



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
H.B. NO. 1605, RELATING TO ELECTIONS.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, January 30, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Reese R. Nakamura, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill amends section 11-151, Hawaii Revised Statutes, to specify that ballots cast in the ratification of a proposed constitutional amendment may be counted as negative votes if the ballot properly indicates that the vote is in the negative; no other indication on the ballot, such as a blank or a cross-out shall counted as negative.

This amendment comports with the Hawaii Supreme Court decision in *Hawai'i State AFL-CIO v. Yoshina*, 84 Hawai'i 374, 935 P.2d 89 (1997), which found blank votes and over-votes are not directly counted in the "negative" against a proposed amendment.

We note that the court in *Yoshina* held that the total number of "ballots cast" within the meaning of article XVII, section 2 of the Hawaii Constitution, includes blank ballots and over votes." *Id.* at 383, 935 P.2d at 98. The total number of votes cast in an election is distinct from the tallied "yes" votes and "no" votes, and that total is considered when applying the two-part test for constitutional amendment ratification as set forth in article XVII, section 2, of the Hawaii Constitution and *Yoshina*.

Article XVII, section 2, states in part:

The revision or amendments shall be effective only if approved at a general election by a majority of all the votes *tallied* upon the question, this majority constituting at least fifty per cent of the total vote *cast* at the

election, or at a special election by a majority of all the votes tallied upon the question, this majority constituting at least thirty per cent of the total number of registered voters. [Emphases added.]

For *tally* purposes, ballots containing neither a "yes" vote nor a "no" vote (e.g., "blank" votes, crossed out, defaced, and "over" votes) are not counted as "yes" or "no" votes, but are still treated as *cast* ballots. Thus, a proposed constitutional amendment will succeed when it garners a majority of tallied votes in the form of "yes" votes for approval, with those "yes" votes constituting at least fifty percent of the total votes cast.

While there do not appear to be legal problems with this bill, the addition of section 11-151(b), HRS, in this bill might *appear* to conflict with article XVII, section 2, and the *Yoshina* case. Therefore, we recommend the following amendments to the proposed wording of subsection (b) on page 2, lines 14-18:

(b) Each vote cast in ratification of a constitutional amendment or a question for a constitutional convention shall be counted in the negative only if the ballot properly indicates that the vote is in the negative. No other indication on the ballot, including but not limited to a blank or cross-out, shall be counted in the negative[-]; provided that the ballots cast, whether voted, blank, spoiled, or otherwise invalid, shall be counted towards the total number of votes cast.

Furthermore, to avoid redundant provisions, we recommend amending subsection (a)(3) on page 2, lines 7-13, as follows:

(3) [If] Unless otherwise provided by law, if a contest or question requires a majority of the votes for passage, any blank, spoiled, or invalid ballot shall not be tallied for passage or as votes cast ~~[except such ballots shall be counted as votes cast in ratification of a constitutional amendment or a question for a constitutional convention].~~

We respectfully ask the Committee to consider our recommended amendments. Thank you for the opportunity to provide these comments.

HB-1605

Submitted on: 1/26/2024 6:07:01 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I **oppose** this Bill.

HB-1605

Submitted on: 1/27/2024 8:23:03 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Moylan	Individual	Oppose	Written Testimony Only

Comments:

I oppose Bill HB1605. This Bill is too confusing. Ballot questions should be worded better instead of bad legislation to account for poorly written ballot questions.

HB-1605

Submitted on: 1/27/2024 8:27:30 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kaiulani Bowers	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill, it is too confusing and worded poorly.

HB-1605

Submitted on: 1/27/2024 8:44:41 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Noela von Wiegandt	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I oppose this bill. This bill is very confusing. The ballot questions should be better worded so that citizens are not confused. Poorly written ballot questions leads to bad legislation. Please rewrite this bill so people understand exactly what they are reading, so they can make an a decision feeling confident. Thank you very much.

Noela von Wiegandt

HB-1605

Submitted on: 1/27/2024 9:20:00 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
April Handog	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill for its confusingly written and lack of transparency.

HB-1605

Submitted on: 1/27/2024 9:21:09 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
kelly morgan	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. Needs to be simply written. As it stands it's too confusing.

HB-1605

Submitted on: 1/27/2024 9:48:58 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tatiana Maumausolo	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill and so should you. This bill is too confusing. Ballot questions should be worded better instead of bad legislation to account for poorly written ballot questions.

Mahalo, Tatiana

HB-1605

Submitted on: 1/27/2024 12:31:45 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sharron VanDeusen	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill.

HB-1605

Submitted on: 1/27/2024 1:14:17 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Leolani Mahuka iwaki	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill!

HB-1605

Submitted on: 1/27/2024 1:28:52 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
kamakani de dely	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill due to it being too vaguely written. Ballot questions should be worded better instead of bad legislation to account for poorly written ballot questions.

HB-1605

Submitted on: 1/27/2024 2:08:07 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mallory De Dely	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill due to it being too vaguely written. Ballot questions should be worded better instead of bad legislation to account for poorly written ballot questions.

HB-1605

Submitted on: 1/27/2024 3:49:29 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
J. Chun	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill.

HB-1605

Submitted on: 1/27/2024 10:01:10 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lesha Mathes	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill!

HB-1605

Submitted on: 1/28/2024 2:11:11 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Luis Ma	Individual	Oppose	Written Testimony Only

Comments:

Strong oppose.

HB-1605

Submitted on: 1/28/2024 8:47:22 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ryan Willis	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose

HB-1605

Submitted on: 1/28/2024 8:56:18 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kanoe Willis	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose

HB-1605

Submitted on: 1/28/2024 10:15:09 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
THOMAS KENT	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE THIS BILL

HB-1605

Submitted on: 1/28/2024 10:46:33 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sierra Palpallatoc	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE THIS BILL

HB-1605

Submitted on: 1/28/2024 10:58:28 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
CHESTER LUM	Individual	Oppose	Written Testimony Only

Comments:

This bill is about constitution amendments but has statements about Rank Choice Voting which are not related and confusing as written. This bill should address the wording of the question that is being put to the public.

This bill should be tabled since it is poorly written.

Thank you for allowing me to submit testimony opposing this bill.

Chester Lum

HB-1605

Submitted on: 1/28/2024 12:32:49 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Teresa Parmenter	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB1605

HB-1605

Submitted on: 1/28/2024 12:54:18 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
TERI SAVAIINAEA	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB 1605.

Thank you,

Teri Savaiinaea

HB-1605

Submitted on: 1/28/2024 1:53:02 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Terri Yoshinaga	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bad bill!

HB-1605

Submitted on: 1/28/2024 1:55:51 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alika Valdez	Individual	Support	Written Testimony Only

Comments:

I support.

HB-1605

Submitted on: 1/28/2024 2:53:28 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
tania victorine	Individual	Oppose	Written Testimony Only

Comments:

Too confusing! Should be worded better!

HB-1605

Submitted on: 1/28/2024 3:38:38 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rita Wong	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB1605. The bill is too confusing

HB-1605

Submitted on: 1/28/2024 6:18:56 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Heather R Lauro	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. Language is to confusing and can easily be misinterrupted. Do better!

HB-1605

Submitted on: 1/28/2024 7:12:07 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tiffany Salazar	Individual	Oppose	Written Testimony Only

Comments:

The bill is too confusing. Ballot questions should be worded better instead of bad legislation to account for poorly written ballot questions.

HB-1605

Submitted on: 1/28/2024 8:45:16 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
James R Cabodol Jr	Individual	Oppose	Written Testimony Only

Comments:

This bill I oppose because the question presented are not clear and thorough, please look into this matter and make the wording of these questions be more clear

HB-1605

Submitted on: 1/28/2024 8:53:00 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Robin Gusich-Batara	Individual	Oppose	Written Testimony Only

Comments:

I oppose this proposed bill HB1605 because it is poorly written. Why does it even mention ranked voting when we do not even have it? The whole bill is confusing and may easily be misconstrued. Please do not muddle our election process any more than it is.

Thank you.

HB-1605

Submitted on: 1/28/2024 9:09:37 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Vivek Pathela	Individual	Oppose	Written Testimony Only

Comments:

Too confusing bill.

HB-1605

Submitted on: 1/28/2024 9:07:33 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lynne Bautista	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB1605.

This law is very confusing. Any law that is not clearly stated and understood should not be passes. Ballot questions need to be more clearly written instead of passing confusing laws to make up for poorly written ballot questions.

HB-1605

Submitted on: 1/28/2024 9:11:04 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica Penner	Individual	Oppose	Written Testimony Only

Comments:

How about just clarifying ballot questions instead of making news laws to deal with poorly written ones?

HB-1605

Submitted on: 1/28/2024 9:29:29 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
L M	Individual	Oppose	Written Testimony Only

Comments:

Oppose. Bill is confusing. Ballot questions should be worded clearly so they can be answered with a clear "yes" or "no."

Thank you.

HB-1605

Submitted on: 1/28/2024 10:29:24 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Amanda Scardilli	Individual	Oppose	Written Testimony Only

Comments:

Opposing due to : The poor written structer of this bill.

IT IS TOO CONFUSING

NEEDS TO BE WRITTEN CLEARLY FOR EVERYONE TO UNDERSTAND.

RESPECTFULLY,

Amanda Scardilli

HB-1605

Submitted on: 1/29/2024 4:50:37 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
julie schaus	Individual	Oppose	Written Testimony Only

Comments:

I oppose hb1605

its against our constitution

HB-1605

Submitted on: 1/29/2024 5:00:10 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Greg schaus	Individual	Oppose	Written Testimony Only

Comments:

I oppose hb1605

HB-1605

Submitted on: 1/29/2024 5:08:57 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sam schaus	Individual	Oppose	Written Testimony Only

Comments:

I oppose hb1605

HB-1605

Submitted on: 1/29/2024 5:59:59 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alice Abellanida	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. Wording on ballot is too confusing.

HB-1605

Submitted on: 1/29/2024 6:01:27 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathy Jenkins	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB1605

HB-1605

Submitted on: 1/29/2024 6:37:02 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Thomas Stanton	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB1605.

HB-1605

Submitted on: 1/29/2024 7:41:57 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Anne Kamau	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. Mahalo.

HB-1605

Submitted on: 1/29/2024 8:28:07 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica Caiazzo	Individual	Oppose	Written Testimony Only

Comments:

Aloha my name is Jessica “Priya” Caiazzo and I strongly oppose HB1605. There are some bad bills that get pushed thru that do not actually benefit we the people, and in fact is misguided disguise of what is for the greater good. It’s important to see thru this bill and shut it down. It's a poorly written bill, if it leaves me more confused and ballot questions should be worded better.

Mahalo,

Jessica "Priya" Caiazzo

HB-1605

Submitted on: 1/29/2024 8:42:24 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Cushnie	Individual	Oppose	Written Testimony Only

Comments:

This Bill is confusing, ballot questions need to be worded clearly and concise.

HB-1605

Submitted on: 1/29/2024 9:17:13 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark Au	Individual	Oppose	Written Testimony Only

Comments:

Chair Tarnas, Vice Chair Takayama, and JHA Committee members, I oppose this bill because it is poorly written in an attempt to clarify counting votes only in the negative . While the bill adds new language clarifying what constitutes a negative vote cast in SECTION 2, (3). (b), it retains current language counting blank, spoiled or invalid ballots for a question for a constitutional convention. See below:

(3) If a contest or question requires a majority of the votes for passage, any blank, spoiled, or invalid ballot shall not be tallied for passage or as votes cast except that [such] the ballots shall be counted as votes cast in [ratification of a constitutional amcnmncnt or] question for a constitutional convention.

While the new section clarifies what constitutes a negative ballot, the above section language retains a negative ballot for blank, spoiled or invalid ballots for a constitutional convention. This is inconsistent with the intent of this bill. Moreover, this proposal is not necessary. To avoid legislation of this kind, a simple solution is to have all future ballot questions be written clearer with simple language for the voter to understand that blank, spoiled, or invalid ballots shall be counted as a negative vote .

For these reasons, I oppose this legislation as written.

Thank you for the opportunity to submit my written testimony.

Mark B. Au

Kailua, HI

HB-1605

Submitted on: 1/29/2024 9:20:30 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Corinne Solomon	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chair Tarnas and JHA Committee Members,

I oppose HB1605.

It is a really confusing bill. Why can't ballot questions be written more clearly in lieu of writing laws to compensate for unclear ballot questions?

Why is Ranked Choice Voting mentioned?

I feel that our laws should be written so that the average Hawai'i citizen can understand them.

Mahalo for the opportunity to submit testimony.

Respectfully submitted,

Corinne Solomon, HD20

HB-1605

Submitted on: 1/29/2024 9:52:45 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Terry Murakami	Individual	Oppose	Written Testimony Only

Comments:

The bill is poorly written and confusing.

HB-1605

Submitted on: 1/29/2024 10:00:30 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chloe S	Individual	Oppose	Written Testimony Only

Comments:

I am in strong opposition to House Bill 1605. This bill is extremely confusing and does not provide clear solutions to the issue of poorly written ballot questions. On the bright side, this bill is an excellent example of the incompetence of our state's government.

HB-1605

Submitted on: 1/29/2024 11:01:22 AM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Vick Penn	Individual	Oppose	Written Testimony Only

Comments:

Good Morning,

I'm writing to OPPOSE Bill HB 1605.

This poorly written bill is UNACCEPTABLE. Bills, along with ballot questions/ballot language should be clearly written and understandable to all.

Hawaii is a state that has a high population of ESL residents. Poorly written bills and ballot language disenfranchises those who are taking part in the institution of American elections.

There are enough Legislators who have been through college and private school to write coherent, non-confusing text. Hawai'i also has enough tax resources to hire writing consultants to write things clearly.

HB-1605

Submitted on: 1/29/2024 12:29:50 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Scott Shedko	Individual	Comments	Written Testimony Only

Comments:

I don't understand why we need a law for this. It seems like common sense that only ballots clearly indicating that the vote is negative should be counted as negative, and only ballots clearly indicating the the vote is positive should be counted as positive.

It seems to me like it should be more urgent to find out why, "votes for questions on ballots for the ratification of constitutional amendments that are left blank, crossed out, or otherwise defaced are counted in the negative."! (page 1, lines 1-5)

I commend whoever discovered this problem, but I don't think we need a new law for this, we need an investigation into why this happens, and for our voting system to work correctly!

HB-1605

Submitted on: 1/29/2024 12:37:24 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kim Cordery	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill because Bills should be clearer in their wording and explanation of bills as to not create "Bad Legislation!"

LATE

HB-1605

Submitted on: 1/29/2024 6:59:42 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lucricia Amaral	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill.

LATE

HB-1605

Submitted on: 1/29/2024 7:04:21 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Melvin Amaral	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill.

LATE

HB-1605

Submitted on: 1/29/2024 7:23:43 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Scott Kidd	Individual	Support	Written Testimony Only

Comments:

I think that an individuals intent on a ballot has to be clear and understood enough to know the intent of the voter. Any ambiguity should not default to a negative selection as it may misrepresent the intent of the individual.

LATE

HB-1605

Submitted on: 1/30/2024 12:32:39 PM

Testimony for JHA on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Yvonne Alvarado	Individual	Oppose	Written Testimony Only

Comments:

I, Yvonne L. Alvarado oppose Bill HB1605.