



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary

Senator Brian T. Taniguchi, Chair

Senator Karl Rhoads, Vice Chair

Monday, April 23, 2018, 9:45 a.m.
State Capitol, Conference Room 016

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Resolution No. and Title: Senate Resolution 48, Urging the Hawai‘i Chapter of the American Judicature Society and the Hawai‘i State Bar Association to Analyze and Assess the Role of the Judiciary Within the Constitutional Framework of Government in the State of Hawai‘i .

Judiciary's Position:

The Judiciary supports the intent of the resolution, insofar as it seeks to foster discussion of the core principles of our constitutional system of government, including the separation of powers. Indeed, the Judiciary has sought to promote understanding of those principles through initiatives such as our Courts in the Community program, which has given almost 4,000 high school students the opportunity to witness actual supreme court oral arguments in schools across the state. The Judiciary welcomes discussion about its role as a co-equal branch of government as such discussions are healthy forms of public discourse.

A conversation about the role of the Judiciary, such as that envisioned by the resolution, should include consideration of the Judiciary’s constitutional role in protecting individual rights and freedoms, and the importance of an independent judiciary in fostering the rule of law. Under our constitution, the Judiciary is sometimes called upon to protect the rights of those whose views may be unpopular or contrary to the wishes of the majority. In making decisions, the judiciary must faithfully apply the constitutions and laws of the United States and Hawai‘i to the facts of each case—free from passion, pressure or outside influence.



Senate Resolution 48, Hawai‘i Chapter of the American Judicature Society;
Hawai‘i State Bar Association; Role of the Judiciary.
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The Judiciary notes that approximately one year ago, the American Judicature Society issued a report (2017 AJS Report) regarding the present system of judicial selection and retention in Hawai‘i. The 2017 AJS Report stated that “fair and impartial courts, and the public’s trust in the fairness and impartiality of courts, are a cornerstone of our system of government, and to ensure this fairness, the system is designed to maintain the independence of the judiciary and insulate it from fear or favor. Such insulation ensures that judges and justices make decisions based on the Constitution and law, regardless of the popularity of those decisions and political expediencies at the time.”

The 2017 AJS Report also highlighted that former Hawai‘i Supreme Court Chief Justice William S. Richardson explained, “Only an independent judiciary can resolve disputes impartially and render decisions that will be accepted by rival parties, particularly if one of those parties is another branch of government.”

Consistent with these principles, the Judiciary respectfully suggests that the resolution be amended to read:

WHEREAS, [~~if a branch violates the separation of powers and renders government unworkable, the public interest will suffer;~~] discussion about the role of the Judiciary should include consideration of the Judiciary’s constitutional role in protecting individual rights and freedoms, and the importance of an independent judiciary in preserving the rule of law. As former Hawai‘i Supreme Court Chief Justice William S. Richardson stated: “Only an independent judiciary can resolve disputes impartially and render decisions that will be accepted by rival parties, particularly if one of those parties is another branch of government.”

The Judiciary also suggests that the topics of discussion in the “BE IT RESOLVED” clause be amended to include the following: “the Judiciary’s role in protecting individual rights and freedoms” and “the importance of judicial independence in fostering the rule of law.”

In sum, the Judiciary welcomes discussion of these complex issues that are at the very foundation of our democracy. Indeed, “[t]he question of how far a judicial inquiry should range has been the most extensive and central debate in constitutional law throughout our country’s history.” *Trustees of Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154 (1987) (quoting K. Ripple, *Constitutional Litigation* § 3–1, at 87 (1984)). Furthermore, the Judiciary appreciates the important roles that AJS and HSBA play in our legal community, and would welcome the opportunity to work with these organizations and other stakeholders to ensure that these types of discussions take place.

Thank you for the opportunity to comment on this measure.



Comments from the
HAWAII STATE BAR ASSOCIATION
Relating to Senate Resolution No. 48

Urging the Hawaii Chapter of the American Judicature Society
and the Hawaii State Bar Association to Analyze and Assess
the Role of the Judiciary within the Constitutional Framework
of Government in the State of Hawaii

TO: The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair
and Members of the Senate Committee on Judiciary

FROM: Howard K.K. Luke
President, Hawaii State Bar Association

Hearing: Monday, April 23, 2018 at 9:45 a.m.
State Capitol, Room 016

The Board of Directors of the HSBA appreciates the opportunity to submit comments on SR 48 relating to the Separation of Powers Doctrine. As an independent, member-governed organization created by the Hawaii Supreme Court with certain powers and responsibilities set for in its Rules (RSCH 17), the HSBA is in agreement with this statement in SR48:

Whereas, continual discourse and reflection upon the respective roles and responsibilities of the three branches is necessary to ensure responsible governance;

The HSBA is willing cooperate and participate in any discourse on this fundamental bedrock of our democracy. The HSBA would defer to legal

academic scholars to lead the discourse and prepare written documentation for the Legislature and the public, if needed.

Thank you for the notification and opportunity to offer comments.



Senate Committee on Judiciary
Chair Brian Taniguchi, Vice Chair Karl Rhoads

04/23/2018 9:45 AM Room 016

SR48 – Urging the Hawaii Chapter of the American Judicature Society and the Hawaii State Bar Association to Analyze and Assess the Role of the Judiciary within the Constitutional Framework of Government in the State of Hawaii

TESTIMONY / COMMENTS
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Taniguchi, Vice Chair Rhoads, and members of the committee:

Common Cause Hawaii offers comments on SR48 which would urge the Hawaii Chapter of the American Judicature Society and the Hawaii State Bar Association to analyze and assess the role of the Judiciary within the constitutional framework of government in the State of Hawaii, including topics such as the Judiciary’s interrelationship with the legislative and executive branches.

We strongly believe that an independent Judiciary, one that is able to make decisions based on our constitution and laws, rather than what is popular at the time, is a keystone of our democracy. The discussion on the Judiciary’s role and its interrelationship with the legislative and executive branches is not new, but deserves to be revisited. As dialogue continues, we encourage officials to provide the public with ample opportunities to weigh in on this complex issue.

Thank you for the opportunity to offer **comments on SR48**.

SR-48

Submitted on: 4/19/2018 9:15:34 PM

Testimony for JDC on 4/23/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

After several incidents I believe the judiciary needs to undertake an audit. Especially when items that fall under the HRPC do not fall under the "jurisdiction" of the ODC.

SR-48

Submitted on: 4/20/2018 3:19:06 AM

Testimony for JDC on 4/23/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Oppose	No

Comments:

Oppose SR48 that proposes, "URGING THE HAWAII CHAPTER OF THE AMERICAN JUDICATURE SOCIETY AND THE HAWAII STATE BAR ASSOCIATION TO ANALYZE AND ASSESS THE ROLE OF THE JUDICIARY WITHIN THE CONSTITUTIONAL FRAMEWORK OF GOVERNMENT IN THE STATE OF HAWAII."

The resolution itself contains no evidence or information about the need for the proposed action. It implies that the Judiciary encroaches into the jurisdiction of other branches of government and that it has violated the separation of powers and renders government unworkable that the public interest will suffer. I would suggest that there may be times that the Judiciary in rendering decisions on cases brought before it that it will **render decisions following the law** that may not be friendly to the legislature or other branches of government. This assures that the public interest is protected.

If there is an issue of the branches of government not working together to integrate its dispersed powers into a workable government, a study that looks at how each branch of government has (or has not) worked together should be made of all branches of government, not just the Judiciary.

SR-48

Submitted on: 4/20/2018 9:10:02 AM

Testimony for JDC on 4/23/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
JANNA	Individual	Support	No

Comments:

I am submitting my testimony in favor of this proposal because we as citizen of the State of Hawaii put our trust in these organizations to serve and protect us, however, they are abusing the power of the system and constitution by deceiving us. This also affects the public and state and creates more problems because if we have bad people, we have bad government and to run a state like that will result in chaos. We need to hold people accountable for their actions and ensure we are practicing good morals by regulating these agencies and ensure they are following the laws.