



The Judiciary, State of Hawai‘i

**Testimony to the Thirty-Second Legislature
2023 Regular Session**

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, February 28, 2023, 10:00 AM
State Capitol
Conference Room 211 & Videoconference

by
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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1074, SD1, Proposing Amendments to the Constitution of the State of Hawai‘i to Amend the Manner in which Justices and Judges are Appointed, Consented to, and Retained.

Purpose: Proposes amendments to the Constitution of the State of Hawai‘i relating to the appointment of justices and judges. Changes the required time frames from 30 to 45 days for the process to appoint and consent to a justice or judge. Harmonizes the Senate consent procedures for district court judgeship nominees to mirror the Senate consent procedures relating to supreme court justices and intermediate court of appeals and circuit court judges. (SD1)

Judiciary’s Position:

The Judiciary appreciates the amendments reflected in the current version of the bill (SB 1074, SD1) made by the Senate Committee on Judiciary. Thank you to Chair Karl Rhoads, Vice Chair Mike Gabbard, and the members of the committee.

Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON WAYS AND MEANS

Senator Donovan DelaCruz, Chair
Senator Gil Keith-Agaran, Vice Chair
Tuesday, February 28, 2023
Room 211 & VIDEOCONFERENCE
10:00 AM

OPPOSITION TO SB 1074 HD1 - JUDICIAL APPOINTED, CONSENTED, AND RETAINED

Aloha Chair DelaCruz, Vice Chair Keith-Agaran and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the 4,028 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 917 (41% of the male imprisoned population²) of Hawai'i's imprisoned people are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates the opportunity to offer testify in **opposition** to SB 1074 HD1. When will the Senate have time for policymaking if they are in the constant advise and consent process?

We continue to advocate for and support an independent judiciary.

One of the basic tenets of our democracy is that the three branches of government - Executive; Legislative; and Judicial - are our system of checks and balances to ensure that one branch is not usurping the powers and responsibilities of another branch.

¹ 1 Department of Public Safety, Weekly Population Report, February 13, 2023.
https://dps.hawaii.gov/wp-content/uploads/2023/02/Pop-Reports-Weekly-2023-02-13_George-King.pdf

² Why are 41% of Hawai'i's male prison population sent thousands of miles from home when the following prisons in Hawai'i have room? Here are the capacity rates of the following prisons: Halawa is at 74.3%; Halawa Special Needs Facility is at 63.6%; Kulani is at 39.5%; Waiawa is at 59% of operational capacity. SEE FN1

Respect for and by the three co-equal branches of government is vital for a vibrant democracy to thrive.

JUDICIAL INDEPENDENCE³

"Judicial independence" is the principle that judges should reach legal decisions free from any outside pressures, political, financial, media-related or popular. Judicial independence means judges must be free to act solely according to the law and their good faith interpretation of it, no matter how unpopular their decisions might be. It means judges need not fear reprisals for interpreting and applying the law to the best of their abilities. An independent judiciary is a cornerstone not only of our justice system but of our entire constitutional system of government.

However, such independence must also be balanced by judicial accountability. Judges are required by their oath of office and canons governing their conduct to perform their duties accurately and ethically, according to the rule of law. If they fail to do so, two major remedies exist: one for judicial error and the other for judicial misconduct. If a judge errs in deciding a case, the decision may be appealed. At both the federal and state levels, parties may appeal unfavorable decisions on the basis of some inaccuracy, such as factual error or misapplication of the law. If a judge engages in misconduct, disciplinary options exist. Federal judges only hold their offices "during good behavior," and Congress may impeach and remove federal judges for certain types of misconduct. States have their own judicial disciplinary bodies (some an arm of the state's highest court, others an independent governmental entity) that investigate and discipline state judges for misconduct. At the state level, an array of sanctions is available, from modest censure to removal from the bench and referral for criminal prosecution.

In our constitutional system of government, an independent judiciary serves two goals. First, it enables the judges to make impartial decisions. Second, it keeps the other political branches in check. Scholars tend to divide judicial independence into two distinct but intertwined varieties: *decisional and institutional*.

- *Decisional independence* refers to a judge's ability to render decisions based only on the facts of each case and the applicable law, free of political, ideological, or popular influence.

- *Institutional independence* distinguishes the judiciary as a fully co-equal branch of government, separate from the legislative and executive branches.

To understand just how prized and rare a circumstance true judicial independence is, just look abroad. The American recipe of judicial independence is relatively rare. It requires a full-fledged judicial branch on an equal footing with other branches of

³ THE NEWSROOM GUIDE TO JUDICIAL INDEPENDENCE.

<https://constitutionproject.org/wp-content/uploads/2012/10/37.pdf>

government, that has the power to review the constitutionality of laws enacted by the other branches, and whose judges cannot be removed from office at the whim of displeased litigants or public officials. American federal and state judges and judicial scholars regularly travel to other parts of the world, particularly where democracies are emerging, to help nations understand how an independent judiciary operates and how to establish one.

U.S. Supreme Court Justice Stephen Breyer explained, *“The good that proper adjudication can do for the justice and stability of a country is only attainable if judges actually decide according to law, and are perceived by everyone around them to be deciding according to law, rather than according to their own whim or in compliance with the will of powerful political actors. Judicial independence provides the organizing concept within which we think about and develop those institutional assurances that allow judges to fulfill this important social role.”*

SB-1074-SD-1

Submitted on: 2/27/2023 10:11:54 AM

Testimony for WAM on 2/28/2023 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB1074 SD1.