



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-SECOND LEGISLATURE, 2023**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 32, PROPOSING AN AMENDMENT TO THE HAWAII STATE CONSTITUTION TO REQUIRE THE REAPPORTIONMENT COMMISSION TO ESTABLISH A REAPPORTIONMENT PLAN TO DRAW DISTRICT LINES FOR THE MEMBERS OF THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF TRUSTEES.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Thursday, January 26, 2023      **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 224

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

---

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to amend the Constitution of the State of Hawai'i to require the Reapportionment Commission to establish a reapportionment plan to draw district lines for the total number of members of the Board of Trustees of the Office of Hawaiian Affairs (OHA).

Instead of members being elected during an at-large statewide election in which all registered voters are permitted to vote to fill all of the seats on the OHA ballot, the bill would amend the Constitution of the State of Hawai'i to provide for an election in which only qualified voters of a district within a basic island unit are permitted to elect one of the nine OHA board members. The Department is concerned that the reapportionment of OHA's nine-member board among the four basic island units may fall short of the one-person, one-vote standard established by the U.S. Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964). While there need not be an identical number of persons in each district, the states must make honest and good faith efforts to construct districts with equal numbers of persons, as practicable. Due to disparities in population sizes among the basic island units, however, we believe that deviations from population

equality in the reapportionment of the OHA Board may be required and, in some instances, be quite significant, potentially resulting in a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

The Department notes that the bill does not address how the current nine-member OHA board will transition to a completely new nine-member OHA board after reapportionment. Nor does it specifically address the procedure for the assignment of members' terms following the adoption of the reapportionment plan such as the staggering of terms. The Department is concerned that, without such wording, there will be uncertainty as to how the current OHA board will transition to the new OHA board and all nine members will serve concurrent four-year terms following reapportionment.

However, even if those amendments would be made, the Department is concerned that the reapportionment of the OHA board would still fall short of the one person, one vote standard, and the Department respectfully asks the Committee to hold this bill.

**LATE**



Testimony of the Office of Hawaiian Affairs

**SB32**

PROPOSING AN AMENDMENT TO THE HAWAII STATE CONSTITUTION TO  
REQUIRE THE REAPPORTIONMENT COMMISSION TO ESTABLISH A  
REAPPORTIONMENT PLAN TO DRAW DISTRICT LINES FOR THE MEMBERS OF  
THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF TRUSTEES

Senate Committee on Hawaiian Affairs

January 26, 2023

1:00 pm

Room 224

---

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB32, which proposes an amendment to the OHA provision of the Hawai'i State Constitution in an attempt to reorganize the OHA Board of Trustees ("OHA Board") through the Reapportionment Commission.

OHA provides this testimony in concert with testimony provided on another introduced measure (SB52) with a similar purpose to reorganize OHA's Board. OHA believes, that should this Committee be resolved in advancing the reapportionment of OHA's Board, then it may accomplish this task with a statutory amendment (as proposed in SB52) and **without the need to make a constitutional amendment –there is certainly no need to propose an amendment to the constitutional provision establishing OHA, which if left open for manipulation, could become catastrophic to the very existence of OHA and the purpose it serves for the benefit of Native Hawaiians.**

OHA appreciates the opportunity to comment on this measure and strongly urges the Committee to take into consideration OHA's comments and concerns. Mahalo nui loa.

**LATE**

**SB-32**

Submitted on: 1/26/2023 1:03:19 AM

Testimony for HWN on 1/26/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Peterson(Nani)	Individual	Support	Written Testimony Only

Comments:

I support this bill

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205  
Kane'ohe, HI 96744  
(808) 247-7942  
Kenneth R. Conklin, Ph.D. Executive Director  
e-mail [Ken\\_Conklin@yahoo.com](mailto:Ken_Conklin@yahoo.com)  
Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
For hearing Thursday, January 26, 2023

Re: SB 32 PROPOSING AN AMENDMENT TO THE HAWAII STATE CONSTITUTION TO REQUIRE THE REAPPORTIONMENT COMMISSION TO ESTABLISH A REAPPORTIONMENT PLAN TO DRAW DISTRICT LINES FOR THE MEMBERS OF THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF TRUSTEES.  
Amends the State Constitution to require the Reapportionment Commission to establish a reapportionment plan to draw district lines for the total number of members of the board of trustees of the office of Hawaiian affairs.

And

SB52 RELATING TO THE ELECTION OF MEMBERS TO THE BOARD OF TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS.  
Amends the process for electing members to the Office of Hawaiian Affairs Board of Trustees. Requires the Reapportionment Commission to establish a reapportionment plan for the members of the Board of Trustees of the Office of Hawaiian Affairs so that they are elected according to their respective districts, rather than an at-large statewide election for each seat.

## TESTIMONY IN OPPOSITION TO BOTH SB32 AND SB52

Both of these poorly written bills contain provisions that were ruled unconstitutional by federal courts two decades ago, and one bill was so hastily copy/pasted from a bill that failed ten years ago that this "new" bill would enact a law explicitly to take effect in year 2014(!!!) Whoever actually authored these two bills should be severely reprimanded by the Senator with the illegible signature who signed them and by the committee chair who placed them on the agenda for hearing. Furthermore, that Senator who signed the bills and the committee chair are presumably old enough and sufficiently aware of the highly publicized controversies surrounding the unconstitutional provisions of these bills that by introducing these bills and placing them on the agenda they may be presumed to have knowingly violated their oath of office to "support and defend the Constitution of the United States." Shame on them!

### PROVISIONS IN THESE BILLS THAT WERE RULED UNCONSTITUTIONAL BY FEDERAL COURTS AND DELETED FROM THE HAWAII STATE CONSTITUTION MORE THAN TWO DECADES AGO:

SB32 pdf version page 6 lines 18-20 says that OHA board members shall be "elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians."

SB52 pdf version page 1 lines 14-16 says "No person shall be eligible for election or appointment to the board unless the person is Hawaiian ..."

### HISTORY OF FEDERAL COURT CIVIL RIGHTS DECISIONS FORBIDDING THOSE PROVISIONS:

Those racist requirements were written into the 1978 amendment to the Hawaii Constitution that created OHA; but because OHA is an agency of the State government, the federal courts ruled them contrary to the U.S. Constitution and stripped them out of the State Constitution. Now I shall educate the introducing Senator, committee chair, and members of the public who read this testimony, regarding the court decisions.

The racial restriction regarding who can vote for candidates for the OHA board was ruled unconstitutional by the U.S. Supreme Court by vote of 7-2. The racial restriction regarding candidacy for the OHA board was ruled

unconstitutional by the U.S. District Court in Honolulu and by the 9th Circuit Court of Appeals.

Of course this committee could rescue those provisions by redefining the word “Hawaiian” to mean “citizen of Hawaii” rather than the racially exclusionary meaning requiring at least one drop of Hawaiian native blood. I would welcome such a redefinition. Please do it! But of course you won’t; so here’s the story.

In year 2000 the U.S. Supreme Court by vote of 7-2 ruled in *Rice v. Cayetano* that there can be no racial restriction on who can vote in the election for OHA trustees.

Later in year 2000 the U.S. District Court in Honolulu, Judge Helen Gillmor presiding, ruled that there can be no racial restriction on who can run as a candidate for OHA trustee. The case was CV 00-00514 HG-BMK Arakaki et. al. vs. State of Hawaii et. al, and OHA as intervenor. I was honored to be among the multiracial group of 13 plaintiffs including 3 Native Hawaiians. We won.

Governor Cayetano ousted all nine OHA trustees on grounds they had been illegally elected. In the election of November 2000 I ran as a candidate for OHA trustee, along with 95 other candidates for the 9 seats. There were at least a dozen so-called “non-Hawaiians” [Hawaii citizens with no native blood] among the 96 candidates; and one of them, Charles Ota, won the Maui seat.

Judge Gillmor’s civil rights racial desegregation decision was appealed to the 9th Circuit Court of Appeals, and was upheld by the three-judge panel, with the final judgment filed on July 1, 2003 by Honolulu clerk Walter Chinn.

The judgment concludes: “... The State is ordered to permit otherwise qualified non-Hawaiians to run for office and to serve, if elected, as trustees of the Office of Hawaiian Affairs. Section 5 of Article XII of the State Constitution and HRS Â§ 13D-2 violate the Fifteenth Amendment and the Voting Rights Act, to the extent that they require persons running for OHA trustee positions and serving, if elected, to be Hawaiian.”

**EMBARRASSING ATTEMPT TO NOW LEGISLATE WHAT MUST HAPPEN 9 YEARS AGO**

SB52 pdf version page 3 lines 1-4: "Beginning January 1, 2014, members of the board of trustees shall be nominated at a primary election and elected at the general election in every even—numbered year."

#### CONCERN ABOUT THE LIKELY VIOLATION OF THE "ONE PERSON = 1 VOTE" CONCEPT IF THESE BILLS ARE ENACTED

Although these bills are poorly written and with convoluted concepts and language, it appears to me that the main purpose behind both bills is to put a stop to the 45-year-old system of allowing all voters throughout the State to vote in every one of the 9 contests for OHA board members, even though 5 of the board members are required to be actual residents of the designated county or island whose seat they are seeking. For whatever reason, the holder of the "Molokai seat" is required to be a resident of Moloka'i, even though all the voters in Hawaii can vote in the contest for that seat; likewise for the O'ahu, Kaua'i (including Ni'ihau), Hawai'i Island, and Maui (including Lana'i and Kaho'olawe) seats. The comparable electoral situation for O'ahu County Council would be to allow every resident of O'ahu to vote for the District 3 representative, while requiring that representative to actually live in District 3. The existing O'ahu system says only the residents of a district can vote for that district's representative. What makes it possible for for the existing O'ahu system to comply with federally-mandated "one person = one vote" rule is that all the districts on O'ahu have their boundaries redrawn after each decennial census to ensure that there are approximately the same number of residents in every district. But the 4 OHA seats currently set aside for residents of specific counties could not possibly comply with one person = one vote unless heavily populated portions of O'ahu were somehow grouped with each of the neighbor counties. The districting concept in these bills is simply illegal and could only be made permissible if there were a wild and crazy hodgepodge of canoe districts. Of course you might get away with an illegal system for 20 years, as happened with the racial segregation of voters and candidates in OHA elections from 1980 to 2000; but in the end there will hopefully be civil rights activists who will come forward and put a stop to it as happened with Rice v. Cayetano and the lawsuit Arakaki v. State where I was honored to be a plaintiff.



**LATE**

**SB-32**

Submitted on: 1/26/2023 1:12:29 PM

Testimony for HWN on 1/26/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Malia Marquez	Individual	Support	Written Testimony Only

Comments:

Aloha Kākou,

I agree and support SB 32. Mahalo for your time on this matter. Ke aloha,

Malia Marquez

**LATE**

**SB-32**

Submitted on: 1/26/2023 1:41:02 PM

Testimony for HWN on 1/26/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Daphne Lindsey	Individual	Support	Written Testimony Only

Comments:

I SUPPORT SB32