LATE TESTIMONY

February 8, 2017

TIM VANDEVEER
Chair
MARIE STRAZAR
Vice Chair

MARGARET WILLE
SEAN SMITH
Legislative Committee Co-Chairs

SB673 "Relating to the Manner in Which Judges Are Appointed, Consented to and Retained"

Honorable Gilbert S.C. Keith-Agaran, Chair
Committee on Judiciary and Labor

Aloha Senator Keith-Agaran,

The Democratic Party of Hawai'i (DPH) Platform reflects a belief in a government that will adequately, efficiently, courteously, openly, ethically and fairly administer to the needs of the people. Consistent with the legislative priority of supporting "Government Wellbeing", the DPH opposes policies that undermine the integrity of the government.

As such, the Democratic Party of Hawai'i *strongly opposes* SB673, because the bill represents a threat to the separation of powers that helps to ensure no one branch wields excessive influence in our government. Re-retention by the Senate would influence judges and justices, blurring the separation of powers among the branches.

When a judge faces re-retention, the judge faces retrospective views by the Senate, public, political action committees, special interest groups, and other entities, any one of which may have had an interest in the result of a particular case. This can unnecessarily politicize the re-retention process.

Hawaii currently has a robust and fair judicial selection process. These proposals would change our current system, by inviting political influence on the Judiciary, and undermining public confidence and trust in the fairness and impartiality of the courts.

Respectfully submitted,

/s/ Tim Vandeveer (tim@hawaiidemocrats.org)
Chair of the Democratic Party of Hawai'i
/s/ Marie (Dolly) Strazar (hilomds@gmail.com)
Vice Chair of the Democratic Party of Hawai'i
/s/ Margaret Wille (margaretwille@mac.com)
/s/ Sean Smith (simashang@yahoo.com)
Legislative Committee Co-Chairs

COMMUNITY ALLIANCE ON PRISONS

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LATE TESTIMONY

COMMITTEE ON JUDICIARY AND LABOR
Sen. Gil Keith-Agaran, Chair
Sen. Karl Rhoads, Vice Chair
Wednesday, February 8, 2017
9:00 a.m.
Room 016

OPPOSITION TO SB 328 & SB 673 – AMENDING THE CONSTITUTION RE: JUDICIARY

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for two decades. This testimony is respectfully offered on behalf of the approximately 6,000 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

Community Alliance on Prisons does not generally testify on bills like this, however, we are deeply concerned about the Separation of Powers defined as the constitutional principle that limits the **powers** vested in any person or institution. It divides governmental authority into three branches: legislative, executive, and judiciary.

CHECKS AND BALANCES

Checks and balances is a system that was built into the U.S. Constitution, to keep each branch of government in check. It is meant to prevent any one branch from usurping too much power. Each branch of government has a certain amount of control over the other branches, in addition to its individual powers. An example of checks and balances is the Governor's authority to veto a law that the legislature has passed. Yet, the legislature can then override the Governor's veto by obtaining a two-thirds vote in both chambers: The Senate and the House of Representatives.

Another example is that the Supreme Court can determine that a law that the legislature has passed – and that the Governor has signed – was ultimately unconstitutional. Those members of the Supreme Court who make that decision have been appointed by the Governor (the executive branch) to make such determinations. However, those appointments first have to be approved by the Senate (the legislative branch).

JUDICIAL INDEPENDENCE

"***Judicial independence***" is the principle that judges should reach legal decisions free from any outside pressures, political, financial, media-related or popular. Judicial independence means judges must be free to act solely according to the law and their good faith interpretation of it, no matter how unpopular their decisions might be. It means judges need not fear reprisals for interpreting and applying the law to the best of their abilities. **An independent judiciary is a cornerstone not only of our justice system but of our entire constitutional system of government.**

However, such independence must also be balanced by ***judicial accountability***. Judges are required by their oath of office and canons governing their conduct to perform their duties accurately and ethically, according to the rule of law. If they fail to do so, two major remedies exist: one for judicial error and the other for judicial misconduct. If a judge errs in deciding a case, the decision may be appealed. At both the federal and state levels, parties may appeal unfavorable decisions on the basis of some inaccuracy, such as factual error or misapplication of the law. If a judge engages in misconduct, disciplinary options exist. Federal judges only hold their offices "during good behavior," and Congress may impeach and remove federal judges for certain types of misconduct. States have their own judicial disciplinary bodies (some an arm of the state's highest court, others an independent governmental entity) that investigate and discipline state judges for misconduct. At the state level, an array of sanctions is available, from modest censure to removal from the bench and referral for criminal prosecution.

In our constitutional system of government, an independent judiciary serves two goals. First, it enables the judges to make impartial decisions. Second, it keeps the other political branches in check. Scholars tend to divide judicial independence into two distinct but intertwined varieties: ***decisional*** and ***institutional***.

- ***Decisional independence*** refers to a judge's ability to render decisions based only on the facts of each case and the applicable law, free of political, ideological, or popular influence.

- ***Institutional independence*** distinguishes the judiciary as a fully co-equal branch of government, separate from the legislative and executive branches.

To understand just how prized and rare a circumstance true judicial independence is, just look abroad. The American recipe of judicial independence is relatively rare. It requires a full-fledged judicial branch on an equal footing with other branches of government, that has the power to review the constitutionality of laws enacted by the other branches, and whose judges cannot be removed from office at the whim of displeased litigants or public officials. American federal and state judges and judicial scholars regularly travel to other parts of the world, particularly where democracies are emerging, to help nations understand how an independent judiciary operates and how to establish one.[1]

[1] The Central Intelligence Agency publishes *The World Factbook*, an index of information about other nations, including each nation's legal system. Available online at http://www.odci.gov/cia/publications/factbook/fields/2100.html

Especially in today's climate, judicial independence is perhaps more important – and perhaps more imperiled – than ever before. In the aftermath of September 11th and the subsequent "war on terrorism," individuals' legal rights have become jeopardized to a degree unprecedented in recent memory. Such changes include governmental actions that purport to strip courts completely of their jurisdiction over particular cases, divest courts of the power to review certain actions by the legislative and executive branches, and deny individuals the right to a trial that adheres to the guarantees of the Constitution.

Not only is the institutional independence of the judiciary threatened, but the independence of individual judges is jeopardized as well. Judges are being increasing pressured to reach politically popular verdicts, particularly in the most unpopular types of cases.

In the past two weeks, we have witnessed what happens what happens when the basic tenets of our democracy and the Constitution are ignored. This undermines the faith and trust of the people.

Community Alliance on Prisons respectfully asks the committee to hold these bills and allow our Judiciary to remain independent of populist and political influence. As a community, we rely on our Judiciary to interpret the law fairly.

Mahalo for this opportunity to testify.

The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing.

Caroline Kennedy

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: naacphawaii@gmail.com
Subject: *Submitted testimony for SB673 on Feb 8, 2017 09:00AM*
Date: Tuesday, February 7, 2017 4:22:02 PM

SB673
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
Honolulu Hawaii NAACP	NAACP	Oppose	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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LATE TESTIMONY

The Twenty-Ninth Legislature
Regular Session of 2017

THE SENATE
Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
State Capitol, Conference Room 016
Wednesday, February 8, 2017; 9:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 673
proposing amendments to the Constitution of the State of Hawaii
to amend the manner in which justics and judges are appointed, consented to, and retained

The ILWU Local 142 **opposes** S.B. 673, which proposes amendments to the Constitution of the State of Hawaii relating to the appointment and retention of justices and judges, authorizes the Senate to approve or reject subsequent terms of office for justices and judges, changes the required timeframe from 30 to 90 days for the process to appointment and consent to a justice or judge, and harmonizes the Senate consent procedures for district court judgeship nominees to mirror the Senate consent procedures relating to Supreme Court justices and Intermediate Court of Appeals and Circuit Court judges.

Like S.B.328, this bill would give greater authority for appointment and retention of justices and judges to the State Senate. The State Constitution now provides for retention decisions to be made solely by the independent Judicial Selection Commission, based on information from various sources that comment on the fitness and character of the incumbent. The information is confidential, which allows for more candid comments than may occur at a public hearing by a Senate Committee.

Such confidentiality and lack of transparency may be causing some legislators to seek to vet an incumbent justice or judge in a public arena. However, such vetting may subject the decision-making to more political influence than necessary. Nevertheless, as a Star-Advertiser editorial noted, the Judicial Selection Commission may want to consider ways to bring more transparency to their decision-making process. Without naming names, they could make public some of the comments that helped them to make their decision to retain a justice or judge.

The ILWU urges that S.B. 673 be HELD. Thank you for the opportunity to offer testimony on this measure.

LATE TESTIMONY

KLEINTOP & LURIA, LLP

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TIMOTHY LURIA

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February 7, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice-Chair
Committee on Judiciary and Labor

Re: Testimony in Opposition to Senate Bill 673
Hearing: February 8, 2017 at 9:00 a.m., Conf. Room 016

Dear Senator Keith-Agaran, Senator Rhoads, and Members of the Committee:

I respectfully submit this written testimony in strong opposition to Senate Bill 673 ("SB 673").

My name is Charles T. Kleintop and I have been a practicing attorney here in Honolulu since 1976. I am the managing partner of Kleintop & Luria, LLP and my practice is almost exclusively in Family Court here on Oahu and on the Neighbor Islands. I am very concerned about SB 673 and its ramifications.

Although this bill states that it seeks to "promote transparency in the judicial retention process", the bill does not do that. The bill simply provides the Senate with an opportunity to review the Judicial Selection Commission's decisions with respect to certain judges. Under this bill, the Senate has the option to hold a confirmation hearing, but it is not required to do so. It appears that the Senate simply wants to pick and choose which judges to question. The only logical reason for this to enable the Senate to question particular judges about decisions they made while in the position they are seeking to retain.

Senate consent, of course, is already required for a judge's initial appointment to the bench. This allows the Senate to vet a potential judge's qualifications before he or she ever takes the bench. The only apparent reason for the Senate to need to consent to a judge's retention on the bench is the Senate's desire to scrutinize the decisions made by the judge since he or she has been on the bench. The Senate, of course, is not the appropriate organization to do this. The Judicial Selection Commission is.

A second "consent" (or perhaps even more "consents") by the Senate is very troubling because it constitutes a threat to the independence of the Judiciary. Judges must be able to make decisions that they believe are appropriate under the law without fear of reprisal by the Senate or individuals or entities with ties to the Senate. If a party believes that a judge has made an incorrect decision in a case, that party may take an appeal from the decision. Further, if a judge consistently displays poor decision-making, parties and attorneys have the opportunity to present their grievances to the Judicial Selection Commission which can then investigate those grievances when considering retention of that judge. Finally, if a party or attorney believes that a judge has violated his or her ethical obligations, that party or attorney can complain to the Commission on Judicial Conduct who will then investigate the complaint. In short, there are already more than enough checks in place on a judge's performance. Another level of review by the Senate is not necessary or appropriate.

I would note that this bill allows the Senate to have public hearings on petitions for retention only where the Judicial Selection Commission votes to retain a judge and that the Senate is not required to have public hearings on all approved petitions. In other words, the Senate would not hold a public hearing on petitions where the Judicial Selection Commission voted to not to retain a judge and could pick and choose when to hold a public hearing where the Judicial Selection Commission voted to retain a judge. This clearly suggests that raw politics is behind this bill.

If the Judicial Selection Commission votes to not retain a judge, the Senate apparently does not care. If, however, the Judicial Selection Commission votes to retain a judge, the Senate may or may not want to review that decision and publicly air it, depending on who the judge is. The only logical explanation for this inconsistency in the bill is the Senate wants to review and discuss decisions that particular judge has made.

As a family law attorney, I am also concerned about the effect such an ill-advised bill would have on Family Court judges. In most Family Court matters, at least one party, because of the emotional issues litigated in Family

LATE TESTIMONY

KLEINTOP & LURIA, LLP

Court, is usually dissatisfied with the outcome of his or her case. There are, of course, many reasons a party may not prevail on his or her claims in Family Court, including a lack of evidence, a lack of credibility, or the equities of the situation. Through this bill, the Senate will be inviting disgruntled and dissatisfied Family Court litigants to bring their claims to the Senate when they already have other avenues available to pursue their grievances. This bill will surely then have the effect of undermining the public's confidence in the judicial process.

Finally, I am concerned that litigants in Family Court who are politically connected will try to use those connections or threaten their spouses or partners with using them. No party or judge should have to be concerned that the decisions being made by the Family Court will be reviewed by anyone other than the appellate courts, the Judicial Selection Commission, or the Commission on Judicial Conduct.

This bill is unnecessary and will undermine the independence of the Judiciary and the integrity of the judicial system. I respectfully request that it not move forward from this Committee.

Thank you for your consideration of my written testimony.

Respectfully,

CHARLES T. KLEINTOP

CTK:ck

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: Captcoon@gmail.com
Subject: Submitted testimony for SB673 on Feb 8, 2017 09:00AM
Date: Wednesday, February 8, 2017 7:28:36 AM

SB673
Submitted on: 2/8/2017
Testimony for JDL on Feb 8, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
James E. Coon	Individual	Oppose	No

Comments: It seems like a bad idea to make judges beholden to the legislature and could erode the separation of powers necessary for an independent judiciary.

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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LATE TESTIMONY

Stephanie A. Rezents
Thomas E. Crowley

REZENTS & CROWLEY

A Limited Liability
Law Partnership

February 6, 2017

Senate Committee on Judiciary And Labor
Via email

Re: S.B. No. 673: Proposing Amendments To The Constitution Of The State of Hawaii To Amend The Manner In Which Justices And Judges Are Appointed, Consented To, And Retained

Dear Chair Keith-Agaran and
Members of the Senate Committee on Judiciary And Labor:

This written testimony is submitted in opposition to the changes to the current procedures by which justices and judges are appointed and retained as proposed in S.B. 673. We are opposed to the new proposed procedures for 1) the selection of a district court judge and; 2) the retention of justices and judges.

I have been licensed to practice law in the State of Hawai'i since September 1977. My law partner, Thomas E. Crowley, III has been licensed to practice law in the State of Hawai'i since September 1976. We are attorneys in private practice. Our written testimony is based on our many years of experience as licensed attorneys.

The current system in place for the appointment of district court judges is not broken. The current system provides for the selection of a district court judge by the Chief Justice from a list of nominees prepared by the Judicial Selection Commission and the consent of the senate. The senate confirmation hearing of a nominee allows the public to have input on the district court appointee and scrutiny by the senate.

The changes proposed in S.B. 673 to allow the senate if it rejects an appointee to the district court to require another hearing on another appointee selected by the Chief Justice until a "valid" appointment is made is cumbersome. This change allows the senate and not the Chief Justice or the Judicial Selection Commission to have the final say in the selection of a district court judge. Such a procedure will not necessarily guarantee a better outcome in the selection of district court judges. Rather it allows for the influx of politics into the selection of judges.

The current system for the retention of justices and judges is not broken. S.B. 673 proposes that the Senate be able to reverse the decision of the Judicial Selection Commission with respect to a justice's or judge's retention.

The principle of law upon which our system of government operates is the separation of powers. A strong Judiciary is the cornerstone of our democracy. Much

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criticism has been made in recent days by the public and the press over the blurring of the lines in maintaining a strict system of the separation of powers. Allowing the senate to have the final say in the retention of a justice or judge appears to blur that line.

Justices and judges should be scrutinized based on whether they have followed the law. The public is already invited to participate in the decision-making of the Judicial Selection Commission by way of the public notice provided to the public in the newspaper that solicits comments about the retention of a justice or judge. Justices and judges should be accountable to the law. They should not have to be concerned about making what appear to be unpopular decisions that while following the law, could be used against them in a senate hearing thus wrongfully impacting their retention.

We therefore strongly oppose passage of S.B. 673 and ask that you vote against this measure.

Very truly yours,

Stephanie A. Rezents

Thomas E. Crowley, III

SUSAN M. ICHINOSE

LATE TESTIMONY

Attorney at Law

February 7, 2017

The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor
Conference Room 016
State Capitol
Honolulu, HI 96813

Re: Hearing 02/08/17, 9:00 a.m., Conference Room 016
S. B. 673 *Proposing Amendments To The Constitution Of The State Of Hawaii To Amend The Manner In Which Justices And Judges Are Appointed, Consented To, And Retained*

Dear Senators:

I am submitting this testimony as an individual, a licensed attorney, and former member and Chair of the Judicial Selection Commission. As such, I urge you to oppose S.B. 673.

Senate Bill 673 is a bill that proposes nothing less than a serious incursion into the independence and fairness of Hawaii's judicial system---a system that judicial scholars, judges, lawyers, and even U. S. Supreme Court justices have acclaimed as the most efficient, fair, and politically balanced judicial selection system in the nation. It is a merit system that depends largely on the check-and-balance limitations that our State Constitution has placed on each of our three branches of government.

It is a delicate balance, to say the least.

While the Executive Branch has the power and authority to appoint our appellate Justices and Circuit Court judges, you in the Senate already possess the power to advise and consent to each such appointment. Similarly, you in the Senate have the power to advise and consent to each District Court appointment made by the Chief Justice.

Moreover, the composition of the nominating body of all judicial appointments, the Judicial Selection Commission, is in symmetry with that balance of power. As you know, the Senate President, the Speaker of the House, and the Governor each have

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the complete power of appointment of two members of the JSC, while the Chief Justice appoints one member, and the Bar Association mounts elections to select two commissioners.

As an elected HSBA representative who has served on the JSC, and one who served as Vice-Chair and Chair during my term, I was witness to how well our entire judicial selection process works. Especially on the Commission, the process is fair, open-minded, and public-spirited. Our deliberations were divorced from political partisanship.

The members of the JSC are volunteers, private citizens who serve in the public interest to try to seek out, find, and review the credentials of qualified lawyers in our State to serve on the bench. Its members volunteer their time in the deep conviction that our system of justice deserves the best, the most humane, the fairest, and the most just of judges to shepherd our litigants and our laws through a system that tries its best to dispense justice to all. To that end, the JSC has been and will continue to be engaged in the awesome task of selecting our judges on the basis of merit.

The bill before you upsets that delicate balance, by allowing the political process to be re-injected into judicial selection even after that judge has served a full term or more on the bench. The judiciary should be as independent as possible from political or other influence from the other branches of government, or from private or partisan interests. In the federal system, such independence is the paramount reason why our founders afforded judges lifetime tenure. In our state system, we do not have lifetime tenure but the JSC's retention process ideally permits judges some insulation from fluctuations of public and political opinion that can sometimes vary from good jurisprudence and legal precedent. We see even now on the national political scene how the possibility of such injections of the political process into judicial processes can play out, to great disruption.

We should preserve the present delicate balance of the judicial selection and retention system that our Constitutional Conventions, in their individual and collective wisdom, created two score years ago. Please do not pass this bill.

Thank you for providing me with this opportunity to be heard.

Me Ke aloha pumehana,

SMI:ms

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LATE TESTIMONY

February 7, 2017

Gil Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

Senate Bill 328/673
Hearing: February 8, 2017 0900, Room 016

Testimony in Opposition to SB 328/673

Chair Keith-Agaran and Members:

I am a resident of Senate District 25. I am opposed to SB 328/673 as it seeks to impose a regime of approval from the legislative branch of government on the performance of members of the judiciary in the retention process.

I have practiced law in the State of Hawaii since 1974. I am the fourth generation of attorneys who have practiced in Hawaii. Two of my ancestors served under the Kingdom of Hawaii as judges, one as a territorial judge on Maui, who had been removed from the bench by the Provisional Government in 1894. I consider my profession to be self regulating. And history has informed me that the judiciary is best left to self regulate.

We presently have five (5) vacancies on the First Circuit Court bench, two of which became vacant in late June 2016. It is only now, some 6 months later, that those two vacancies are being filled. The First Circuit also has four vacancies on the district court bench. The Big Island and Kauai, similarly, have vacancies on both circuit and district court benches. As a consumer of judicial services, these unfilled vacancies wreak havoc with judicial calendars and the administration of justice in my community. To insert the unnecessary need (and delay) to obtain Senate consent for retentions just adds to an already overburdened branch of the government.

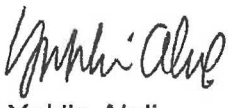
Finally, I am deeply concerned about the impression that the legislative branch of government is somehow displeased with two recent Hawaii Supreme Court rulings of great import to the Native Hawaiian community (TMT and the Nelson matter). As is abundantly clear from recent events in the United States, it is imperative that the judicial branch of government remain independent of the political branches. This is especially

LATE TESTIMONY

so in the instance of retention, which is why the federal judicial appointments are lifelong. One would think that Hawaii is going through a Trumpian moment right now with these two proposed bills.

I urge your committee to vote no on these proposed bills.

Mahalo,



Yuklin Aluli

SHOPO

LATE TESTIMONY

February 7, 2017

U.S. MAIL/FAX: 808-586-7348

The Honorable Gilbert Keith-Agaran
Chair
Senate Committee on Judiciary and Labor
Hawaii State Capitol, Room 221
415 South Beretania Street
Honolulu, HI 96813

Re: **SB673**

Dear Chair Keith-Agaran:

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in strong opposition to SB673 which seeks a constitutional amendment relating to the appointment and retention of justices/judges.

While there are often differing and sometimes conflicting views and opinions held between the three branches of government, we believe a strong, transparent and unbiased government is rooted in a foundation based on a strong and respectful separation of powers. The existing system of checks and balances that allows and encourages differing views and opinions is exactly what keeps the judiciary branch in check without undue political influence or pressure.

We believe that SB673 will turn the process of selecting and retaining judges into an overly politicized process and undermine the existing system in place. The current system of selecting and retaining justices and judges through the Judicial Selection Commission ("JSC") serves its purpose of selecting and retaining only those who merit selection and retention and dismisses those who do not.

The process of selecting and retaining judges through the JSC was the result of the 1978 Constitutional Convention. Thus, the existing system and process that has been in place for nearly four (4) decades was the product of careful thought, debate and consideration before it was adopted and implemented. After nearly 40 years, the current selection and retention process that involves an extensive and non-political review of a judges' qualifications, abilities and body of work has worked well. Although no process can ever be considered "perfect," the system and process utilized for so many years is the

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fairest and best system available to review, evaluate and determine whether a judge is worthy, based on merit, to be selected or retained in judicial office.

Deviating from the current process as advocated by SB673 raises the serious risk of politicizing and compromising the judiciary's independence. Interjecting potential political pressure into a process that seeks to keep such pressure at bay can only unfairly create the risk that a judge will have in the back of his/her mind the political ramifications of a particular decision. I think we can all agree that should never be part of a judge's thought process when interpreting and applying the law to the facts of a particular case. To allow such interjection would unquestionably be detrimental and cause irreparable harm to our current system of justice. After all, our judges are human and although they exhibit the highest degree of legal discipline, judicial independence is what preserves the integrity of the entire judicial process and system. Any compromise or intrusion into judicial independence can only lead to unfavorable and negative consequences, despite the best of intentions behind this bill.

Commissioners who serve on the JSC come from various legal and non-legal backgrounds and include appointments made by the Senate President, House Speaker, Governor and Chief Justice. Thus, all three branches of the government have a say in who serves on the JSC. We have faith that the aforementioned appointing authorities give much thought and consideration to their selection because they understand the critical role each commissioner plays in the selection and retention of a judge. In turn, the process by which the JSC reviews and evaluates a judicial candidate insures and facilitates a thorough, candid and honest review and critique of our judges from both within and outside the judiciary system, including the solicitation of public input by the JSC.

The one thing we have not heard in regards to SB673 is why the system that has been in place for nearly 40 years should suddenly be changed, especially in such a drastic fashion in calling for a constitutional amendment. If there are existing problems with the current process, we are not aware of them and as police officers we are intimately involved with the courts. Our officers interact with the courts and judges on a daily basis. As police officers, we appear in courtrooms across the State of Hawaii providing testimony in critical cases that often result in new case law. Our participation in the judicial system has resulted in not only new case law but at times some very unpopular decisions. Not surprisingly, we have had some differing views and disagreements over rulings and decisions rendered by our judges and if we did not, I would say something was wrong. However, disagreeing with a judge's ruling does not mean that we believe a judge is incompetent or that the system of selection and retention is somehow defective and should be changed. It is the exact opposite in that we believe the systems functions extremely well and has selected and retained judges of the highest legal competence and ability.

We have the utmost respect for our judges whether we agree or disagree with a particular ruling because we understand that judges have very difficult jobs. Based on our experience, we see first hand how the many judges have executed their duties and responsibilities with courage, well reasoned decisions that exhibit careful consideration, and a genuine effort to render decisions based on their honest legal interpretation and application of the law and facts of the case. That is all we can ask of any judge whether we agree or disagree with a particular decision. And when we may have disagreed with a decision or ruling, we always have the option of exploring having a law changed through the legislature. That is one of the most powerful checks on the judiciary that your honorable body controls as a branch of government.

In closing, I can attest to the fact that the quality of judges on the bench during the last 27 plus years that I have been serving as a police officer reflects a system and process that protects judicial independence and has provided the judiciary with intelligent, dedicated, diligent, respectful and fair-minded judges. On the other end, if it appears that a particular judge may not be up to the task and demands of the job, we have seen the JSC move to deny a petition for retention. As the old adage goes, "If it ain't broke, don't fix it" which we think applies fittingly to this bill. We thank you for allowing us to be heard on this very important issue and respectfully hope your committee does not support this bill.

RESPECTFULLY SUBMITTED,

TENARI MA'AFALA
SHOPO PRESIDENT

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE TESTIMONY

AFSCME
LOCAL 152, AFL-CIO

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association

February 8, 2016

S.B. 673 – PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII TO AMEND THE MANNER IN WHICH JUSTICES AND JUDGES ARE APPOINTED, CONSENTED TO, AND RETAINED

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 673, which proposes amendments to the Constitution of the State of Hawaii relating to the appointment and retention of justices and judges and authorizes the senate to approve or reject subsequent terms of office for justices and judges.

It is essential for our judicial system to be composed of justices and judges who have the authority and autonomy to exercise their independent judgement. When justices and judges must return to the Senate for confirmation to renew each term, they are exposed to political influence and their rulings on controversial cases may be swayed to ensure another term. While it can be argued that there could be more transparency in the process, the current composition of and criteria for Hawaii's judicial merit selection system works.

Thank you for the opportunity to testify in strong opposition to S.B. 673. We respectfully request the Committee defer this measure.

Respectfully submitted,

Randy Perreira
Executive Director

888 MILILANI STREET, SUITE 401 HONOLULU, HAWAII 96813-2991

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB673 on Feb 8, 2017 09:00AM
Date: Wednesday, February 8, 2017 8:40:20 AM

SB673
Submitted on: 2/8/2017
Testimony for JDL on Feb 8, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Oppose	Yes

Comments: We STRONGLY OPPOSE this bill. Like SB328, this is nothing but a retaliatory bill whose aim is to punish the Judiciary for decisions that this body took offense to. There is no public interest forwarded here. Please remember that we are Hawaii, the land of Aloha. If you truly respect the autonomy of each branch of government, you would kill this bill. Mahalo.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE TESTIMONY

From: Henry Curtis
To: JDLTestimony
Subject: SB 328 and SB673
Date: Wednesday, February 8, 2017 9:40:39 AM

Aloha

Life of the Land opposes both bills

Henry Curtis
Executive Director

LATE TESTIMONY

SHERRY P. BRODER

Law Offices of Sherry P. Broder

Suite 400, Seven Waterfront Plaza, 500 Ala Moana Blvd., Honolulu, HI 96813

February 8, 2017

Chairman Keith-Agaran and Committee Members
Senate Judiciary Committee
Capitol Building
Honolulu, Hawaii

Re: SB 328 and SB673 (re Senate Reconfirmation of Judges and Justices)

Dear Chairman Oshiro and Committee Members,

This testimony is submitted in opposition to SB 328 and SB673 (re Senate Reconfirmation of Judges and Justices)..

Judges have always been attacked for their decisions. Sometimes political branches attack court decisions, but the judicial rules of ethics severely constrain the ability of the judges to respond. Judges are generally confined to the four corners of their opinions to explain themselves. While there may be criticism that is unanswered directly by the judge, nonetheless our system of retention in Hawaii is based on merit and does allow ample opportunity for those who have complaints about a particular judge to voice their criticisms and have it investigated and evaluated for merit.

Judges cannot make hard decisions unless they are truly independent. A judge who must seek legislative approval for retention may not issue opinions whose contents will likely upset the legislature because they will decide whether he or she will stay on the bench. Judges seeking retention should not make promises regarding their future judicial decision-making.

Hawaii has and has had outstanding judges under our merit system. If we are to have them in the future, one of the primary roles of the judiciary is to protect individuals and their rights from encroachment by the other branches of the government. Judges are duty bound to render decisions which protect those rights even when the decision proves highly unpopular with the other co-equal branches of government. If judges are to carry out effectively this important role, they must be accorded independence in the selection and retention process.

LATE TESTIMONY

Members of the Committee:

This is a brief and heartfelt testimony in strong opposition to Senate Bills 328, 673 (relating to retention) and 249 (relating to retirement) having read the three bills and the testimony of the Hawai`i State Trial Judges Association (HSTJA).

It is a well-settled and time-honored principle of American Constitutional Law that a judge must be independent and free from political or public pressure above all. Current checks and balances of appeal and retention are more than adequate. Public trust and confidence are essential for this Third branch to be effective as we are entrusted with key legal, social and personal issues for the litigants. Folks want a fair "day in court". Further, we certainly want judges to make being a judge a calling and a career. This bill in my view clearly undermines this independence. One need only look at current national developments and in other states to see that Hawai`i enjoys a merit based and quality Judiciary.

Currently, I am a mediator/arbitrator/neutral with Dispute Prevention Resolution Hawai`i, having served as a trial judge in Circuit and Family Court for over 30 years and as Senior Judge of the Family Court. I hold a Masters in Constitutional Law from Yale Law School and taught law at our Richardson School of Law for years.

Bottom line for me is we need an independent Judiciary with great public trust and confidence. The Bills would degrade and erode this trust and independence and deter qualified candidates from applying or judges from seeking retention. I believe the current process has worked effectively over the years. It has been an honor to serve as a judge for over 30 years until mandatory retirement at age 70. I stand ready to answer any questions, should you have any. With respect and best regards. Judge Michael A. Town (retired).