



LATE TESTIMONY

February 8, 2017

TIM VANDEVEER
Chair
MARIE STRAZAR
Vice Chair

MARGARET WILLE
SEAN SMITH
Legislative Committee Co-Chairs

RE: SB328 “Relating To Constitutional Amendments for Renewal of Judges”

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* SB328, 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 Vandever (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 increasingly pressured to reach politically popular verdicts, particularly in the most unpopular types of cases.

In the past two weeks, we have witnessed 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: [JDL Testimony](#)
Cc: naacphawaii@gmail.com
Subject: *Submitted testimony for SB328 on Feb 8, 2017 09:00AM*
Date: Tuesday, February 7, 2017 4:16:52 PM

SB328

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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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. 328
proposing an amendment to Article VI, Section 3 of
the Constitution of the State of Hawaii
to amend the timeframe to renew the term of office of a justice or judge and
require consent of the Senate for a justice or judge to renew a term of office**

The ILWU Local 142 opposes S.B. 328, which proposes a constitutional amendment to amend the timeframe to renew the term of a justice or judge and requires consent of the Senate for retention.

The State Constitution currently provides for the Judicial Selection Commission solely to determine whether a justice or judge should be retained or not. Members of the Commission are appointed, two each, by the Hawaii Bar Association, the Governor, the Senate President, and the House Speaker. The Chief Justice appoints a ninth member of the Commission. These appointments are intended to ensure that the three branches of government (executive, legislative, judiciary) and the legal community have a hand in appointing members to the Judicial Selection Commission, which then offers a list of candidates for the executive branch to appoint and the legislative branch, namely the Senate, to confirm or reject.

In the case of a justice or judge seeking to be retained, the Judicial Selection Commission evaluates each candidate seeking renewal of his or her term and makes the final decision without further review.

S.B. 328 proposes to change the method by which justices and judges are retained. Instead of allowing the decision to be made solely by the Commission, the proposal will require the justice or judge to petition to the Commission between twelve and nine months prior to the expiration of the term of office for retention. The bill then allows the Commission six months to evaluate and determine if retention should occur and, if so, immediately notify the Senate to consider consent.

We believe this extra step of requiring consent by the Senate is unnecessary and leaves an incumbent justice or judge subject to scrutiny by the Senate, which may have its own ax to grind over decisions rendered by a particular justice or judge. This was not the intent reflected in the State Constitution. The Judicial Selection Commission has the duty to determine whether or not to retain a justice or judge and does so independent of politics and considering all information presented to them in an unbiased manner.

The Chief Justice himself questioned why the Legislature is now considering changing the method of determining retention of justices and judges. The current method of retaining justices and judges has been in place for nearly 40 years with very little problem.

The ILWU urges that S.B. 328 be HELD. Thank you for considering our testimony.

LATE TESTIMONY

KLEINTOP & LURIA, LLP

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OF COUNSEL:
JESSI L. K. HALL

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 328
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 328 ("SB 328").

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 328 and its ramifications.

No reason is given in section 1 of this bill for requiring Senate consent for judges seeking retention. The lack of any rationale or reasonable basis for this bill suggests that the Senate has simply decided that it wishes to exert more control and power over the selection of judges than it already does.

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

KLEINTOP & LURIA, LLP

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Senator Keith-Agaran
Senator Rhoads
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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 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

KLEINTOP & LURIA, LLP

February 7, 2017
Senator Keith-Agaran
Senator Rhoads
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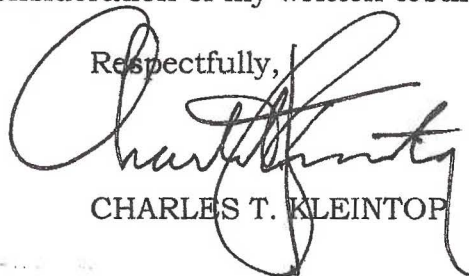
dissatisfied Family Court litigants to bring their claims to the Senate when they already have other avenues available to pursue their grievances. This bill will surely then have the effect of undermining the public's confidence in the judicial process.

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

Stephanie A. Rezens
Thomas E. Crowley



A Limited Liability
Law Partnership

February 6, 2017

Senate Committee on Judiciary And Labor

Via email

Re: S.B. No. 328: Proposing An Amendment To Article IV, Section 3, Of The Constitution Of The State Of Hawaii To Amend The Timeframe To Renew The Term Of Office Of A Justice Or Judge And Require Consent Of The Senate For A Justice Or Judge To Renew A Term Of Office

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

This written testimony is being submitted in opposition to the proposed amendment to Article IV, Section 3, of the Constitution of the State of Hawaii as contained in S.B. 328 to provide for senate confirmation for the retention of justices and judges.

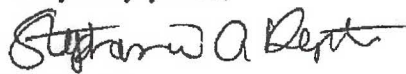
I have been licensed to practice law in the State of Hawai'i since September 1977. My law partner, Thomas E. Crowley, III has been licensed to practice law in the State of Hawai'i since September 1976.

The current system in place for the retention of justices and judges is not broken. Changing the system will not necessarily guarantee a better outcome. Changing the current system as proposed in S. B. 328 appears to infuse politics into the retention of justices and judges. By allowing the Senate to be able to reverse the decision of the Judicial Selection Commission with respect to the reappointment of a justice or judge makes the Senate the final arbiter of a justice's or judge's retention.

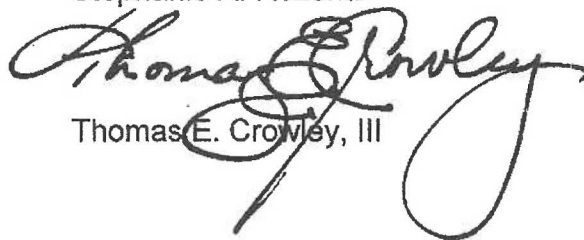
The principle upon which our system of government operates is the separation of powers. A strong Judiciary is paramount in maintaining these lines of separation of powers. Allowing the Legislature to have the final say in the retention of a justice or judge or the appointment of a district court judge appears to blur that line.

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

Very truly yours,



Stephanie A. Rezens



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
SB 328: *Proposing An Amendment To Article VI, Section 3, Of The Constitution Of The State Of Hawaii To Amend The Timeframe To Renew The Term Of Office Of A Justice Or Judge And Require Consent Of The Senate For A Justice Or Judge To Renew A Term Of Office.*

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. 328.

I have submitted testimony on S.B. 673 setting out several reasons why the current system of judicial selection and retention should be retained without any changes. In short, the current system has worked exceedingly well over the years; ours is a merit selection system that is likely the most economical, most efficient, fairest, and most politically nonpartisan in the country. It is a system whose hallmark is a delicate balance between the three branches of government---Executive, Legislative, and Judicial---each of whom unilaterally names representatives to serve on the judicial nominating body, the Judicial Selection Commission.

The bill purports to inject Senate power and authority into the retention process, which the Constitutional Conventions decided it should have none beyond its considerable power and authority in the selection process. The bill thus upsets the delicate balance of power between and among the three branches in the judicial selection and retention process (neither the Executive nor the Judicial branch will have any say in retention).

Beyond the balance of power issue, the bill also presents logistical problems. It elongates the period of time during which a judge at the end of his term will be

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subject to review---not just by the JSC, but by the Senate. It is an elongation and injection that will likely jeopardize court case management and scheduling, and may even extend beyond the judge's term unless the Senate is called into expensive special sessions to accommodate judicial term limits that vary with each judge. In my time on the JSC, we were frequently faced with judges who sought retention. It was not unusual to have multiple judges petition for retention within a six-month period, each on a different date. Should this bill pass, the Senate must be prepared to accommodate each petitioner so as to consider him or her on the merits before the petitioner's term expires.

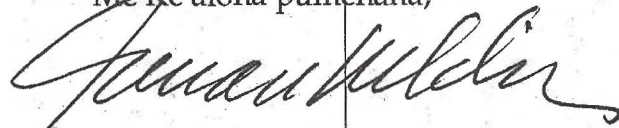
I would also anticipate that public hearings would be held by the Senate, which will likely entertain comments and grievances brought by disappointed litigants. Even the best of judges disappoints half of all litigants before him or her, not to speak of their lawyers. In the private confines of the JSC, we could consider such comments and grievances with equanimity, without public clamor or media coverage, and thus provide all parties with confidentiality. Will the Senate be able to do so as well?

The measure before you, if passed, would subject a sitting judge to public comment--good, bad, fair, unfair, prejudicial, come what may. In this manner, such a public review affects the independence of that sitting judge, who should be able to dispense with his or her discretionary duties according to law and not media coverage or public opinion or political budget constraints (as has occurred notably in the U.S. Senate, where Senator Grassley of Iowa ignobly has threatened and placed punitive budget constraints on the Federal judiciary).

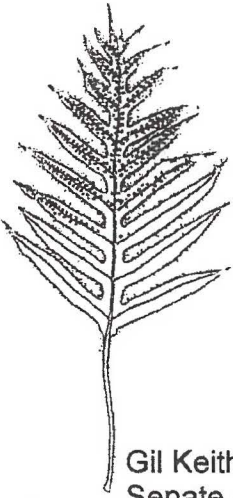
No system is perfect, but the present judicial retention system in Hawaii is not broken and is as fair as a system can be without affording lifetime tenure to judges (which the Federal system adopted in an effort to insulate judges from the vagaries of public opinion). Please do not pass this bill.

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

Me Ke aloha pumehana,

A handwritten signature in black ink, appearing to read "J. Michael Smith", written in a cursive style.

SMI:ms



YUKLIN ALULI
ATTORNEY AT LAW
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Kailua, Hawaii 96734
tel 262-5900 • fax 262-5610
email: yuklinaluli@hawaii.rr.com

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

Gil Keith-Agaran, Chair
Senate Committee on Judiciary and Labor
February 7, 2017
Re: Senate Bill 328/673
Page Two

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,

A handwritten signature in black ink, appearing to read 'Yuklin Aluli', written in a cursive style.

Yuklin Aluli

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: naacphawaii@gmail.com
Subject: *Submitted testimony for SB328 on Feb 8, 2017 09:00AM*
Date: Tuesday, February 7, 2017 4:16:52 PM

SB328

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:

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February 8, 2017

TIM VANDEVEER
Chair
MARIE STRAZAR
Vice Chair

MARGARET WILLE
SEAN SMITH
Legislative Committee Co-Chairs

RE: SB328 “Relating To Constitutional Amendments for Renewal of Judges”

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* SB328, 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 Vandev eer (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

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: Submitted testimony for SB328 on Feb 8, 2017 09:00AM
Date: Wednesday, February 8, 2017 8:32:13 AM

LATE TESTIMONY

SB328

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. Instead of attacking the Judiciary, we should be trying to work with the Judiciary to help solve some of our problems with the jail overcrowding. It should be remembered that this is the land of Aloha & that it is our custom & tradition to work together. There are 3 separate branches of Government whom are each autonomous to each other. It is set up that way for a reason. To retaliate against the Judiciary for decisions that you don't particularly like, is not justice nor pono! It is hewa & just plain wrong. Please stop this trend of retaliatory legislation.

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LATE TESTIMONY

From: [Henry Curtis](#)
To: [JDL Testimony](#)
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

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.

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).