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CITY AND COUNTY OF HONOLULU

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

April 3, 2017

RE: H.B. 301, H.D. 1; RELATING TO RESPONSE TO WRIT FOR CERTIORARI.

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in strong support of H.B. 301, H.D. 1. This bill is part of the Department's 2017 legislative package.

The purpose of H.B. 301, H.D. 1, is to ensure that the responding party to an application for writ of certiorari in both civil and criminal cases is given an equal opportunity to properly research and respond to the growing number of applications for writ of certiorari. This bill seeks to achieve this purpose by statutorily granting the respondent an additional fifteen (15) days to file a response to an application.

Currently, section 602.59(c) of the Hawaii Revised Statutes and the Hawaii Rules of Appellate Procedure allows an applicant thirty (30) days to file an application for writ of certiorari. In addition, if an applicant determines that more time is needed, the applicant is allowed by statute an additional thirty (30) days upon a written request to the court. However, currently, under the same rules, a respondent is allotted only fifteen (15) days to file a response to an application for certiorari. Unlike an application for writ of certiorari, neither section 602.59(c), H.R.S., nor the Hawaii Rules of Appellate Procedure establish or allow for a mechanism in which a respondent may request an extension. In fact, the Hawaii Supreme Court has denied the respondent’s request for an extension, clearly citing the limitations of section 602.59(c):

“See Hawai`i Revised Statutes § 602-59(c) (Supp. 2012) (“Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed.” (See Attachment 1)).

It is also important to note that, since the creation of our certiorari court system—in which most, if not all, appeals are heard by the Intermediate Court of Appeals—there has been a

significant increase in applications to the Hawaii Supreme Court. As the last avenue for appeals (at State-level), it is not uncommon for our Supreme Court to use their discretion in allowing the applicant to introduce new issues or arguments, which were not previously heard at the Intermediate Court of Appeals level. This leaves a respondent at a huge disadvantage if the applicant has up to sixty (60) days to file their application for writ of certiorari, while the respondent only has fifteen (15) days to respond—including any additional research on new issues—with no mechanism for extension.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 301, H.D. 1. Thank you for the opportunity to testify on this matter.

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Supreme Court
SCWC-12-0000806
18-MAR-2014
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SCWC-12-0000806

IN THE SUPREME COURT OF THE STATE OF HAWAII

SUSAN P. GORDON, Respondent/Plaintiff-Appellee,

v.

IRA GORDON, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000806; FC-D NO. 10-1-6664)

ORDER DENYING MOTION FOR EXTENSION OF TIME
(By: Pollack, J.)

Upon consideration of the Respondent/Plaintiff-Appellee Susan P. Gordon's Motion for Extension of Time to Respond to Defendant-Appellant's Petition for Certiorari (motion) filed on March 18, 2014, the papers in support and opposition, the motion is hereby denied. See Hawai'i Revised Statutes § 602-59(c) (Supp. 2012) ("Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed.").

DATED: Honolulu, Hawai'i, March 18, 2014.

Peter Van Name Esser and
Huilin Dong
for petitioner

/s/ Richard W. Pollack
Associate Justice



Samuel P. King, Jr.
for respondent

Attachment 1

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i**

April 4, 2017

**RE: H.B. 301, H.D. 1; RELATING TO RESPONSE TO WRIT FOR
CERTIORARI.**

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Senate Committee on Judiciary and Labor, the Office of the Prosecuting Attorney of the County of Kaua'i ("Office") submits the following testimony in strong support of H.B. 301, H.D. 1. This bill is part of the Honolulu Prosecutor's 2017 legislative package.

The purpose of H.B. 301, H.D. 1, is to ensure that the responding party to an application for writ of certiorari in both civil and criminal cases is given an equal opportunity to properly research and respond to the growing number of applications for writ of certiorari. This bill seeks to achieve this purpose by statutorily granting the respondent an additional fifteen (15) days to file a response to an application.

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For all of the foregoing reasons, the Office of the Prosecuting Attorney of the County of Kaua'i strongly supports the passage of H.B. 301, H.D. 1. Thank you for the opportunity to testify on this matter.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 301, HD1

A BILL FOR AN ACT RELATING TO WRIT FOR
CERTIORARI

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Tuesday, April 4, 2017 9:30 A.M.
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran, Honorable Vice Chair Rhoads, and Members of the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 301, HD1.

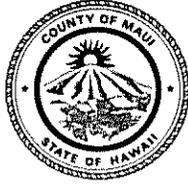
The purpose of H.B. 301, HD1, is to ensure that the responding party to an application for writ of certiorari in both civil and criminal cases is given an equal opportunity to properly research and respond to the growing number of applications for writ of certiorari. This bill seeks to achieve this purpose by statutorily granting the respondent an additional fifteen (15) days to file a response to an application.

Currently, section 602.59(c) of the Hawaii Revised Statutes and the Hawaii Rules of Appellate Procedure allows an applicant thirty (30) days to file an application for writ of certiorari. In addition, if an applicant determines that more time is needed, the applicant is allowed by statute an additional thirty (30) days upon a written request to the court. However, currently, under the same rules, a respondent is allotted only fifteen (15) days to file a response to an application for certiorari. Unlike an application for writ of certiorari, neither section 602.59(c), H.R.S., nor the Hawaii Rules of Appellate Procedure establish or allow for a mechanism in which a respondent may request an extension. In fact, the Hawaii Supreme Court has denied the respondent's request for an extension, clearly citing the limitations of section 602.59(c):

“See Hawai'i Revised Statutes § 602-59(c) (Supp. 2012) (“Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed.” (See Attachment 1).

It is also important to note that, since the creation of our certiorari court system—in which most, if not all, appeals are heard by the Intermediate Court of Appeals—there has been a significant increase in applications to the Hawaii Supreme Court. As the last avenue for appeals (at State-level), it is not uncommon for our Supreme Court to use their discretion in allowing the applicant to introduce new issues or arguments, which were not previously heard at the Intermediate Court of Appeals level. This leaves a respondent at a huge disadvantage if the applicant has up to sixty (60) days to file their application for writ of certiorari, while the respondent only has fifteen (15) days to respond—including any additional research on new issues—with no mechanism for extension.

The Office of the Prosecuting Attorney, County of Hawai‘i supports the passage of House Bill No. 301, HD1. Thank you for the opportunity to testify on this matter.



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Deputy Prosecuting Attorney
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
HB 301, HD 1 - RELATING TO RESPONSE TO WRIT FOR CERTIORARI

April 4, 2017

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui supports HB 301, HD 1, Relating to Response to Writ for Certiorari. This measure allows a 15-day extension to file a response to an application for a writ of certiorari.

We concur with the testimonies of the other prosecutor's offices. There should be sufficient time afforded to prepare a response to a petition for a writ of certiorari. The recent practice of the Hawaii Supreme Court to allow arguments not previously presented before lower courts justifies the need for the extension contemplated by this measure.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.