



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2418, PROPOSING AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE CONSTITUTION OF THE STATE OF HAWAII.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, February 10, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Attorney General opposes passage of this bill to amend the State Constitution to fill the office of attorney general by means of a nonpartisan election. The Attorney General asks that the bill be held.

For over one hundred and fifty years, the office of attorney general has been filled by appointment, pursuant to the 1864 Constitution of the Kingdom of Hawaii, the Organic Act, and the State Constitution. Since 1866, the Attorney General's principal duties and responsibilities have been described in statutes as follows:

- Appear for the Kingdom, the Territory, or the State in all courts, in all civil and criminal cases in which the Kingdom, Territory or State is a party or had an interest;
- Prosecute offenders and otherwise enforce the civil and criminal laws;
- Give opinions on questions of law submitted to the attorney general by the governor, legislature, or the head of a department; and
- Give advice and counsel to all state officers, "at all times when called upon, . . . in all matters connected with their public duties, and otherwise aid and assist them in every way requisite to enable them to perform their duties faithfully."

Since 1968, the State Constitution has provided that "the removal of the chief legal officer of the State shall be subject to the advice and consent of the senate," to foster a degree of independence from the Governor for the Attorney General.

In the past, bills to elect the attorney general have been introduced to provide “for an independent Attorney General who is accountable to the public,” extinguish “the perception that the Attorney General is solely the Governor’s counsel,” and dispel any notion an attorney general may have that “his or her role is to champion the positions and decisions of the Governor, at the expense of the duties owed to other agencies and branches of the state government.” Stand. Com. Rep. No. 618 re S.B. No. 1187, S.D. 1 (March 4, 2011). The underlying objective of these bills has been to de-politicize the office and make the attorney general more accountable to the people.

In our view, electing the attorney general, even by means of a nonpartisan election, is more likely to have the opposite effect. Electing the attorney general almost certainly would subject the attorney general to external influences substantially greater than any attorneys general has had to contend with to date. Additionally, in our current system, the Attorney General already enjoys a degree of autonomy because he cannot simply be removed by the Governor. The Attorney General may only be removed if two-thirds of the members of the Senate concur.

Running for office, even in a nonpartisan election, requires time and money. Ideally, an attorney general would serve for more than one term, and have to run for re-election while serving as the attorney general. This has to take time away from what already is a workweek that regularly includes at least part of a weekend, and a work day that extends well beyond the beginning and end of the State’s official eight hour work day. An election every four years is highly likely to disrupt the work of the office, and distract the attorney general and the deputies from devoting their “entire time and attention” to performing the duties and responsibilities assigned them by the State Constitution and statutes. It could also create instability in the ranks of the deputy attorneys general who, by state statute, serve as the alter egos of the attorney general in the courts, and in the offices and agencies of the State’s executive, legislative, and judicial branches.

A successful run for office also requires money. An attorney general is unlikely to fund a statewide re-election campaign with his or her own funds only. We have to anticipate that a candidate for attorney general will need to raise funds for his or her campaign. This could subject the office to at least the appearance of being influenced by those who contribute to that campaign when the attorney general renders an opinion to the Governor or the Legislature, gives

advice and counsel to state officials, or decides whether to prosecute an individual criminally, or sue a person or business civilly.

In Caperton v. A.T. Massey Coal Co., Inc., 129 S. Ct. 2252, 2263-64 (2009), the Court described the concern that campaign contributions inject into our system of justice:

Not every campaign contribution by a litigant or attorney creates a probability of bias . . . [however] there is a serious risk of actual bias - based on objective and reasonable perceptions – when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.

Whether the Attorney General is enforcing the State’s laws, representing the State and its officers and agencies in the federal and state courts, or giving opinions, or advice and counsel to state officials, it is critical that the Attorney General and his or her deputies do so objectively, consistently, and irrespective of who is being prosecuted, represented, or poses the question or situation for which an opinion, or advice and counsel is sought. Every attorney general, whether elected or appointed is required “at all times when called upon, [to] give advice and counsel . . . to public officers, in all matters connected with their public duties, and otherwise aid and assist them in every way requisite to enable them to perform their duties faithfully.” And, when asked the same question by more than one state official, the Attorney General, as an attorney, can only render the same opinion and give the same advice and counsel to each official.

An appointed attorney general should be able to devote all of his or her time to performing the duties and responsibilities of the office of attorney general. An appointed attorney general should also have fewer distractions and conflicts that would preclude him or her from performing the attorney general’s work. If an attorney general is not making him or herself available to a state officer, then that attorney general should be reminded of his or her statutory obligations. If an attorney general is not acting with the independence the State Constitution contemplates, then that attorney general should be reminded of the unique prerogative the State Constitution accords to the office. It should not be necessary to abandon what has been the practice under the law in Hawaii for more than a hundred and fifty years.

For these reasons, we respectfully request that this bill be held.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON SENATE BILL 2418
RELATING TO PROPOSING AN AMENDMENT TO ARTICLE V, SECTION 6,
OF THE CONSTITUTION OF THE STATE OF HAWAII

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 10, 2016; 9:00 AM
State Capitol, Conference Room 016

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in strong opposition of Senate Bill 2418 relating to proposing an amendment to Article V, Section 6, of the Constitution of the State of Hawai'i.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. The Commission's legal advisor is the Department of Attorney General.

The Attorney General, in his role as the head of the Law Enforcement Coalition and through his Crime Prevention and Justice Assistance Division, works closely with the Commission to further victim's rights.

An appointed attorney general has the ability do what is right as opposed to what is popular with the electorate. As a result, there has been considerable continuity within the Department of Attorney General when the Attorney General has changed. In an office headed by an elected official, there is a higher rate of turnover when a new official takes office which can negatively affect office function.

The Attorney General must, at a minimum, be a capable administrator and have an understanding of both criminal law and civil law. Few attorneys have these qualifications and fewer would have the desire to run for elected office. Having an elected Attorney General would not increase the likelihood that the most qualified person would be selected for the office.

Thank you for providing the Commission with the opportunity to testify in strong opposition of Senate Bill 2418.

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February 8, 2016

Testimony submitted electronically

The Honorable Gilbert Keith-Agaran and Members
Senate Committee on Judiciary and Labor

Re: SB 2418: Testimony in opposition
JDL Hearing: February 10, 2016 at 9:00 am

Dear Chair Keith-Agaran and Members:

We are former Attorneys General of Hawai'i. We write in opposition to SB 2418.

For decades, Hawai'i has had the benefit of an apolitical AG's office that decides disputes strictly on the legal merits. This bill, if passed and adopted by the voters, would end that. This would frustrate the smooth operation of state government, and over time, will likely cause the proliferation of lawyers in agencies outside the AG's office.

Contrast Hawai'i's experience with that of the majority of states where the AG is elected. In those states, the AG is very often jockeying for political position, stirring controversy, and interfering with -- rather than facilitating -- the important work of state government. Attorneys in those offices are politicized, and come and go with each new AG.

The appointment and Senate confirmation of the Hawai'i AG is analogous to the appointment and confirmation of the United States Attorney General. This process gives the Hawai'i Department of the Attorney General (and the United States Department of Justice) the benefit of a stable AG's office where Deputy AGs operate free of the boss's political agenda. This freedom is abundantly clear now, where Attorney General Chin did not even know Governor Ige prior to being tapped for the job.

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and Members
Senate Committee on Judiciary and Labor
February 8, 2016
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Sometimes, when disputes between the Legislature and Governor arise, Legislators believe that the Attorney General is the Governor's lawyer and not theirs. But that is not the case. Indeed, Article V, Section 6 of the Hawai'i Constitution provides that the AG is the only cabinet officer that cannot be removed by the Governor except with the Senate's consent. This safeguard is unique to Hawai'i and assures that the Hawai'i AG acts autonomously of the Governor.

We believe electing the Attorney General will be bad for Hawai'i and we strongly urge that this bill be held in committee.

Respectfully submitted,



Warren Price, III
Former Hawai'i Attorney General
1986-92



Robert A. Marks
Former Hawai'i Attorney General
1992-94

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB2418 on Feb 10, 2016 09:00AM
Date: Wednesday, February 03, 2016 9:23:34 PM

SB2418

Submitted on: 2/3/2016

Testimony for JDL on Feb 10, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We FULLY SUPPORT this common sense bill to remove the personal influence of the Governor to "pick his guy" for office of the Attorney General, and all the negative connotations that appears to come with such an appointment. The power would be given back to the people! We should do this very thing with the Department of Hawaiian Home Lands!

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
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB2418 on Feb 10, 2016 09:00AM*
Date: Thursday, February 04, 2016 10:40:27 AM

SB2418

Submitted on: 2/4/2016

Testimony for JDL on Feb 10, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	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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February 9, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Maile S. L. Shimabukuro, Vice-Chair
Senate Committee on Judiciary and Labor
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: **Opposition Testimony to SB 2418 – Election of Attorney General**
Hearing: Wednesday, February 10, 2016 @ 9:00 a.m.
Conference Room 016
State Capitol

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Judiciary and Labor Committee,

Thank you for the opportunity to submit comments on SB 2418.

I served as Attorney General for the State of Hawaii under Governor Neil Abercrombie. I strongly oppose SB 2418. SB 2418 would change the selection of the attorney general by making the office elected instead of an appointed office. Such a change would unduly politicize the office and be bad for the people of Hawaii.

The current model followed in Hawaii is that of the federal government. In the federal model, the President appoints the attorney general. Similarly, in Hawaii, the Governor appoints the attorney general.

The election of the attorney general would inject politics into a system which has worked well for many years. It would make the office a political football. The office is too important to the functioning of the State of Hawaii to allow such a change. Currently the attorney general interprets the Constitution and the laws in an even-handed manner. It is best if the advice of the attorney general is given without regard to political considerations.

While a number of other states do elect their attorneys general, the injection of political considerations can be detrimental to the functioning of the state government when the attorney general and the governor are at odds or members of different political parties. A number of other states have been forced to establish a separate office of counsel to advise the governor, thus adding a layer of bureaucracy and additional employees.

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Judiciary and Labor
Committee

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In states which elect the attorney general, very often the attorney general will run for a state-wide office such as governor, lieutenant governor and congressional offices. I believe it is much better for the attorney general to concentrate on the business of interpreting and enforcing the laws rather than worrying about running for office. The people of Hawaii benefit from such a focus rather than having a politician in the office.

For these reasons, I strongly oppose this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David M. Louie', with a stylized flourish at the end.

DAVID M. LOUIE

for

KOBAYASHI, SUGITA & GODA