



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2138, RELATING TO ELECTIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, January 25, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

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

Chair Rhoads 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 only 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. Thus, to add clarity, it might be useful to add a proviso to the added wording in the bill at page 2, line 11, such as ". . . ; provided that all ballots cast, whether voted or blank or otherwise voided, shall be counted towards the total number of votes to be tallied."

Thank you for the opportunity to provide these comments.

SB-2138

Submitted on: 1/22/2024 2:39:23 PM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawai'i	Support	Remotely Via Zoom

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai'i; Hawai'i's oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 2138.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr. (he/him)
Chair and SCC Representative
Stonewall Caucus for the DPH

SB-2138

Submitted on: 1/21/2024 10:55:08 PM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Brett Kulbis	Individual	Support	Written Testimony Only

Comments:

To often when Hawaii voters are unsure of what is being asked of they leave constitutional ballot questions blank not realizing that their blank vote is counted as a NO vote. This loophole has been exploited for years. I support SB2138.

SB-2138

Submitted on: 1/22/2024 9:19:37 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I oppose SB2138. This is not a clearly written bill. Ballot questions should be written more clearly instead of laws being written to counter poorly written ballot questions.

SB-2138

Submitted on: 1/22/2024 9:40:38 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I oppose

SB-2138

Submitted on: 1/22/2024 10:07:31 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Timothy Ashton	Individual	Oppose	Written Testimony Only

Comments:

More clear ballot questions are needed instead of new laws to infer the peoples choice.

SB-2138

Submitted on: 1/22/2024 1:26:13 PM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Marcelle Liana	Individual	Oppose	Written Testimony Only

Comments:

I strongly OPPOSE

SB-2138

Submitted on: 1/23/2024 12:18:21 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jennifer Cabjuan	Individual	Oppose	Written Testimony Only

Comments:

Oppose this bill

SB-2138

Submitted on: 1/23/2024 5:11:00 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I oppose this bill. It is unclear and confusing.

SB-2138

Submitted on: 1/23/2024 5:37:49 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Christina West	Individual	Oppose	Written Testimony Only

Comments: I strongly oppose SB2138 as it seeks to remove Trump from the ballot without any basis of insurrection charges. This interferes with my right to vote for the candidate of my choice. I urge the Hawaii Capitol to reconsider this bill and protect our fundamental right to vote freely.

SB-2138

Submitted on: 1/23/2024 8:03:29 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

This bill is about constitution ammendments but has statements about Rank Choice Voting which are not related and confusing as written. This bill should be tabled since it is poorly written.

SB-2138

Submitted on: 1/23/2024 8:04:59 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I reject this measure as unclear and confusing.

SB-2138

Submitted on: 1/23/2024 10:54:21 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I oppose Sb 2138

this is against our constitution

SB-2138

Submitted on: 1/23/2024 11:00:44 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I oppose sb 2138

this goes against our. Constitution

SB-2138

Submitted on: 1/23/2024 12:05:28 PM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I strongly oppose sb2138

This is Against our constitution

SB-2138

Submitted on: 1/23/2024 7:13:49 PM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

This is a poorly written bill - very confusing

SB-2138

Submitted on: 1/24/2024 7:24:37 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

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

Comments:

I **oppose** this Bill.

SB-2138

Submitted on: 1/24/2024 8:47:57 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Emily Kekuewa	Individual	Oppose	Written Testimony Only

Comments:

Bill is too confusing!!! Need more clarification!!

SB-2138

Submitted on: 1/24/2024 9:13:15 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Christine Asing	Individual	Oppose	Written Testimony Only

Comments:

Oppose