitted to release the information pursuant to Rule 19.

"Finally, on this matter Public Defender Susan Arnett, an original member of the committee to construct Rule 19 in 1991, stated emphatically that the 'contents offered under Rule 19

were for the chief justice to review in an effort to evaluate and constructively comment on the conduct of sitting jurists only.'

"Your committee notes the testimony from two female civil rights lawyers who testified in support of the appointment of Judge Wilson. Both testified that Hawai'i has strong laws to provide recourse for victims of sexual harassment or discrimination. However, in order to provide recourse or address an uncomfortable or sometimes traumatic situation, the victim must come forward. The attorneys also urged that as a matter of fairness, a victim must also come forward at the time the instance of sexual harassment or discrimination occurs. Coming forward when the instance occurs provides an opportunity for correction and education, as the harassment or discrimination may have been a misunderstanding or unintended.

"Your committee believes that sexual harassment and discrimination are not to be tolerated and takes claims of sexual harassment or discrimination seriously and with sensitivity. Your committee also recognizes the courage it takes for a person to come forward to disclose instances of sexual harassment or discrimination. As such, your committee's intention to hold a second hearing was to provide an additional opportunity for any individuals with concerns regarding sexual harassment or discrimination by the appointee to express or substantiate concerns so that your committee could appropriately consider that testimony. Your committee notes that no one came forward, and that any claims regarding sexual harassment or discrimination remain unsubstantiated and unknown.

"Accordingly, your committee maintains its finding that Judge Michael D. Wilson has the experience, temperament, judiciousness, and other competencies to serve as an Associate Justice of the Hawai'i Supreme Court, and that Judge Wilson has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for an Associate Justice of the Supreme Court. I urge confirmation of Judge Michael Wilson. Thank you, Madam President."

Senator Baker rose to speak in opposition to the nominee as follows:

"I had questions about the qualifications and suitability of this nominee to serve on the high court from the beginning. There was something I just couldn't put my finger on, but unlike other nominations to the Supreme Court, there didn't seem to be much happiness or excitement about this nominee. 'Was he the best and brightest; couldn't we do better?' I heard that in whispers and then in phone calls and conversations from people I know and respect. I heard that he created a hostile work environment, didn't treat subordinates with respect – some of whom were women – and that the nominee didn't have the appropriate judicial demeanor or work ethic. He wasn't diligent, didn't come to his calendar on time or prepared, and expected others to do his work. I expect more of a judge – whether in the Circuit Court or on the Supreme Court. I also heard from others who I also know and who wanted me to vote for him because he was a liberal, just like I am, or because it would make the governor look bad if the Senate turned him down. Now, in the governor's defense, nobody from the administration suggested that to me – just zealous supporters.

"When I talked to the nominee, I raised some of those questions. All were denied. But that nagging doubt in my stomach continued. Then, he invited me to speak with folks in the community I greatly respect to vouch for his veracity. I did; they didn't.

"When I listened to and read the testimony, one piece of testimony stood out for me. It was the testimony of litigator Janice Kim. She recounted her encounters with Judge Wilson in

that testimony in support of his nomination on March 15. However, in so doing, she brought into question his judicial ethic. According to her testimony, she had a personal relationship with the nominee in 2008, after her divorce. In 2011, she represented clients in a lawsuit in which Judge Wilson sat in as a substitute justice. The case eventually was decided in Ms. Kim's clients' favor. Based on my understanding of the Code of Judicial Conduct, it seems that Mr. Wilson should have declined to sit on that case because of a personal relationship with one of the attorneys in the case. I'm told that in a situation of judges sitting as substitutes to the Supreme Court, such judges are given a list of all the parties and their counsel and must acknowledge that they have no personal relationship with any of the parties to ensure there is no potential conflict of interest or favoritism. In an abundance of caution, it seems to me that Judge Wilson should have declined to sit on that case.

"Madam President, do we want the best possible candidate for the Supreme Court? I think we do. There are simply too many questions surrounding this nominee for me to conclude that he represents the best, brightest, and most diligent. I have to vote 'no.' In that regard, I ask that the statement of the Senate Women's Caucus submitted to the *Honolulu Star-Advertiser* be submitted into the Journal.

"There's another aspect to this nomination. I have to question the process, and offer to my colleagues that our judicial selection and confirmation processes are flawed. Much has been made about anonymous testimony or assertions. Since I personally knew some of the people who had concerns and expressed them to a number of us, those complaints weren't anonymous but confidential. Those personal observations questioned his diligence, treatment of others, and work ethic. I find it interesting that we want to uphold confidentiality for lawyers and judges – that's okay – but not for subordinates whose careers may be in jeopardy as well.

"The chair and some committee members made much of the fact that those complaining didn't come forward. May I offer some thoughts on this topic? As difficult as it is to imagine, not everyone is in a position to offend their bosses or, if early in their legal career, to offend those in power. Those of us with power sometimes lose touch with those who are without it. That makes it our responsibility to deepen our understanding, allow for the possibility that powerlessness is immobilizing, and assist in whatever ways we can to protect against exploitation wherever it may occur.

"Our expectation sometimes is that everyone can step forward and speak truth to power. The too-easy mantra that I heard is this: 'If it happened, tell us about it. If it happened and you don't describe it, we can't help you. We won't leap to conclusions; we just won't assume anything.' But the unwritten response that I heard is, 'We discount whatever is said in confidence.'

"We don't have to assume anything. The communications I received from people that I know and know their veracity raises doubts about this nominee. The so-called 'whisper campaign' was loud and persistent. In spite of the fact that the titans of politics and the titans of the legal community came forward, plenty of our people in our community did not. They were the powerless with firsthand knowledge; they did not come forward, and those also included subordinates and others in the legal, law enforcement, and women's communities.

"I expect that this body will confirm Gov. Msg. No. 580, but we must learn from this sad chapter and reform the system. I hope the nominee will take to heart the concerns raised and strive to do better. I'd like nothing more than over the next several years to have my 'no' vote proven wrong.

"What we should be striving for is the creation of an environment where people who are unfamiliar with the legislative process, or who have little experience participating in the legislative process, can be invited to share their experiences. Circulating a hearing notice to attend a hostile hearing is hardly inviting.

"It may seem unrealistic to create such an environment, but I think that is the challenge before us, and we've failed at it so far. Procedural reforms appear to be necessary in the judiciary and the legal profession as well.

"I humbly ask the chief justice to pull together a panel of professionals within and without the judiciary and the legal community to examine the judicial selection process. I ask him to review the court's harassment policies and procedures and develop a process where subordinates in the judiciary can feel safe offering their concerns about their bosses or supervisors, even if those bosses or supervisors are judges. No one – *no one* – can be above the law. We expect more of those who apply the law than perhaps we expect of others. I make the same request of the Hawaii State Bar Association; your processes need to be reformed as well.

"Madam President, colleagues, this is not the first contentious judicial nominee that we've had, and I suspect it won't be the last. However, we need to move forward to improve the system so that all in our community are better served and the best and the brightest can rise to the highest courts in Hawai'i. Mahalo."

The Chair having so ordered, the statement of the Senate Women's Caucus as published in the *Honolulu Star-Advertiser* is identified as "**ATTACHMENT A**" to the Journal of this day.

Senator Solomon rose to speak in support of the nominee as follows:

"Thank you very much, Madam President. With due respect to the remarks of the previous speaker, I'm going to be making my own. I'd like to speak in very strong support of the Judiciary chairman's remarks. I want to thank the Judiciary chairman for taking the Women's Caucus letter seriously, and because of this, was able to extend the hearing.

"As you know, Madam President, I was in attendance at both, and if anyone should be intimidated, maybe, I guess, I should have been when the former governor came forward and accused a senator of possibly misusing my 'political power' or influence in requesting that the hearings be continued. Of course, Madam President, you've known me for many, many years, and I don't really get intimidated very easily. But I like to think of myself as a role model that's encouraging women to step forward. I know it's difficult. I owe a lot of this, I guess, to my upbringing. I was brought up on a farm and a ranch, and as you know, in my circle on the ranch, I'm known as a 'cow boss.' Now, not as a cowboy, but a cow boss, and I've always taken that quite seriously because on a ranch you're treated with respect and equality. If you can do the job, you're judged on your merit, and that's really the *nā paniolo* way of really looking at people and what people can do.

"I myself was very disappointed as women did not come forward. I myself, Madam President, who was the second female on the committee, did not receive one call from a woman or any women that felt intimidated or harassed, but I felt very compelled to support the Women's Caucus position simply because I believe that women are caught up in a situation, a very difficult situation. Many of them are single mothers and as you know, this is a very small shop, and people, especially in various professions, people do feel overwhelmed and intimidated.

“But I think as it pertains to this particular instance, and because this was the highest court in Hawai‘i, I was hoping that females would feel more motivated to come forward. I want to commend the only woman that did show up to express her mana‘o and her concerns when she was there at DLNR. But I think that through the process of the testimonies that were received, it was resolved that Mr. Wilson was not the one involved, but her immediate supervisor.

“So, with that in mind, Madam President, I’d like to urge all my colleagues to vote in support. I agree with the remarks of the previous speaker and I’ve said it verbally, at the end of the testimonies, that I think that the pilikia with this whole process really rests with the judiciary. I think that they have to examine how they are conducting – and although I agree, confidentiality is important – but there comes a moment when one has to really look at the issues. I was very happy – if I can use those words – very happy that Justice Duffy did step forward and because many of his colleagues are retired, they are willing to look into the whole process and to come up with better recommendations so that we in this body can make better decisions as we, in fact, truly represent the public.

“So, with that, Madam President, thank you very much.”

Senator Thielen rose to speak in support of the nominee with reservations as follows:

“Thank you, Madam President. I rise in support of the nominee but with some very serious reservations. First of all, I’d like to thank the chair of the Judiciary Committee for holding the second hearing and responding to the Senate Women’s Caucus request. I’d like to thank my fellow women senators for standing up to make the request based on the statements of the Hawaii State Bar Association about the areas of concern regarding the nominee. I also want to thank the HSBA representatives on the Judicial Selection Commission for coming to that second hearing and explaining the process that they go through, the people who submitted testimony, and the people from the public who contacted us senators to give input for us to consider and weigh. And I want to thank the nominee for answering some very direct questions in the hearing.

“Perhaps because of my role as the former president of Hawaii Women Lawyers and the work that I’ve done back when I was a member of the private bar and afterwards, some people felt more comfortable contacting me than others. I have to say that some of the contact came to me after the initial Judiciary Committee vote, and although I encouraged people to call others, I think some felt that because the committee had already voted, their input may not be listened to.

“We all have to vote our conscience based on the information that we have in front of us, and I support the vote of my fellow senator and all of you. And in struggling with my own conscience and the information I have in front of me, I have decided that I would discard secondhand information or allegations that were raised about the nominee’s private life and just look at the information relating to the nominee’s role as a judge.

“Unfortunately, because we don’t have access to the performance evaluations or even the summaries of the performance evaluations, we senators are put in a situation where we cannot look to a record to validate or invalidate statements that may have been made to us privately. So, I’ve made the decision to take the nominee at his word when he answered my direct questions at the hearing and to trust the screening of the judicial selection process as described by the two representatives and vote to support his nomination with my reservations expressed.

“But going forward, many of you have sat through a number of very contentious judicial nominations. I have not; this is my

first. It’s clear to me that this process is flawed, and I’d like to echo some of the remarks that some of the other senators have but to add my own thoughts on this, too.

“It’s often been said in the military that most generals go into battle fighting the last war; in other words, you overcompensate for recent events. But the really good generals are the ones that understand that the next battle is going to be different. We now have had a number of judicial appointments where the HSBA has come forward with an ‘unqualified’ rating, and in response, we’ve reached very different votes in this body. I think there are going to be some people who are motivated to go back to HSBA to take a hard look at that process and whether it’s appropriate to allow confidential comments regarding nominees to be made as part of their process.

“I want to point out that there are confidential comments made at every level of the nomination process relating to judges. The judicial performance reviews allow attorneys to make confidential comments. They do so because they know that attorneys appearing in front of a judge are going to be very concerned that the comments that they make are going to be held against them by that judge in rulings later on. The Judicial Selection Commission process includes an avenue for confidential comments, including access to the performance reviews as well as the other due diligence that they do. The HSBA process allows for confidential comments, and many of the past presidents of the HSBA have cited their support for that confidentiality and the necessity for it, including back in 2010, when people like Rai Saint Chu, who has stepped forward to support the current nominee, defended the need to provide an avenue for members of the bar to provide confidential comments to the HSBA when they are evaluating the nominees for the courts. And our process here in the Senate also includes an avenue for confidential comments. It always has and it always will, because part of our role is to represent the public and allow not just members of the bar, but other members of the public to contact us, either formally through testimony, through appearing in hearing, or through individual confidential meetings or phone calls.

“I don’t want us to eliminate an avenue for confidentiality, and I’m going to cite an example here not because I think it relates to this nomination, but for future nominations. Several people brought forward the name of Anita Hill, and they said that you have to stand up, you have to be willing to come forward. Last week, *The New York Times* ran an article about Anita Hill because it’s been 23 years since she came forward. And what most of us have forgotten in those 23 years, including myself, is that Anita Hill did not voluntarily step forward to raise the allegations of sexual harassment against Clarence Thomas. Anita Hill had been an employee and subordinate to Clarence Thomas in two different jobs in the federal government. When the administration of George H. W. Bush was considering nominating Clarence Thomas to the Supreme Court, the FBI was doing a background check on him. The FBI contacted Anita Hill. In a confidential interview where she was promised confidentiality, she shared her experience with Clarence Thomas. And after the Bush administration nominated Clarence Thomas to the bench, somebody in the government leaked that confidential report to the press, where it was published. After it was published, the U.S. Senate Judiciary Committee called Anita Hill forward, where she was clearly a reluctant witness.

“Moreover, Ms. Hill at the time was a tenured professor, and I believe she was living in a different state than the nominee for the Supreme Court. So as she testified, she knew that she was not going to have to go home and live and work in close proximity to the nominee and she wouldn’t have to appear in front of him in his role as a judge. And even then, Ms. Hill, according to that *New York Times* report and the documentary

that's coming out on her, received death threats; received attempts to take her out of her job, even though she was a tenured professor; and felt uncomfortable for many years afterwards.

"Anita Hill's experience is not an example that we can use as a parallel for our process here in Hawai'i. And as we go back and take a look at how to re-examine this judicial selection process and the confirmation of the nominees, I think it's very important that we maintain an ability for people to bring forward confidential information. What we need to focus on is how do we better weigh, evaluate, verify, and validate the information that comes forward in that confidential manner, because we do have to be fair to the nominees as well.

"I applaud the efforts of retired Justice Duffy and others to go back and take a look at the bar association process. I encourage them to involve younger people in that evaluation. What's become clear to me as my daughters are growing – I have a 21-year-old and a 17-year-old – they have very different standards about what's acceptable conduct. We see that in polls relating to attitudes towards same-sex marriage. People in my generation or older, maybe fewer than 40, 50 percent support it, but when you take a look at the younger generation, you see something like 80, 90 percent support. They have a very different standard of conduct that's acceptable, and I think as we evaluate this process, it's important that we bring the younger professionals into that consideration.

"I also would like to encourage that we engage in a discussion with the chief justice of the Supreme Court to find out if there is a way that we can – without creating a chilling effect on the confidential nature of the information that they have – access some form of records or evaluations to help us in our weighing and validation of the individual comments that we receive regarding sitting judges.

"I think the other thing that we need to revisit is the length of time that we have in making this determination; 30 days is very short. I understand it is under the Constitution and may require an amendment, but I think in order to give the bar, the public, and the members of this Senate more opportunity to judiciously weigh the information, we may need a little bit more time, 45 to 60 days, and would encourage further discussion on that topic as well.

"Thank you, Madam President, for the opportunity to make these remarks."

Senator Slom rose to speak in strong support of the nominee as follows:

"Thank you. First of all, I want to thank the Judiciary chairman, not only for the way the hearings were conducted, but also for his comments today about sexual harassment and about any charges that were brought forth.

"Having said that, let me say that I've known the nominee for several decades. He's a Democrat; I am not. He is a liberal; I am not. He apparently got close to Miss Universe; I did not. But I know his integrity and I know his experience, and we've seen him as a presiding judge in the First Circuit. We've seen him in action. We've seen countless numbers of people come forward to testify, men and women – and you know, I have to say I'm a little sad that this has become a 'woman versus man' kind of issue because it's not. It's an issue of experience. It's an issue of serving the people.

"I must say, in my limited experience, Madam President, I only admire and love strong women, and I see many, many, many strong women in our community, many in our body here. I do not understand that not one woman could come forward other than the DLNR employee, who was totally discredited in her testimony by her supervisor. I cannot understand this so-

called climate of fear among and between attorneys because attorneys, in fact, do have things that they can do if they suspect or allege retribution. All this talk about 'somebody's going to take it out on anybody that testified' is hearsay and conjecture. We do not have any examples of that happening before, but we do have remedies.

"The nominee met all eight criteria of the Hawaii State Bar Association to the extent that no negative information was given by them in detail or by anyone else. Some of the information that was alleged was, on this day, Madam President, purely blarney. And what we saw over the last two weeks, with hushed whispers and alleged confidentiality, was a public colonoscopy of a judge who deserves better. I am all for people standing up and being contrary to anyone or any issue. There was plenty of time to do this. The process revealed even more the dysfunction of the Hawaii State Bar Association and their procedures. I have been involved in my 18 years in the Senate in many, many Senate confirmations. I have been very critical of their process. While there were suggestions that they were going to make changes, no important changes, in fact, have been made. So, we can all join hands in saying that there need to be changes.

"Probably the most bizarre statement of all came on Saturday, when we spent six hours in our second hearing. I asked the incoming president, or president-elect, of the bar association if he thought it was fair that the nominee, in fact, was denied due process, which was acknowledged. And the answer, incredible to me and to members of the committee and to the public that were there, was, 'Due process is reserved for criminal actions only.' How shameful.

"And this whole idea that this nominee, first of all, received initially a 'highly qualified' rating when that rating was available, and then subsequently a 'qualified' rating on the bench when the 'highly qualified' was discontinued, and now all of a sudden received an 'unqualified' rating, brought to mind a number of former candidates for judicial selection who, because of the action of the Hawaii Bar Association, were denied the opportunity to serve the people of Hawai'i. Probably most prominent among that long list was Kate Leonard. I think the community suffered because of that. I think women suffered because of that, but I note that all women voted against Kate Leonard's nomination.

"So, we have to get over this and get the politics out of this. Let's hold nominees absolutely accountable to the criteria. Let's talk about their experience. Let's talk about their judicial demeanor, their professionalism. Every question – as bizarre as those questions were on Saturday – every question given to the nominee was asked and answered. Everything that we would've known or should've known or could've known or wanted to know about this nominee was answered in this timeframe.

"I believe in confidentiality. All of us in this room, I'm sure, have been approached by people referred to as 'whistleblowers,' people who have come forward, some of us more than others. But in this case here, we are still left with no evidentiary substance, not one iota. And the fact that an individual member of this Senate body may have talked to people, but that that information was not available even in a confidential manner leaves us with allegations, innuendo, and falsehood.

"The only thing we should be concerned about is the nominee's character, experience, and whether or not he or she will serve the best interests of the people – all the people, men and women – in his or her responsibilities as justice. And is there a difference between being a Supreme Court justice and a Circuit Court or District Court nominee? Yes, there is. Should there be a higher standard? Yes, there should. But we only have the information given to us and asked for, and if we can't get it

and if we have asked every question of the nominee and that nominee has answered that question, and nearly a hundred people came forward in his support, then why do we still have questions?

“Ms. Arnett, the public defender, was brought up earlier, and I thought her testimony on Saturday was extremely compelling. And in her role, if anyone – *anyone* – would have come forward or come to her, or if she would have known or suspected anything about this nominee, it would have come out, but it didn’t. And a rational person must conclude there’s nothing there – nothing at all.

“So, we’re left with a nominee who men and women came forward to support; who, when asked, ‘What is the biggest weakness of this nominee?’ they said, ‘Probably his over-compassion and the time that he devotes to individuals and the fact that he has been open and accessible and willing and able to meet anyone on campus or off campus.’

“This nominee will be confirmed today and will prove to be a justice that we need on our State Supreme Court. He brings humility; experience; professionalism; the background from a small law firm rather than a highly connected, political law firm; and he brings the ability to have a strong voice and a strong effect on justice in Hawai‘i. And after all, what’s this all about other than fairness and justice for all? Thank you, Madam President.”

Senator Hee rose to speak in support of the nominee as follows:

“Thank you. Let me explain why I rise in support. I think some of the statements made by the senator from Maui – who I have a lot of fond aloha for – are the kinds of statements that may be played up by the media who is present; and I want to make a few remarks because of some of the comments she made which may be played up.

“So, let me start. The question was raised, ‘Was he the best?’ We’ll never know. That decision does not rest with us. The governor is given six names, and it’s not our choice to choose: it is the governor’s.

“A second remark was made up with respect to the time afforded this body: 30 days by Constitution. Just so everybody knows, when the six names were submitted to the governor from the Judicial Selection Commission, I took it upon myself to ask the governor to take his time so that the Senate would be afforded more time from when the clock began to toll 30 days so that the Senate could look at all six without presuming who the governor’s selection was, and the Committee on Judiciary could be afforded as much time as possible. The governor asked me, ‘How much time?’ My response to him was, ‘As much time as you can afford the Senate.’ My recollection is he had a trip to the National Governors Conference some time in late February. I asked him to send the name down as he was leaving, and he did. In essence, it afforded the Senate more time than 30 days, regardless of the Constitution.

“Comments have been made with respect to the flawed process as imperfect, and you’ll get no argument from anyone on this floor. But this process, this longstanding process, has been flawed since time immemorial and it, in my opinion, will not be fixed. But the process, to me, was even more flawed with this nominee because for the first time since 1982, when I was first elected to public office, the flawed process included the chief justice himself. All of you know – because all of you have received everything that I have sent out or received a copy of, all of you – and all of you know that when the Senate Women’s Caucus sent me their letter of concern, I did not interpret it to the chief justice; I sent it as an attachment. And all of you know that when the response came from the judiciary, it was signed not by the chief justice, but by the administrative director of the

courts. There’s a message there. There is a message there! And all of you know that that letter signed by the administrative director of the courts did not emphatically say one way or the other whether he was permitted to release Rule 19 information. There is a message there from the administrative director of the courts. There is a message there! So, the process that has been described as flawed is made profoundly more flawed by the highest member of the third branch of government, the judiciary. This is unbelievable.

“With respect to Janice Kim, in a letter dated March 14, way in the middle of the letter, she said this; I’m going to quote it:

My other interaction with him [meaning the judge] was personal. I apologize in advance if this is the proverbial “more information than you need” scenario. I was divorced in 2008 and kindhearted friends thought I should date. They picked Judge Wilson as the first victim. We didn’t hit it off, which would be reason enough for me to testify at odds with his nomination. However, I can tell you that I was already a civil rights lawyer. I am keenly aware of power issues between men and women, and I cannot help but evaluate that in every interaction. I simply didn’t detect any misogyny in my brief encounter with Judge Wilson. I found him to be respectful, gracious, and amiable.

“I want to also make comment with the propriety of Judge Wilson to sit as an interim member of the Hawai‘i Supreme Court, a substitute justice, in the case Ms. Kim argued in 2011 called *Steigman v. Outrigger Enterprises*, Supreme Court No. 28473. I’m going to read her remarks:

Judge Wilson asked one question indicative of his viewpoint. He asked how a sitting trial judge would properly instruct a jury if the law that I advocated [meaning Ms. Kim] were changed in the manner I proposed. This question was extremely astute: Judge Wilson brought to the floor the day-to-day issues the trial judge and the litigants would confront given my proposed change to the law. A trial judge would be faced with the dilemma of how to translate my changes into reasonable instructions to a jury and judge, and Judge Wilson knew it. As a litigator, I would come up against the same challenge, and Judge Wilson knew it. It was a good question, and his view from the bench bodes well for all of us who toil daily with the vagaries of how to give life to concepts expressed in legal precedent. This makes me believe Judge Wilson would be an asset to the Supreme Court.

“And then she said, ‘If you have heard this before, please forgive me.’

“Rule 2.11 is explicit in the Hawai‘i Rules of Court regarding recusal. What we don’t know is whether a recusal was asked of, whether a recusal was offered, or whether any such discussion on recusal took place. But I invite you to go to Hawai‘i Rules of Court, Rights of Recusal. You will see – as I have while everyone was talking, in this computer – that the sword cuts both ways on rules regarding recusal.

“I want to close with what I believe to be the only shred of evidence that questions Judge Wilson, and that is – and all of you have it – in a series of emails from an individual named Dave Holzman. Mr. Holzman has asserted that he himself was a party to a proceeding in bringing a complaint before the Office of Disciplinary Counsel 20 years ago. He described the situation, as all of you well know, which he asserted was bad conduct by the nominee when he represented a client as a private attorney; and Mr. Holzman described the complaint in

great detail to all of you. Mr. Holzman even identified the investigator for the ODC. I gave a call to this individual; he has not returned my call. In the latest email from this individual, Mr. Holzman identified the law firm that represented him, and the law firm is the law firm of William McCorriston. He did so this morning, and I called Mr. McCorriston's firm this morning. Mr. McCorriston's executive secretary said it was her opinion that no such files longer than 10 years are kept by the law firm, so I asked her to please take another look. I just received this information from Sergeant-at-Arms, I presume from one of my clerks, and it says, 'McCorriston's firm has nothing on their files on this matter. Mac also does not recall anything. Pua said,' that's the executive secretary, 'if there was anything, it would have been destroyed since it was so long ago, and if you want to speak to her...' and then she left a number.

"I'm not sure that there is a stone that hasn't had at least an effort made to unturn it. If this in fact happened, which seems to be quite possible, the Hawaii State Bar Association still found the nominee highly qualified. The Judicial Selection Commission evidently in 2000, with the consent of the bar in 2009, found the nominee qualified on retention. On page 19, and this is the nominee's questionnaire to the Judicial Selection Commission, on professional responsibility, 'Have you ever been admonished, disciplined for a breach of code of professional responsibility, a breach of the guidelines of professional courtesy and civility for Hawai'i lawyers, professional misconduct, or professional negligence?' Respondent: 'No.' 'Have you ever been found by a court, administrative body, or official committee to have been professionally negligent or guilty of professional misconduct?' He answered no. I submit to you, despite our best efforts as the Committee on Judiciary and Labor, there is no reason, or in fact, every reason, to agree to consent to his nomination based on every sincere effort we have made to try to find every wart that has been alleged on this nominee.

"In retrospect, the lessons learned on this particular nomination are not happy ones. I feel very sorry for others in private practice or presently presiding as a jurist who may even consider to be a jurist on a higher court or a jurist, period. This display of what has happened with this particular nominee is shameful. And this is not to discredit those who choose not to come forward, but in fact, to acknowledge those who choose not to come forward that because of that decision, we have been left with rumors, innuendo, aspersions cast against an individual's character that, as Chris Yuen said, were laid in the shadows and limited us to fighting with ghosts. There is nothing that this committee, in my humble opinion, has not undertaken to put him under the heaviest scrutiny that I have ever participated in because, like all of you, I take this responsibility very seriously.

"I am very sad at the kinds of allegations that have been leveled against an individual who elected to be considered to be an Associate Justice of the Supreme Court. Thank you, Madam President."

Senator Slom rose to request a Roll Call vote, and the Chair so ordered.

The motion was put by the Chair and, Roll Call vote having been requested, carried on the following showing of Ayes and Noes:

Ayes, 23. Ayes with Reservations, 2 (Kidani, Thielen). Noes, 1 (Baker). Excused, 1 (Wakai).

At this time, Senator Hee introduced newly confirmed Associate Justice Michael Wilson, as well as supporters including his father, Don Wilson; his mother, Linda Wilson; retired Judge Michael Town; Judge Karl Sakamoto; Judith Ann Pavey; Carol Acoba, wife of Associate Justice Simeon R.

Acoba, Jr., and her grandchildren, Liko and Lehua Acoba; judicial assistant Alden Kau; the DeSoto 'ohana; and Denise Antolini, professor of law.

At 1:08 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:20 p.m. with the Vice President in the Chair.

RE-REFERRAL OF A HOUSE BILL

The Chair re-referred the following House bill that was received:

H.B. No.:	Re-referred to:
H.B. No. 1316, H.D. 1	Committee on Commerce and Consumer Protection, then to the Committee on Judiciary and Labor

Senator Kahele, Chair of the Committee on Tourism, requested a waiver of the notice requirement pursuant to Senate Rule 21 for H.B. No. 1671, H.D. 1 and H.B. No. 2434, H.D. 2.

Senator Kahele noted:

"Your chairs of both Committees on Tourism and Water and Land agree that the public discussion on this measure is necessary to better craft a plan on caring for our state natural resources. It leaves the amount of the TAT to DLNR at \$3 million and it allocates the funds to the Special Land and Development Fund.

"H.B. No. 1671: After deep consideration, your Committees on Tourism and Public Safety, Intergovernmental and Military Affairs have decided to hold a public hearing on this measure to continue the discussion specifically regarding the transient accommodations tax. This measure removes the cap on the appropriations to the counties and replaces it with a percentage."

The Chair granted the waivers.

Senator Kahele announced that the Committee on Tourism and the Committee on Public Safety, Intergovernmental and Military Affairs would hold a public hearing on H.B. No. 1671, H.D. 1 on Wednesday, March 19, 2014, at 2:40 p.m. in Conference Room 229.

Senator Kahele also announced that the Committee on Tourism and the Committee on Water and Land would hold a public hearing on H.B. No. 2434, H.D. 2 on Wednesday, March 19, 2014, at 2:35 p.m. in Conference Room 229.

Senator Tokuda rose to announce that Education Week would continue the following day with events celebrating the University of Hawai'i's Community Colleges' 50 years of service including a fashion show and demonstrations of culinary arts, robotics, and agripharmatech.

Senator Espero extended condolences to Senator Wakai on the passing of his father on behalf of the members of the Senate.

ADJOURNMENT

At 1:23 p.m., on motion by Senator Espero, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, March 18, 2014.

ATTACHMENT A

http://www.staradvertiser.com/editorialspremium/20140315__Possible_unfitting_behavior_toward_women_should_not_be_ignored.html?id=25043694

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Possible unfitting behavior toward women should not be ignored

By The State Senate Women's Caucus

POSTED: 01:30 a.m. HST, Mar 15, 2014 LAST UPDATED: 02:03 a.m. HST, Mar 15, 2014

The intent of the Women's Caucus memo that resulted in a second confirmation hearing for Circuit Judge Michael Wilson was to address the concerns of misconduct toward women in the workplace that recently surfaced.

This is also a matter of fairness to Wilson, as he deserves an opportunity to respond to the testimony the Hawaii State Bar Association (HSBA) submitted after the first hearing.

More detailed questions about Wilson's work history have been raised, stemming from the negative comments from HSBA which cited "work ethic concerns, a lack of professionalism in the workplace and questions concerning the propriety of conduct toward women in professional contexts, and the ability to serve at the level of Supreme Court justice."

Lawmakers will hold a hearing Saturday, 11 a.m. at the state Capitol in Room 16, to allow people with concerns to step forward.

The caucus recognizes that Wilson is highly regarded by many reputable people in our community and has done many wonderful things in his career. However, we do believe that issues and concerns related to the treatment of women in the workplace should never be ignored. We have an obligation to address these concerns.

If we did not give it a second look, we would be doing a disservice to all the work that many women have done to make sexual assault, sexual harassment and conduct toward women a public concern.

The fact is, the issue of treatment of women in the workplace is all too often dismissed, as the problem is belittled or normalized.

As female senators, we want to send the message to our society that this is a real issue that needs to be addressed. Workplace misconduct toward women is one of the most difficult and insidious issues to tackle, as most victims are in vulnerable positions and/or are afraid of retribution.

Many women don't speak up for fear of not being taken seriously.

We also want to make sure that women are given a safe place to raise these issues during a confirmation process for any position.

Our society must continue to take issues of sexual harassment, sexual assault and conduct toward women seriously in order to keep us from becoming a society that trivializes them to a point where we

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http://www.staradvertiser.com/editorialspremium/20140315__Possible_unfitting_behavior_toward_women_should_not_be_ignored.html?id=25043694

accept it as the norm.

As mentioned in the memo, the Women's Caucus also supports re-evaluating the Judicial Selection Commission (JSC) screening process for future judicial applications.

Based on inquiries, it appears that some of the performance evaluations of sitting judges may not be routinely weighed by the JSC.

We want to ensure a thorough vetting before the Senate receives the nomination for consideration.

During the legislative session, the Senate has only 30 days to consider the nominee, and therefore relies heavily on the JSC to do a good job.

Members of the Senate Women's Caucus are: Senate President Donna Mercado Kim and Sens. Michelle Kidani, Laura Thielen, Suzanne Chun Oakland, Maile Shimabukuro, Jill Tokuda, Roz Baker and Malama Solomon.

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