



## *The Judiciary, State of Hawai'i*

### **Testimony to the Senate Committee on Judiciary**

Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 10, 2020, 10:00 a.m.  
State Capitol, Conference Room 016

by

Rodney A. Maile  
Administrative Director of the Courts

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**Bill No. and Title:** House Bill No. 2549, Relating to Constitutional Amendments.

**Purpose:** Requires the language and meaning of any proposed constitutional amendment and ratification question to be simple, concise, and direct. Allows the presiding officers of the Legislature to request a written opinion of the Supreme Court regarding the legality of a proposed amendment to the Hawai'i State Constitution and the corresponding constitutional ratification question. Requires the court to provide a written opinion within 48 hours of receipt of the request. Requires, for any written opinion by the court that invalidates a constitutional ratification question, a detailed and specific explanation of the reasons for this opinion.

### **Judiciary's Position:**

Due to the significant constitutional issues implicated by this proposal, it is inappropriate for the Judiciary to take a position on this proposed legislation. The Judiciary offers the following comments.

We were unable to locate provisions in other states identical to that proposed in House Bill No. 2549. It appears about ten states have provisions pertaining to advisory opinions requested by other branches of government. Concerns expressed regarding those provisions include those arising from the separation of powers doctrine and the quality of opinions that must be rendered in short time frames.

This proposal provides no opportunity for persons whose interests might be affected by the ratification question to be heard. In effect, the court would be reviewing the question without



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the benefit of any adversarial testing. Moreover, the proposal provides that the court's written opinion "shall not be appealable," which suggests no further opportunity for judicial review even by those whose interests could be affected and who were not allowed to participate.

Additionally, the proposal does not indicate what factual record would be submitted to the court to assess the adequacy of the question. Nor does it provide the court with sufficient time (only 48 hours) to review the potentially complex issues that could be posed. Lastly, there are no limits on successive questions being submitted.

Thank you for the opportunity to testify on this measure.

Statement Before The  
**SENATE COMMITTEE ON JUDICIARY**  
Tuesday, March 10, 2020  
10:00 AM  
State Capitol, Conference Room 016

in consideration of  
**HB 2549**  
**RELATING TO CONSTITUTIONAL AMENDMENTS.**

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii comments on HB 2549, which (1) requires the language and meaning of any proposed constitutional amendment and ratification question to be simple, concise, and direct, (2) allows the presiding officers of the Legislature to request a written opinion of the Supreme Court regarding the legality of a proposed amendment to the Hawaii State Constitution and the corresponding constitutional ratification question, (3) requires the court to provide a written opinion within 48 hours of receipt of the request, (4) requires, for any written opinion by the court that invalidates a constitutional ratification question, a detailed and specific explanation of the reasons for this opinion, and (5) prohibits any appeal of a written opinion.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through a fair, impartial, and independent judiciary. Fair courts mean equal access to the courts.

HB 2549 provides that “any decision established in a written opinion rendered pursuant to this paragraph shall not be appealable.” Pg. 4, lines 15-17. The right to due process and his/her day in court is a central part of democracy. Limiting appeals is contrary to our democratic process.

Thank you for the opportunity to comment on HB 2549. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,  
Sandy Ma  
Executive Director, Common Cause Hawaii



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COMMITTEE ON JUDICIARY  
Tuesday, March 10, 2020, 10:00 a.m., Room 016

HB 2549 RELATING TO PROPOSED CONSTITUTIONAL AMENDMENTS

**TESTIMONY**

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Keohokalole and Committee Members:

**The League of Women Voters of Hawaii strongly supports HB2549** that requires the language and meaning of any proposed constitutional amendment and ratification question to be simple, concise, and direct. The measure allows the presiding officers of the Legislature to request a written opinion of the Supreme Court regarding the legality of a proposed amendment to the Hawaii State Constitution and the corresponding constitutional ratification question. The bill requires the court to provide a written opinion within 48 hours of receipt of the request, and requires, for any written opinion by the court that invalidates a constitutional ratification question, a detailed and specific explanation of the reasons for this opinion. The measure prohibits any appeal of a written opinion.

For too long, voters have struggled with trying to understand the legal vocabulary used in the wording of ballot proposals. For constitutional amendments, Act 286 which became law in 2019, was an important effort to address this problem; we hope the legislature will reconcile this law with the provisions of HB 2549 as needed. That law did not specify how the Legislature and the Judiciary would cooperate on proposed amendment wording, but it does appear that HB2548 sets out a reasonable process for the Legislature and the State Supreme Court to cooperate on both ballot questions and the ratification wording.

We do appreciate the necessity of wording the ballot using a certain amount of legal vocabulary, but a translation is required for we common folks! This is especially important knowing that blank votes on ballot questions count as “no” votes; in fact, blank votes often mean “I don’t understand.”

We urge the Office of Elections to go one step further should HB 2549 become law, by providing a “pro/con” analyses of the proposed amendments; this also helps voters understand the question. While



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the League has provided such analyses in the past, the Office of Elections is the only practical avenue for statewide distribution of such information. It is a source likely to be accepted by voters as objective and nonpartisan.

Ballot proposal analysis is only one part of the voter education that voters deserve from our election officials. More comprehensive education would also include candidate statements in a common template form and a program that continues to provide practical information such as sample ballots and arrangements for voting.

For many years, the Hawaii League of Women Voters has pursued voting modernization such as online voter registration, same-day voter registration and automatic voter registration – all in hope of making it easy to vote. We will be the first to admit such efforts are critical but insufficient. Once registered, how can we encourage people to vote? Surely voter education is important, just as fielding a competitive group of good candidates is important. But here we are emphasizing as strongly as we can - **Hawaii needs comprehensive voter education, and this measure moves toward that goal.**

We see consensus within the legislature on this measure and we are delighted to see the bill would take effect upon approval. Thank you for the opportunity to submit testimony.