

LATE

SB2420

Proposing an Amendment to
Article VI, Section 3, of the
Constitution of the State of Hawaii
to Amend the Timeframe to Renew
the Term of Office of a Justice or
Judge and Require Consent of the
Senate for a Justice or Judge to
Renew a Term of Office



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE

The Twenty-Eighth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association

February 10, 2016

**S.B. 2420 – PROPOSING AN AMENDMENT
TO THE CONSTITUTION OF THE STATE
OF HAWAII TO AMEND THE TIMEFRAME
TO RENEW THE TERM OF OFFICE OF
A JUSTICE OR JUDGE AND REQUIRE
CONSENT OF THE SENATE**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 2420, which proposes a constitutional amendment to amend the timeframe to renew a justice's or judge's term of office and require consent of the Senate to renew a term of office.

It is essential for our judicial system to be composed of justices and judges who have the authority and autonomy to exercise their independent judgement. When justices and judges must return to the Senate for confirmation to renew each term, they are exposed to political influence and their rulings on controversial cases may be swayed to ensure another term. While it can be argued that there could be more transparency in the process, the current composition of and criteria for Hawaii's judicial merit selection system works.

Thank you for the opportunity to testify in strong opposition to S.B. 2420. We respectfully request the Committee defer this measure.

Respectfully submitted,


for Randy Perreira
Executive Director

February 8, 2016

Senate Committee on Judiciary and Labor

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813
Wednesday, February 10, 2016, 9:00 a.m.

RE: Opposition to SB2238, SB2239, and SB2420

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and Esteemed Committee Members:

My name is Brandon Marc Higa; I am the President of the Student Bar Association (SBA) and currently a first-year law student at Richardson. The SBA is Richardson's student government and serves as the official voice of the student body.

On behalf of the student body at the William S. Richardson School of Law, I write in support of the American Constitution Society for Law and Policy's (ACS) position **in opposition to SB2238, SB2239, and SB2420**. These proposals would result in an infusion of politics into judicial selection and retention processes.

SB2238 and SB2239 would undermine the judiciary's independence and harm the community. An ethical framework for judicial elections would be difficult for our state to police and increase the likelihood of judicial misconduct.¹ It is important to consider that elected judges are disciplined at higher rates and for more serious crimes than appointed judges,² and elected judges are substantially harsher on parties in criminal matters.³ Campaign financing would also lead many in the community to question the judiciary's independence and leave judges subject to attacks from those with deep pockets and political agendas.⁴

SB2420 would undermine the ability of the Judicial Selection Committee ("JSC") to make well-informed judicial retention decisions. The JSC reviews confidential comments from the community, bar members, and other judges that would not be available to the Senate during its proposed review. Judges are able to respond to JSC retention proceedings because they are confidential; however, a judge would not be able to respond publicly before the Senate. Politics will also be further infused into retention decisions if consent power is consolidated in the Senate, for retention decisions are reached with input from members designated by the other legislative body, the executive branch, the judicial branch, and the state's bar.

¹ See *Williams-Yulee v. The Florida Bar*, 135 S.Ct. 1656 (2015).

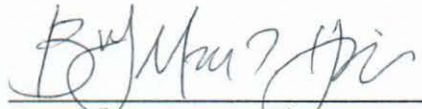
² Malia Reddick, *Judging the Quality of Judicial Selection Methods: Merit Selection, Elections, and Judicial Discipline*, available at http://www.judicialselection.us/uploads/documents/Judging_the_Quality_of_Judicial_Sel_8EF0DC3806ED8.pdf.

³ Erik Opsal, *New Analysis: Judicial Re-Election Pressures Tied to Harsher Criminal Sentencing*, COMMON DREAMS (Dec. 2, 2015, 11:30 a.m.), <http://www.commondreams.org/newswire/2015/12/02/new-analysis-judicial-re-election-pressures-tied-harsher-criminal-sentencing>.

⁴ *Koch Brothers Set Sights on Florida Supreme Court Justices*, FLORIDA CENTER FOR INVESTIGATIVE REPORTING (Oct. 1, 2012), <http://fcir.org/2012/10/01/koch-brothers-set-sights-on-florida-supreme-court-justices/>.

As President of the Student Bar Association and on behalf of the student body, I write in support of the American Constitution Society for Law and Policy's opposition to SB2238, SB2239, and SB2420 for the aforementioned reasons.

Signed: February 9, 2016

A handwritten signature in cursive script, appearing to read "Brandon Marc Higa", written over a horizontal line.

Brandon Marc Higa
President, Student Bar Association

From: [Eyke BrathHurdman](#)
To: [JDLTestimony](#)
Subject: SB 2238, SB 2239, SB 2420
Date: Tuesday, February 09, 2016 5:19:04 PM

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor:

I am writing in opposition of the proposed bills listed above. I have read other submitted oppositions and agree with the many good arguments made in these oppositions.

My arguments are practical arguments-

- 1) Our court calendars are already over scheduled with our hearings being limited to 15 minutes if we are fortunate, hearings must be set within certain statutory requirement, but if a hearing must be continued, then we must wait 3-4 weeks to reset.
- 2) Our Judges are working long hours as it is and to add campaigning to their schedule can only take away much needed time for them to focus on their cases and to also have necessary quality personal time for themselves. The human aspect of our Judges seems to be overlooked time and time again. We cannot expect healthy Judges to make good decisions if we are pushing them to their physical, mental and emotional limit. Forcing them to now campaign mean they must now allocate time away from their work as a Judge and their personal life. Another negative aspect of an election process is the lack of privacy. Spouses, parents, children-all become "fair game" , I cannot see how this would encourage attorneys to seek Judicial positions.

Sincerely,

Ms.Eyke L. BrathHurdman, Esq.

Immediate Past President of MCBA

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February 9, 2016

Senate Committee on Judiciary and Labor
Wednesday, February 10, 2016, 9:00 a.m.

RE: Opposition to SB2238, SB2239, and SB2420

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and Esteemed Committee Members:

Thank you for your service to our community. I am a second-year student at the William S. Richardson School of Law (WSRSL), and I sit on the board of the our school's chapter of the American Constitution Society (ACS). I write on behalf of the board and members of the WSRSL chapter of ACS in opposition to SB2238, SB2239, and SB2420. We are concerned that the judicial election system proposed by Senate Bill 2238 and 2239 would endanger the fairness and impartiality of Hawaii judges.

SB2238 and SB2239 would undermine the judiciary's independence and harm the community. An ethical framework for judicial elections would be difficult for our state to police and increase the likelihood of judicial misconduct.¹ It is important to consider that elected judges are disciplined at higher rates and for more serious crimes than appointed judges,² and elected judges are substantially harsher on parties in criminal matters.³

Forcing judges to campaign and to raise money for their elections campaigns threatens to tilt the scales of justice as various interest groups may use the opportunity to shape the judiciary. According to Justice at Stake polls, 87% of Americans believe that campaign contributions affect courtroom decisions. Nearly 50% of judges believe that campaign contributions do influence judges' decisions. Recent studies provided by the American Constitution Society confirm a significant relationship between campaign donations and judicial decisions. It is vital that that the public has confidence in the judiciary. Courts need to stay fair and independent -- and private money involvement should be minimized. Instead of boosting public confidence in our court system, the involvement of campaign money through an election process will do just the opposite.

Judges are not politicians; they should be selected based on a merit, not based on campaign promises. Moreover, judges need to be able to protect the rule of law without fear of political retribution. The cornerstone of justice is an independent judiciary that is free from political restraints. It is the duty of courts to protect the rights of people, no matter what the politics of the day may demand.

I write in opposition to SB2238, SB2239, and SB2420 for the aforementioned reasons.

¹ See *Williams-Yulee v. The Florida Bar*, 135 S.Ct. 1656 (2015).

² Malia Reddick, *Judging the Quality of Judicial Selection Methods: Merit Selection, Elections, and Judicial Discipline*, available at http://www.judicialselection.us/uploads/documents/Judging_the_Quality_of_Judicial_Sel_8EF0DC3806ED8.pdf.

³ Erik Opsal, *New Analysis: Judicial Re-Election Pressures Tied to Harsher Criminal Sentencing*, COMMON DREAMS (Dec. 2, 2015, 11:30 a.m.), <http://www.commondreams.org/newswire/2015/12/02/new-analysis-judicial-re-election-pressures-tied-harsher-criminal-sentencing>.

Sincerely,
Kaily Wakefield
William S. Richardson School of Law Student Chapter of
American Cconstitution Society
Public Relations Manager
JD Candidate, Class of 2017