



*The Judiciary, State of Hawai'i*

**Testimony to the  
Senate Committee on Judiciary and Labor**

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

Wednesday, February 8, 2017, 9:00 a.m.  
Conference Room 016

By  
Rodney A. Maile  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 249, Relating to Retirement.

**Purpose:** Senate Bill No. 249 proposes to amend the provisions of chapter 88, Hawai'i Revised Statutes, to: 1) establish a different service retirement requirement for current ERS members who subsequently become judges after June 30, 2017 and for new ERS members who become judges after June 30, 2017, and 2) reduce the service retirement allowance for credited service as a judge for new judicial appointments after June 30, 2017.

**Judiciary's Position:**

The Judiciary respectfully opposes Senate Bill No. 249 as it creates an additional and more stringent tier of service requirement and pension benefit for judges by: 1) establishing a lengthier service requirement (from 10 years to 12 years) for persons being appointed as judges after June 30, 2017, and 2) reducing the retirement allowance (from 3% to 2%) for credited service as a judge for new judicial appointments after June 30, 2017.

Prior to the passage of Act 163, Session Laws of Hawai'i 2011, the age and service retirement requirements for judges were the same as for other contributory plan members who became members of the ERS at the same time, i.e., age 55 with 5 years of service. With the passage of Act 163, the age and service requirements for current contributory plan members remained at age 55 with 5 years of service. However, for those existing ERS contributory



Senate Bill No. 249, Relating to Retirement  
Senate Committee on Judiciary and Labor  
February 8, 2017  
Page 2

plan members who became judges after June 30, 2012, their age and service requirements increased to age 60 with 10 years of service. Thus, while other contributory plan members remained at age 55 with 5 years of service, a disparity arose with those existing ERS contributory plan members who became judges after June 30, 2012.

Senate Bill No. 249 will result in further expansion of this disparity by increasing the service requirement to 12 years of service for existing ERS members who become judges after June 30, 2017. If these members retain their current ERS membership status and not become judges after June 30, 2017, i.e., stay in the contributory plan as a general employee, they would maintain the vesting requirements of age 55 with 5 years of service (or age 60 with 10 years of service if ERS contributory plan member after June 30, 2012) instead of being subject to the age 60 with 12 years of service vesting requirements.

Senate Bill No. 249 also impacts new ERS members upon appointment as judges after June 30, 2017. New ERS members who are appointed judges after June 30, 2017 will be subject to the more stringent vesting requirements of age 60 with 12 years of service. This new requirement will not be applicable to other members in the contributory class such as the fire or police officers, and elected officials.

Senate Bill No. 249 proposes to again decrease the service retirement allowance for credited service as a judge from 3.0% (already decreased from 3.5% under Act 163 for judges appointed after June 30, 2012) to 2.0% for new judicial appointments after June 30, 2017.

Further, no other category of employees is subject to a mandatory retirement age except for judges. The Hawaii State Constitution states: "justices and judges shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the state." As such, in certain situations, retirement benefits would not be attainable to those new ERS members appointed as judges who would "age out" after serving one 10-year term but before reaching 12 years of service due to the mandatory retirement age of 70. While being included in the retirement system during their tenure as judges, upon reaching age 70, those certain judges will not be vested and cannot "retire" or receive retirement benefits. Thus, the proposed increase in the service requirement further exacerbates the disparity for those who enter service at a certain age and do not have the option of working for 12 years in order to receive retirement benefits.

Although the proposed amendments affect only one small category of public employees, the impact is significant to existing ERS members such as prosecutors, public defenders, deputy attorneys general, and even many qualified elected officials, seeking a judgeship. Maintaining an equitable retirement package for judges as compared to other contributory members is reasonable and necessary to attract experienced public and private sector attorneys to serve as judges.

For these reasons, the Judiciary respectfully opposes Senate Bill No. 249.

Thank you for the opportunity to provide testimony on Senate Bill No. 249.

DAVID Y. IGE  
GOVERNOR



THOMAS WILLIAMS  
EXECUTIVE DIRECTOR

KANOE MARGOL  
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII**  
**EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY THOMAS WILLIAMS  
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON

SENATE BILL NO. 249

FEBRUARY 8, 2017, 9:00 A.M.  
Room 016

RELATING TO RETIREMENT

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

S.B. 249 would raise the required years of service for retirement benefits and reduce the retirement benefits for judges who first earn credited service as a judge after June 30, 2017, by amending sections 88-73 and 88-74, Hawaii Revised Statutes.

The Employees' Retirement System (ERS) Board of Trustees has not taken a formal position on S.B. 249; however, the ERS staff has the following comments:

This bill lowers the benefit multiplier from 3 percent to 2 percent for judges who first earn credited service as a judge after June 30, 2017. With this reduced multiplier, retirement benefits for judges will be earned at a lower and different rate than from that of elective and legislative officers, police officers and fire fighters and some other public safety employees. In addition, the minimum service requirement of twelve years for retirement eligibility proposed by this bill will be higher than any other employee group of any retirement class. Creating this new "tier" of benefits and requirements for a relatively small segment of the total ERS membership will require computer and administrative modifications and counseling resource costs which, from a



Employees' Retirement System  
of the State of Hawaii

business perspective, the ERS believes may be disproportionate to the small number of members affected by this legislation.

On behalf of the Board of Trustees and staff of ERS we wish to thank you for the opportunity to testify.

# Hawai'i State Trial Judges Association

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**Testimony to the Senate Committee on Judiciary and Labor  
Regarding SB249**

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Hearing on Wednesday, February 8, 2017, 9:00 a.m.

Conference Room 016

By

Board Members on behalf of the Hawai'i State Trial Judges Association

Hon. Jeannette H. Castagnetti, President

Hon. Melvin H. Fujino, Vice President

Hon. Joseph E. Cardoza, Secretary

Hon. Catherine Remigio, Treasurer

**Written Testimony Only**

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On behalf of the Hawai'i State Trial Judges Association ("HSTJA"), thank you for the opportunity to comment on SB249 which proposes to amend the provisions of HRS Ch. 88 relating to the retirement requirements for judges.

The HSTJA was formed in 1990 to gather, study and disseminate information with respect to the trial and the disposition of litigation, the organization of the trial courts, and to promote, encourage, and engage in activities to improve the law, the legal system, and the administration of justice.

Our membership consists of every duly appointed circuit, family and district court judge in the State of Hawai'i as well as appellate justices and judges.

The HSTJA opposes SB249, and we join in the testimony submitted by the Judiciary, State of Hawai'i.

Thank you for considering our testimony.

February 7, 2017

Senate Committee on Judiciary and Labor

Wednesday, February 8, 2016, 9:00 a.m.

**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Charlotte Mukai. I am a 3<sup>rd</sup> year law student at Richardson and I testify against Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs.

Hawaii already has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>i</sup> Appointees are vetted and a decision is made on merit, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawaii's existing judicial selection process is considered the "gold standard" by many other states for its effectiveness in keeping the courts free from direct political interference. The measures proposed in these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

The strength of our democracy depends on an independent judiciary as we have seen in the current headlines. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills set the stage to create a judicial climate where judges fear political backlash if their rulings do not line up with certain senators. That is a step in the wrong direction.

The people of Hawai'i deserve an independent judiciary. These bills represent an attempt to undermine that system.

I urge you to oppose Senate Bills 328, 673, and 249.

*/s/ Charlotte Mukai*

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<sup>i</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jsr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jsr.pdf)).

February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2017, 9:00 a.m.  
**RE: Opposition to SB673, SB328, SB249**

Dear Chair Keith-Agaran, Vice Chair Karl Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Chase Livingston I am a 1<sup>st</sup> year law student at Richardson and I testify **against** Senate Bills 673. These bills would move the Hawaii state courts to popular election, which would mean the end of selecting judges based on merit. Popular election of judges increases the role of politics and money on the bench while deteriorating the public's confidence in the judiciary.

I believe Hawaii currently has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices. Appointees are vetted and a decision is made on the merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

I am concerned that the judicial election system proposed by these bills would endanger the fairness and impartiality of Hawaii judges. Forcing judges to raise money for their campaigns threatens to tilt the scales of justice as various interest groups may use the opportunity to shape the judiciary.

According to the non-partisan group, **Justice at Stake**, 87% of Americans believe that campaign contributions affect courtroom decisions. Courts need to stay fair and independent -- and private money involvement should be minimized. Instead of boosting public confidence in our court system, the involvement of campaign money through an election process will do just the opposite. The current political climate in Washington should be all the evidence necessary to show how fundamentally necessary strong separations between the three branches of government are for the welfare of our country.

Judges are not politicians; they should be selected based on merit, not based on successful campaigning. Moreover, judges need to be able to protect the rule of law without fear of the political consequences.

This is why I urge you to oppose Senate Bills 673, 328, and 249.

Chase Livingston

February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2016, 9:00 a.m.  
**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Christina Yee and I am a 2nd year law student at Richardson and I oppose Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs and risk improper influence that the commission was created to avoid.

Currently Hawaii has a robust and fair judicial selection process which includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>1</sup> Appointees are vetted and a selection decision is made based upon merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawaii's existing judicial selection process is what other states should strive for in its effectiveness in keeping the courts free from direct political interference. The measures proposed under these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

The strength of our democracy depends on an independent judiciary. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. This is a step in the wrong direction.

The people of Hawai'i deserve the independent judiciary which they have under the current system. These bills represent attempts to undermine that system and threaten political influence.

For these reasons I urge you to oppose Senate Bills 328, 673, and 249.

Sincerely,

*Christina Yee*

Christina Yee

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<sup>1</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jscr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jscr.pdf)).



February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2016, 9:00 a.m.  
**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Ciara Kahahane. I am a 1st year law student at Richardson and I testify in strong opposition to Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs. They are a solution to a problem that does not exist.

Hawai'i currently has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>i</sup> In fact, four of the nine committee members are already approved by legislative leaders. Appointees are vetted and a decision is made on the merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawai'i's existing judicial selection process is considered the "gold standard" by many other states for its effectiveness in keeping the courts free from direct political interference. It ensures a fair and unbiased assessment of judges, which means a healthy judiciary free from looming political pressures. The measures proposed under these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

It is absolutely vital to the interest of justice that the Hawai'i judiciary remains independent from the influence of our state's legislature. The strength of our democracy depends on an independent judiciary. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. That is a step in the wrong direction.

The people of Hawai'i deserve an independent judiciary and under the current system, they have that. These bills represent attempts to undermine that system.

This is why I urge you to oppose Senate Bills 328, 673, and 249.

Ciara Kahahane, 1L

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<sup>i</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jsr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jsr.pdf)).

February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2016, 9:00 a.m.  
**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is David Lau, I am a 2<sup>nd</sup> year law student at Richardson and I testify against Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs. They are a solution to a problem that does not exist.

I believe Hawaii currently has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>1</sup> In fact, four of the nine committee members are already approved by legislative leaders. Appointees are vetted and a decision is made on the merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawaii's existing judicial selection process is considered the "gold standard" by many other states for its effectiveness in keeping the courts free from direct political interference. The measures proposed under these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

The strength of our democracy depends on an independent judiciary. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. That is a step in the wrong direction.

The people of Hawai'i deserve an independent judiciary and under the current system, they have that. These bills represent attempts to undermine that system.

This is why I urge you to oppose Senate Bills 328, 673, and 249.

Sincerely,

David R. Lau

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<sup>1</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jscr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jscr.pdf)).

**DOUGLAS S. MCNISH**  
Judge, Second Circuit Hawaii Family Court (Ret.)

2101 Piihola Rd., Makawao, HI. 96768

February 4, 2017

WRITTEN TESTIMONY IN OPPOSITION TO  
SB 249

This Bill proposes reduction the retirement credit and extension of the period of benefit vesting for judicial appointments commencing after June 30, 2017.

Assuming the purpose of this Bill is to address the fiscal issue of the under funded ERS, it should clarify why benefits and vesting requirements for government employees other than judges are not part of the proposed legislation

If I am reading the Bill correctly it appears that anyone entering government service for the first time as a judge who is 58 years old or more could never be vested (mandatory retirement at age 70). If this is correct, it would likely discourage qualified applicants for judicial positions if they would be 58 by the time they enter service. Also, the great disparity in benefits between a 57 year old and a 58 year old entering service as a judge seems unsupportable.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB249 on Feb 8, 2017 09:00AM  
**Date:** Saturday, February 4, 2017 9:56:53 AM

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**SB249**

Submitted on: 2/4/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eden Hifo	Individual	Oppose	Yes

Comments: I stand by my testimony of last year opposing similar bill that the co-equal branches of government should be treated the same and the reduction of retirement benefits for judges should be the same as legislators and other elected officials.

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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February 6, 2017

Senate Committee on Judiciary and Labor

Wednesday, February 8, 2016, 9:00 a.m.

**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Erik Meade, I am a 1st year law student at Richardson and I testify against Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs. They are a solution to a problem that does not exist.

I believe Hawaii currently has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>1</sup> In fact, four of the nine committee members are already approved by legislative leaders. Appointees are vetted and a decision is made on the merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawaii's existing judicial selection process is considered the "gold standard" by many other states for its effectiveness in keeping the courts free from direct political interference. The measures proposed under these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

The strength of our democracy depends on an independent judiciary. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. That is a step in the wrong direction.

The people of Hawai'i deserve an independent judiciary and under the current system, they have that. These bills represent attempts to undermine that system.

This is why I urge you to oppose Senate Bills 328, 673, and 249.

Erik G. H. Meade

<sup>1</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jscr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jscr.pdf)).

TESTIMONY

Chair of Senate: Chair Senator Gilbert Keith-Agaran, Vice-Chair Senator Karl Rhoads

Bill: SB249 – Compensation for judges.

Date of Hearing: February 8, 2017

Time and Place of Hearing: 9:00 AM, CR016

Name of Person Testifying: Shackley F. Raffetto, Chief Judge (Ret.), Second Circuit Court, State of Hawaii

Testifying about: SB249, amending the Hawaii Employee's Retirement System for Hawaii Judges by providing for different credited service years and retirement benefits for employees beginning employment after June 30, 2017, and in certain respects for employees becoming a judge after June 30, 1999 but before July 1, 2012.

Position: I oppose SB249 in its entirety

Testimony:

Good Morning. I have been privileged to be a lawyer in Hawaii for about 46 years. I engaged in private practice providing business law and litigation services in my community until 1994 when I became a full-time Circuit Court Judge. I served 24 years as a trial judge in Hawaii (7 years as a per diem judge in District & Family Courts), including 18 years as a Second Circuit Court Judge and 12 years as Chief Judge of Second Circuit. I also served 23 years in the US Navy Reserve Jag Corps., 5 years of which was service as a Military trial judge.

After mandatory age retirement from the Judiciary in 2012 (only judges face mandatory retirement at age 70 years) I have continued to serve our Judiciary as a member of the Judicial Counsel and as a member of the Judicial Review Panel, the latter of which reviews the performance of our judges.

I believe, like me, most of our lawyers who apply to serve as judges in Hawaii do so, first and foremost, in order to be of service to and provide justice for the people of Hawaii. Those in my age group will remember our late President, John F. Kennedy, when he said “ask not what your country can do for you; rather, ask what you can do for your country”. I remember hearing him say that and it has motivated me all of my life to be of service to my community and to my country. It is the reason I applied to become a judge when a vacancy occurred and it is also the reason I served many years in the US military.

Based upon my knowledge of our judges, and during the time I served I knew most of them, I believe that most, if not all, of our judges believe the same as I do about service to our community. They are motivated, first and foremost, by their desire to serve their communities and to provide justice for the people of Hawaii.

It is a great honor to be selected and appointed to serve as a judge in our State; and, to have the opportunity to use the power of the office of Judge to help to provide justice for our citizens. However, our judges, like all of us, have families they must provide for, and financial obligations they must honor.

In spite of the altruistic motivations of most lawyers who seek to serve as judges, they must, ultimately, make a “cost-benefit-analysis” about judicial service. An important aspect of that

analysis is the potential of earning a retirement pension benefit, eventually, as a result of their judicial service. Most of us, actually, never sit down and figure out what the potential retirement pension benefit is likely to be. Most of us simply trust that the retirement pension benefit will be fair and that after a reasonable period of service we will receive a fair pension benefit.

During the past few years, the law has changed and the retirement pension benefit for judges in Hawaii has been significantly reduced.

Most lawyers who decide to seek judicial service do so in mid-career and middle-age. In many nations, a decision to serve as a judge is made upon leaving law school. That is not the case in the US or Hawaii. In Hawaii, the law requires at least 10 years of legal experience before one can apply for judicial office in Circuit Court. Given the number of years of study necessary in order to become a lawyer, a person will be middle-aged before he or she realistically may begin seeking judicial office. Therefore, if a successful lawyer is considering judicial service, he or she will also be considering whether a retirement pension can reasonably be earned if they become a judge vs. the benefits of staying in their current professional position. Most will decide to stay in their current employment. Only the most highly motivated lawyers, who truly desire public service, will take the chance and hope that the retirement pension benefit will be fair and adequate.

After reviewing SB249 one can understand why it is very difficult for a lawyer considering judicial service to understand what the potential retirement pension benefit will be. SB249 is confusing and complicated; and, it refers to other sections of the law which one must consider in order to determine what a retirement benefit might be. It will depend upon a number of variables.



It appears that SB249 will significantly reduce the potential retirement pension benefit available for a person entering judicial service after June 30, 1999; and, also, for those entering judicial service after June 30, 2017. Accordingly, I believe that SB249 will be understood to provide a substantially lower retirement pension benefit from that currently available.

Understanding that the potential retirement benefit has been substantially reduced, it will be less likely that the most qualified and experienced lawyers will be encouraged to seek judicial service.

If Hawaii wishes to provide the best justice available for its citizens, then it must be willing to encourage the best qualified, and most experienced, lawyers to seek to become judges.

SB249 provides that a judge who enters service after June 30, 2017, must serve 12 years to retire with a full benefit at age 60 years. And, that in order to retire as a judge at age 55 years with a full benefit, he or she must serve 25 years.

In order to accumulate 25 years of judicial service by the time one reaches 55 years of age, one would have had to begin judicial service at age 30 years. Given that most lawyers will be at least 25 year of age by the time they pass the Bar exam and begin practice as a lawyer, and given that 10 years of experience is required before applying for a Circuit Court judicial position, it will be virtually impossible for a judge to accumulate 25 years of service by the time he or she attains age 55 years.

SB249 is so complicated it is impossible to calculate a retirement pension benefit. However, it appears that if a judge retires before

reaching age 60 years that his or her retirement pension benefit will be reduced by 2% per year below 60 years of age at retirement. Even this is uncertain, given the complicated language of SB249.

SB249 requires that a judge must serve at least 12 years at age 60 years in order to be entitled to a retirement pension benefit if his or her service began after June 30, 2017. This provision appears to provide that a judge will not be entitled to a full retirement pension benefit if he or she begins judicial service after attaining 58 years of age. Many of our most successful and most experienced lawyers will not attain their “peak” of success until they reach 58 years of age. Therefore, these lawyers will be highly unlikely to apply for judicial service and are effectively excluded from consideration. The loss of the potential service of these lawyers as judges is a substantial loss for the people of Hawaii.

History has shown that in order to prevent corruption in government it is essential to provide adequate salaries and compensation to government officials. Likewise, in order to obtain justice for its citizens a nation is well advised to provide fair and reasonable salaries and benefits to persons who would serve as judges.

Our Hawaii Judiciary is our third branch of Government. Our Judiciary provides a very important function in the system of “checks and balances” which is fundamental to our Democracy. Our Judiciary is charged with the responsibility to ensure that our laws, as enacted by our Hawaii Legislature, elected representatives of our people, are enforced. Our Legislature is also responsible for providing the financial resources for our

Judiciary needs in order that it may provide justice for the people of Hawaii.

In addition to providing the financial resources for our Judiciary to operate day-to-day, our Legislature also establishes the salaries and the retirement benefits for our judges. The salaries and pension benefits of our Hawaii judges are public information. Our legislature has established and is responsible for maintaining and adjusting an appropriate formula according to which a judge, as well as other Government employees, may be entitled to a retirement pension benefit. Generally, a judge's retirement benefit is based upon the number of years of qualified service and the amount of his or her monthly salary.

The quality of justice provided for the people of Hawaii depends upon the quality of our judges. Accordingly, providing adequate compensation for our judges, in order to attract and retain the best judges should be a primary goal of our Legislature.

Closing:

The goal of the compensation package provided for our Hawaii judges should be to recruit and retain the best legal minds and most experienced, competent lawyers to become our judges. Recruiting our best lawyers will have a direct impact and is directly correlated to providing the best judges and justice for the citizens of Hawaii. SB249 is complicated and difficult to understand. SB249 appears to prevent a reasonable opportunity for a lawyer seeking judicial service to earn a reasonable retirement pension benefit after a reasonable period of judicial service. Compensation for our judges must be fair, clearly understandable and reasonable considering the likelihood of typical judicial service. I do not believe that SB249 presents or

offers a fair and equitable compensation for our judges; and, therefore, I oppose SB249 and recommend that it be rejected.

Thank you for this opportunity to present testimony.

Shackley F. Raffetto  
Chief Judge (Ret.), Second Circuit,  
State of Hawaii  
215 Alanuilili Place  
Kula, Hawaii 96790  
(808) 878-3112  
jsraffetto@aol.com

February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2016, 9:00 a.m.

**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

My name is Kay Lorraine Bate, I am a 3<sup>rd</sup> year law student at William S. Richardson School of Law. I would like to submit testimony in strong opposition of Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs. They are a solution to a problem that does not exist.

I have lived in states where judges were elected in general elections, and I have lived in a state where judges were selected by the state's general assembly. I have seen for myself how people try to influence the court's decision-making when they control who sits on the bench. Hawaii currently has the best and least political judicial selection process that I have seen.

Keeping the courts free from direct political interference is extremely important. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. That is a step in the wrong direction. Hawai'i deserves an independent judiciary and under the current system, they have that.

Believe me, you do not want judges out glad-handing the legislature in an attempt to get elected to the bench. That would undermine the neutrality of the court, but it would also be absolutely inevitable if the Senate takes over the process, eliminating the current independent Judicial Selection Commission. The Senate has enough to do without getting itself involved in shaping judicial decision-making. And, of course, that is exactly what these bills are all about.

I urge you to please oppose Senate Bills 328, 673, and 249.

Warmest aloha,

Kay Lorraine Bate  
7098 Hawaii Kai Drive #32  
Honolulu, HI 96825

February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2016, 9:00 a.m.  
**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Kevin Morris, I am a 1st year law student at Richardson and I testify against Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs. They are a solution to a problem that does not exist.

I believe Hawaii currently has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>1</sup> In fact, four of the nine committee members are already approved by legislative leaders. Appointees are vetted and a decision is made on the merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawaii's existing judicial selection process is considered the "gold standard" by many other states for its effectiveness in keeping the courts free from direct political interference. The measures proposed under these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

The strength of our democracy depends on an independent judiciary. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. That is a step in the wrong direction.

The people of Hawai'i deserve an independent judiciary and under the current system, they have that. These bills represent attempts to undermine that system.

This is why I urge you to oppose Senate Bills 328, 673, and 249.

Kevin A. Morris

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<sup>1</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jsr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jsr.pdf)).

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**TESTIMONY OF MARGERY S. BRONSTER**

Regarding Senate Bill 249, Relating to Retirement

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

Wednesday, February 8, 2017, 9:00 a.m.  
Conference Room 016, State Capitol

Good morning Senator Keith-Agaran and members of the Committee:

I strongly oppose Senate Bill 249, which is part of a package of bills aimed at diminishing the independence and integrity of the judiciary. Senate Bill 249, if passed into law, would compromise the independence of our state's judicial branch, and it should, therefore, be rejected.

An independent judiciary is a cornerstone of American democracy. Both the United States and Hawai'i Constitutions establish three co-equal but fully independent branches of government to insure the checks and balances necessary to preserve our democratic form of government. Above all, these checks and balances insure a nation bound by the rule of law and not the preferences of powerful individuals. Just as the legislative branch must be allowed to independently write the laws and the executive branch to independently implement them, so too must the judicial branch be allowed to independently interpret them.

The history of both the United States and Hawai'i has been marked by attacks upon the independence of the judiciary as a co-equal branch of government, but, on balance, the judiciary has withstood these attacks and remained independent. This has served our nation and the State of Hawai'i well because we have remained a nation and State governed by laws rather than individuals. This not only maintains justice for individuals but is also necessary to ensure a climate that is favorable for business by insuring the predictable application of law to cases regardless of the particular parties before the court.

Committee on Judiciary and Labor

Senate Bill 249

Wednesday, February 8, 2017, 9:00 a.m.

An independent judiciary requires two elements. First, judges must be free to interpret the law without fear of political interference or influence. And, second, judges must be compensated in a manner that makes them secure from monetary influence.

Senate Bill 249 reduces the retirement benefits available to all future judges by decreasing their benefits and increasing the time necessary to qualify for them. The combination is a significant reduction in the compensation of future judges and a concomitant diminishment in the value of all judicial positions. If we are to expect the best judicial decisions, we must insure that our judiciary is comprised of our States' most able and experienced lawyers. At present, our judiciary is compensated at a level that is scarcely competitive with what experienced lawyers can earn in private practice. Any further reduction will seriously jeopardize the quality of our future judiciary by increasing the gap between the compensation available to a judge and that in the private sector. The Committee should, therefore, reject Senate Bill 249.



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB249 on Feb 8, 2017 09:00AM  
**Date:** Tuesday, February 7, 2017 10:56:49 AM

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**SB249**

Submitted on: 2/7/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel Kailianu	Individual	Support	Yes

Comments: They earned their pension and is not double dipping into the general funds.

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](mailto:webmaster@capitol.hawaii.gov)

February 6, 2017  
Senate Committee on Judiciary and Labor  
Wednesday, February 8, 2016, 9:00 a.m.  
**RE: Opposition to SB328, SB673, and SB249**

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Esteemed Committee Members:

Thank you for the opportunity to submit testimony on this important issue. My name is Sean Aronson, I am a 3rd year law student at Richardson and I testify AGAINST Senate Bills 328, 673, and 249. These bills taken together represent an unfair and unnecessary involvement by the senate in judicial affairs. They are a solution to a problem that does not exist.

I believe Hawaii currently has a robust and fair judicial selection process. It includes a nine-member judicial selection committee and senate confirmation for all judges and justices.<sup>i</sup> In fact, four of the nine committee members are already approved by legislative leaders. Appointees are vetted and a decision is made on the merits, not political connections. Once appointed, judges are subject to disciplinary action if they are deemed unfit to sit on the bench.

Hawaii's existing judicial selection process is considered the "gold standard" by many other states for its effectiveness in keeping the courts free from direct political interference. The measures proposed under these three bills would undermine that effectiveness by allowing politics to seep into the judiciary.

The strength of our democracy depends on an independent judiciary. We need our judges to make decisions based on the facts and laws relevant to the cases before them. These bills would create a judicial climate where judges would fear political backlashes if their rulings were not in line with certain senators. That is a step in the wrong direction.

The people of Hawai'i deserve an independent judiciary and under the current system, they have that. These bills represent attempts to undermine that system. Last year's attempts to politicize the judiciary were overwhelmingly opposed and that should have signaled to the Senate that the public does not share in their zeal for reform. Don't fix what isn't broke.

This is why I urge you to oppose Senate Bills 328, 673, and 249.

Sincerely,

Sean Aronson

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<sup>i</sup> Judicial Selection Commission Rules ([http://www.courts.state.hi.us/docs/court\\_rules/rules/jsr.pdf](http://www.courts.state.hi.us/docs/court_rules/rules/jsr.pdf)).

**TESTIMONY OF THOMAS D. FARRELL**  
Regarding Senate Bill 249, Relating to Retirement

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

Wednesday, February 8, 2017, 9:00 a.m.  
Conference Room 016, State Capitol

Good morning Senator Keith-Agaran and members of the Committee:

I strongly oppose Senate Bill 249, which is one of a package of bills designed to degrade Hawaii's judiciary. This is just another version of a measure to cut judge's retirement pay, which died in the 2016 session. This one is a little different, however, as it applies only to new judges.

If this is such a good idea, how is it that only judges have been selected to be reduced to a 2% multiplier, but you folks haven't? After all, members of this Legislature get a 3% multiplier. While we're at it, I also notice that this proposal will add five years to the age at which a judge may begin to receive retired pay, and increase the vesting period from ten years to twelve. Well, let's do the same to your retired pay, and while we're at it, maybe term limits of ten years would be in order.

Some say that judges are highly paid (although I think you're rather highly paid for 3 ½ months of work). Nonetheless, I've heard the argument that we can save more money cutting judges' retirements than legislators'. The only problem with that theory is that the ERS says you aren't going to save any money at all.<sup>1</sup>

This new variant of last year's failed bill is motivated by the same animus. I can express it in three words: Judge Jeanette Castagnetti. On November 27, 2015, in *Nelson v. HHL*, she held, "The legislature has failed to appropriate sufficient sums to the Department of Hawaiian Home Lands for its administrative and operating budget in violation of its constitutional duty to do so. This failure includes every fiscal year since at least 1992." And according to reports I've read, that shortfall reaches somewhere in the neighborhood of \$28 million. I'll bet you were pretty

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<sup>1</sup> In testimony before last year before the House Finance Committee, ERS said "This unique segment (of a current membership group of approximately 80 judges) will require computer modification and counseling resource costs which, from a business perspective, the ERS believes will be out of proportion to the members affected by this legislation.

Testimony of Thomas D. Farrell  
SB 249  
February 4, 2017  
page 2

upset when you learned that you could have a \$28 million wild card in the State budget. Let's let's not kid ourselves; this is what SB 249 and the rest of the package to punish the judicial branch is all about.

Now I don't know if Castagnetti is right or not, although it seems to me to be a good thing that there is some way for the Hawaiians to enforce the rights and benefits promised to them by our Constitution and laws. Yet even if it's a bad decision, it would seem to me that the last thing you would want to do is create even more bad decisions, which is what you get when you have bad judges.<sup>2</sup> SB 249 is a sure ticket to judicial mediocrity.

If you're any good as a lawyer, you make a lot more practicing law than you do as a judge. While money isn't everything, it's expensive to live in Hawaii. Judicial compensation is a package deal, based on the principle of deferred gratification. You agree to work for a lower salary, but the retirement plan is pretty good. Now if you're a successful lawyer and around forty years of age, is it a good deal to seek a judgeship? Assuming you've got at least 25 years left in the workplace, with a 3% multiplier you can retire at 65 with 75% of your salary. If SB 249 passes, the prospective judge is looking at 50% of salary at 65, and 60% if you stay on until age 70 (at which time you have to go). That's not looking so good.

And, by the way, if you're out at age 70, and it takes twelve years to vest, there's no good reason for any lawyer age 58 or older to apply for a judgeship.

So while this Legislature is arguing about whether to give the judiciary the money to create new judgeships (which I doubt that you will, that will be a moot point if you pass SB 249. You'll wind up with a whole bunch of judicial vacancies that can't be filled, or can be filled only with the independently wealthy or those who couldn't cut in in private practice. Maybe that's why you've introduced another bill (SB 276) about the number of judges---with blanks in it.

The bottom line is that the less desirable you make the position, the less desirable will be candidate who seeks it. Coupled with some of the other measures on your calendar this morning, if your package gets enacted, I can't imagine why anyone would want to be a judge in this town.

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<sup>2</sup> For the record, I do not know the judge in question, nor have I read the decision. I have no opinion on whether this is a good judge, a bad judge, or somewhere in the middle.