

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 420, H.D. 1, PROPOSING AN AMENDMENT TO THE HAWAII STATE CONSTITUTION TO REQUIRE DISCLOSURE OF THE NAMES OF JUDICIAL NOMINEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 19, 2014 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

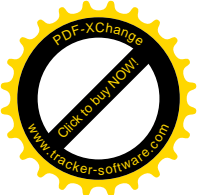
Chair Luke and Members of the Committee:

The Attorney General opposes passage of this bill and urges the Committee to defer acting on it. The Attorney General believes that confidentiality is critical to getting attorneys who would make good judges to apply to fill judicial vacancies, and believes that passage of this bill could undermine the quality of our Judiciary.

The Attorney General urges that rather than move this bill forward, the Committee should seek to obtain statistical information from the Judicial Selection Commission with which to evaluate whether disclosure of the Commission's list of nominees by governors, chief justices and the Commission since the Hawaii Supreme Court decided Pray v. Judicial Selection Commission, 75 Haw. 333, 861 P.2d 723 (1993), and the Commission's amendment of its Confidentiality rule have reduced the size, or altered the composition or quality of the pool of candidates the Commission has had to prepare its nominating lists.

This bill proposes to amend provisions in article VI of the State Constitution for appointing justices and judges of the State's courts, to expressly require the Judicial Selection Commission to publicly disclose its list of nominees for each judicial vacancy it prepares, concurrently with its presentation of that list to the Governor or Chief Justice.

In 1978, the Committee on the Judiciary of the 1978 Constitutional Convention that amended article VI of the State Constitution to transfer the power to qualify and nominate individuals for appointment to serve as justices and judges of the State's courts from the Governor and the Chief Justice, to a Judicial Selection Commission, noted: "Confidentiality is



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necessary to encourage and protect those prospective candidates who otherwise would not be willing to be considered if the deliberation process of the commission were to be made public.” Standing Committee Report No. 52, I Proceedings of the Constitutional Convention of Hawaii of 1978 at 626 (1980).

In the course of representing Governor Abercrombie in the suit the Star-Advertiser brought to compel the Governor to disclose the names of the nominees on the list from which he appointed Justice McKenna to serve on the Supreme Court, several individuals shared anecdotes about how in the recent past, attorneys had been treated unfairly after their firms discovered that they had applied for judicial appointments. Two commentaries published in the Star-Advertiser when the case was pending cited similar situations, and are attached to this testimony for the Committee’s consideration.

If only to assure the voters that this proposed amendment to the State Constitution should not undermine the quality of our Judiciary, this Committee should direct the Commission to furnish information only it has about the pools of candidates it used to prepare the nomination lists it presented to the Governor and Chief Justice to fill judicial vacancies after Pray was decided in 1993. At minimum, the Commission should be asked to provide the number of applications it received to fill each vacancy, broken down by the numbers of candidates in the pool who practiced as government attorneys, solo practitioners, or in small, medium, or large private firms, and the areas of practice and number of years each candidates practiced in those areas. The Committee should also ask if multiple (and how many) notices of vacancy needed to be published to secure an adequate candidate pool for each of the vacancies it filled.

Until it receives and reviews this information to satisfy itself that amending the State Constitution as proposed will not frustrate the judicial appointment process or diminish the quality of the Judiciary, the Committee should hold this bill.

Thank you for the opportunity to testify on this measure.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

House Committee on Finance

Wednesday, February 19, 2014, Conference Room 308
HB 420, HD1 Proposing a Constitutional Amendment to the Hawaii State Constitution to Require
Disclosure of the Names of Judicial Nominees

TESTIMONY

Jean Aoki, Legislative Committee, League of Women Voters of Hawaii

Chair Luke, Vice-Chairs Nishimoto and Johanson and Committee Members:

The League of Women Voters of Hawaii strongly supports HB 420,HD1 which would amend our state constitution to require the judicial selection commission to publicly disclose its lists of nominees for appointments to seats on our district and circuit courts, the intermediate appellate court and the supreme court, concurrently with its presentation of those lists to the governor or the chief justice.

When the League did our study of the Judiciary in 2002 and 2003, we focused a great deal of attention on the Judicial Selection Commission, because the public had really no or little input in the selection of our judges and justices in contrast to states where the judges and justices are elected. While we would oppose any attempts to select the members of our courts by election, we did believe and took the position that the names of the nominees for seats on the courts should be released by the Judicial Selection Commission. This would allow input by members of the public who knew one or more of the nominees to comment as to their qualifications, just as the voluntary release of the names of nominees started by then Governor Lingle and Chief Justice Moon made possible comments to them from the public.

So it was welcome news when the Chair of the Judicial Selection Commission announced that henceforth, the names of all nominees to seats on the courts would be released at the times the names are sent to the governor and the chief justice. Increased sunshine in the process of selecting judges would increase public confidence in the Judiciary.

Thank you for this opportunity to testify on this very important constitutional amendment.

finance1

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 18, 2014 12:05 AM
To: FINTestimony
Cc: katc31999@gmail.com
Subject: *Submitted testimony for HB420 on Feb 19, 2014 15:00PM*

HB420

Submitted on: 2/18/2014

Testimony for FIN on Feb 19, 2014 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Katarina Culina	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 19, 2014 6:58 AM
To: FINTestimony
Cc: sharonmi@hawaii.edu
Subject: Submitted testimony for HB420 on Feb 19, 2014 15:00PM



HB420

Submitted on: 2/19/2014
Testimony for FIN on Feb 19, 2014 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Sharon Miyashiro	Individual	Support	No

Comments: Open government for all branches is critical. Nominees should be known to the public. If these individuals want to serve they should be willing to be vetted by those who they will serve if appointed.

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