



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Finance

Representative Sylvia Luke, Chair

Representative Ty J.K. Cullen, Vice Chair

Friday, February 26, 2021, 11:00 AM

State Capitol, Conference Room 308

VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: House Bill No. 337, H.D. 1, 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 possible. 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. Prohibits any appeal of a written 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. 337, H.D. 1. 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.



House Bill No. 337, H.D.1, Relating to Constitutional Amendments
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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 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.



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TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

RE: HB337, HD1 RELATING TO CONSTITUTIONAL AMENDMENTS

FRIDAY, FEBRUARY 26, 2021

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Luke and Members of the Committee:

The Hawaii State Teachers Association supports HB337, HD1, relating to constitutional amendments. This bill would require the language and meaning of any proposed constitutional amendment and ratification question to be simple, concise, and direct to the extent practicable and that the court to provide a written opinion after the court invalidates any constitutional ratification question.

On April 23, 2018 the Hawaii State Senate passed Senate Bill 2922, a proposed constitutional amendment to create an additional source of revenue for our public schools, by an overwhelming vote of 23 to 1. This Senate vote followed the State House session on April 10, during which representatives unanimously approved this bill.

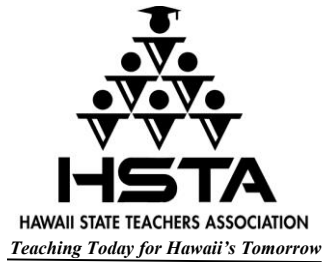
Unfortunately, in October, 2018 The Hawaii Supreme Court invalidated that question on general election ballots.

Ruling in favor of Hawaii's four counties, the court found that the wording of the question wasn't sufficiently clear. Hawaii law requires that the language of a constitutional amendment be "neither misleading or deceptive."

"The Chief Election Officer shall issue a public proclamation stating that the ballot question is invalid and that any votes for or against the measure will not be counted and will have no impact," according to the order from the Supreme Court.

HSTA was extremely disappointed with the Supreme Court ruling. The campaign for this Constitutional Amendment had been a multi-year fight to properly fund our public schools.

The Constitutional Amendment was created to fix the long term problems of underfunding Hawaii's schools. Hawaii has more than 1,000 classrooms that lack a



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qualified teacher each year, have crumbling facilities, and because of being underfunded, too many of our students are denied learning opportunities based on their special needs.

If this bill had been in place the previous Constitutional Amendment for public school funding would have met the criteria for simple, concise and direct. Therefore, the Hawaii State Teachers Association respectfully asks you to **support** this bill.

LATE

HB-337-HD-1

Submitted on: 2/25/2021 4:29:28 PM
Testimony for FIN on 2/26/2021 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Will Caron	Individual	Support	No

Comments:

Aloha committee members,

I support this bill because access to democracy, particularly direct democracy, requires transparency and accountability. Although Hawai'i has a less liberal referendum process than, say California, the obvious pitfalls associated with complex and often intentionally misleading language including within many of that state's ballot initiatives are nevertheless something that we should guard against in Hawai'i as well. Referendum measures on the ballot in Hawai'i, once approved by the legislature, as well as county referendums which are much easier to get on the ballot have, in the past, been confusing and difficult to decipher. This limits access to democracy. We should create regulations ensuring that direct democracy measures are clear, concise, and have no hidden motives written between the lines.

Mahalo!