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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

February 8, 2017

RE: S.B. 489; RELATING TO RESPONSE TO WRIT FOR CERTIORARI.

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in strong support of S.B. 489. This bill is part of the Department's 2017 legislative package.

The purpose of S.B. 489 is to ensure that the responding party to an application for writ of certiorari in both civil and criminal cases is given an equal opportunity to properly research and respond to the growing number of applications for writ of certiorari. This bill seeks to achieve this purpose by statutorily granting the respondent an additional fifteen days to file a response to an application.

Currently, section 602.59(c) of the Hawaii Revised Statutes and the Hawaii Rules of Appellate Procedure allows an applicant thirty (30) days to file an application for writ of certiorari. In addition, if an applicant determines that more time is needed, the applicant is allowed by statute an additional thirty (30) days upon a written request to the court. However, currently, under the same rules, a respondent is allotted only fifteen (15) days to file a response to an application for certiorari. Unlike an application for writ of certiorari, neither section 602.59(c), H.R.S., nor the Hawaii Rules of Appellate Procedure establish or allow for a mechanism in which a respondent may request an extension. In fact, the Hawaii Supreme Court has denied the respondent’s request for an extension, clearly citing the limitations of section 602.59(c):

“See Hawai`i Revised Statutes § 602-59(c) (Supp. 2012) (“Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed.” (See Attachment 1)).

It is also important to note that, since the creation of our certiorari court system—in which most, if not all, appeals are heard by the Intermediate Court of Appeals—there has been a

significant increase in applications to the Hawaii Supreme Court. As the last avenue for appeals (at State-level), it is not uncommon for our Supreme Court to use their discretion in allowing the applicant to introduce new issues or arguments not previously heard at the Court of Appeals level. This leaves a respondent at a huge disadvantage if the applicant has up to sixty (60) days to file their application for writ of certiorari, while the respondent only has fifteen days to respond—including additional research on new issues—with no mechanism for an extension.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 489. Thank you for the opportunity to testify on this matter.

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SCWC-12-0000806

IN THE SUPREME COURT OF THE STATE OF HAWAII

SUSAN P. GORDON, Respondent/Plaintiff-Appellee,

v.

IRA GORDON, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000806; FC-D NO. 10-1-6664)

ORDER DENYING MOTION FOR EXTENSION OF TIME
(By: Pollack, J.)

Upon consideration of the Respondent/Plaintiff-Appellee Susan P. Gordon's Motion for Extension of Time to Respond to Defendant-Appellant's Petition for Certiorari (motion) filed on March 18, 2014, the papers in support and opposition, the motion is hereby denied. See Hawai'i Revised Statutes § 602-59(c) (Supp. 2012) ("Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed.").

DATED: Honolulu, Hawai'i, March 18, 2014.

Peter Van Name Esser and
Huilin Dong
for petitioner

/s/ Richard W. Pollack
Associate Justice



Samuel P. King, Jr.
for respondent

Attachment 1

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB489 on Feb 8, 2017 09:00AM*
Date: Tuesday, February 7, 2017 10:56:45 AM

SB489

Submitted on: 2/7/2017

Testimony for JDL on Feb 8, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel Kailianu	Individual	Support	Yes

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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