



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 13, 2018, 2:00 PM
State Capitol, Conference Room 325

by
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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Resolution 21; Hawai'i Chapter of the American Judicature Society; Hawai'i State Bar Association; Role of the Judiciary

Purpose: Urging the Hawai'i Chapter of the American Judicature Society and the Hawai'i State Bar Association to Analyze and Assess the Role of the Judiciary Within the Constitutional Framework of Government in the State of Hawai'i .

Judiciary's Position:

The Judiciary supports the intent of the resolution, insofar as it seeks to foster discussion of the core principles of our constitutional system of government, including the separation of powers. Indeed, the Judiciary has sought to promote understanding of those principles through initiatives such as our Courts in the Community program, which has given almost 4,000 high school students the opportunity to witness actual supreme court oral arguments in schools across the state. The Judiciary welcomes discussion about its role as a co-equal branch of government as such discussions are healthy forms of public discourse.

A conversation about the role of the Judiciary, such as that envisioned by the resolution, should include consideration of the Judiciary's constitutional role in protecting individual rights and freedoms, and the importance of an independent judiciary in fostering the rule of law. Under our constitution, the Judiciary is sometimes called upon to protect the rights of those whose views may be unpopular or contrary to the wishes of the majority. In making decisions, the



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judiciary must faithfully apply the constitutions and laws of the United States and Hawai‘i to the facts of each case—free from passion, pressure or outside influence.

The Judiciary notes that one year ago this month, the American Judicature Society issued a report (2017 AJS Report) regarding the present system of judicial selection and retention in Hawai‘i. The 2017 AJS Report stated that “fair and impartial courts, and the public’s trust in the fairness and impartiality of courts, are a cornerstone of our system of government, and to ensure this fairness, the system is designed to maintain the independence of the judiciary and insulate it from fear or favor. Such insulation ensures that judges and justices make decisions based on the Constitution and law, regardless of the popularity of those decisions and political expediencies at the time.”

The 2017 AJS Report also highlighted that former Hawai‘i Supreme Court Chief Justice William S. Richardson explained, “Only an independent judiciary can resolve disputes impartially and render decisions that will be accepted by rival parties, particularly if one of those parties is another branch of government.”

Consistent with these principles, the Judiciary respectfully suggests that the resolution be amended to read:

WHEREAS, [~~if a branch violates the separation of powers and renders government unworkable, the public interest will suffer;~~] discussion about the role of the Judiciary should include consideration of the Judiciary’s constitutional role in protecting individual rights and freedoms, and the importance of an independent judiciary in preserving the rule of law. As former Hawai‘i Supreme Court Chief Justice William S. Richardson stated: “Only an independent judiciary can resolve disputes impartially and render decisions that will be accepted by rival parties, particularly if one of those parties is another branch of government.”

The Judiciary also suggests that the topics of discussion in the “BE IT RESOLVED” clause be amended to include the following: “the Judiciary’s role in protecting individual rights and freedoms” and “the importance of judicial independence in fostering the rule of law.”

In sum, the Judiciary welcomes discussion of these complex issues that are at the very foundation of our democracy. Indeed, “[t]he question of how far a judicial inquiry should range has been the most extensive and central debate in constitutional law throughout our country’s history.” *Trustees of Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154 (1987) (quoting K. Ripple, *Constitutional Litigation* § 3–1, at 87 (1984)). Furthermore, the Judiciary appreciates the important roles that AJS and HSBA play in our legal community, and would welcome the



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opportunity to work with these organizations and other stakeholders to ensure that these types of discussions take place.

Thank you for the opportunity to comment on this measure.