



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-First Legislature, Regular Session of 2022**

**House Committee on Judiciary & Hawaiian Affairs**

Representative Mark M. Nakashima, Chair

Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 16, 2022, 2:00 PM

State Capitol, Conference Room 325

VIA VIDEOCONFERENCE

**WRITTEN TESTIMONY ONLY**

by

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**Bill No. and Title:** House Bill No. 2038, Relating to Constitutional Amendments.

**Purpose:** Requires the language and meaning of any proposed constitutional amendment and ratification question to be simple, concise, and direct to the extent practicable. 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 supreme court to provide a written opinion within 48 hours of receipt of the request. Requires, for any written opinion by the supreme court that invalidates a constitutional ratification question, a detailed and specific explanation of the reasons for this opinion. Prohibits any appeal of a written opinion.

**Judiciary’s Position:**

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

The Judiciary was unable to locate provisions in other states identical to that proposed in House Bill No. 2038, and only about ten states have provisions pertaining to advisory opinions requested by other branches of government. Concerns expressed about state provisions



pertaining to advisory opinions include those arising from the separation of powers doctrine as well as the quality of opinions that must be rendered in short time frames.

Moreover, the opportunity to thoroughly consider an issue through zealous advocacy is absent in the proposal. Specifically, the proposal provides no opportunity for persons whose interests might be affected by the constitutional amendment or ratification question to be heard. In effect, the court would be reviewing the question without the benefit of any adversarial testing. Furthermore, 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 in the court's consideration of the important issue(s).

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 are often posed by the constitutional amendment or ratification question. Lastly, there are no limits on successive questions being submitted.

Thank you for the opportunity to submit testimony on this measure.