IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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LEAGUE OF WOMEN VOTERS OF HONOLULU and COMMON CAUSE,
Plaintiffs-Appellants,

vs.

STATE OF HAWAIʻI,
Defendant-Appellee.

SCAP-19-0000372

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-19-0000372; CASE NO. 1CC18-1-001376)

NOVEMBER 4, 2021

DISSENTING OPINION BY RECKTENWALD, C.J.,
IN WHICH CIRCUIT JUDGE KAWAMURA JOINS

## I. INTRODUCTION

This case requires us to consider the constitutional requirement that "no bill shall become law unless it shall pass three readings in each house on separate days." Haw. Const. art. III, § 15.

The bill at issue here, Senate Bill 2858 (S.B. 2858), was read three times by its title in each house of the Hawaiʻi State Legislature, in compliance with rules adopted by both the House of Representatives and the Senate. However, the Majority invalidates the resulting law, Act 84 of the 2018 Session, because the procedure followed by the legislature violated the three readings requirement. Specifically, the Majority holds that because the House made "non-germane" amendments to S.B. 2858, it in effect became a new bill that subsequently only received one reading in the Senate.

Respectfully, I disagree with that conclusion. First, it is not required by the plain language of the Hawaiʻi Constitution. The three readings provision does not define what a "reading" must entail, nor does it set the outer bounds of permissible changes to a bill. Since the Constitution does not establish these matters, the legislature properly used the rulemaking authority granted it by article III, section 12 to define what a reading entails. Haw. Const. art. III, § 12 ("Each house shall . . . determine the rules of its proceedings. . . ."). And, the legislature followed those rules in enacting S.B. 2858.

Second, the history of article III, section 15 does not support the Majority's interpretation. Notably, the delegates to the Constitutional Convention of 1968 considered

many of the same concerns that we are addressing today, when they recommended amendments to the predecessor of the current section 15. The delegates' debates clearly reflect the understanding that a bill could be "substantially changed" during the legislative process, morphing from a bill concerned with "elephants" into one concerned with "elephants, dogs, pigeons and what not." Comm. of the Whole Debates in 2 Proceedings of the Constitutional Convention of Hawaii of 1968, at 169 (1972) ("Proceedings of 1968"). The solution they proposed was to require that printed copies of the bill "in the form to be passed" must be made available to legislators for 24 hours prior to a third or final reading.[1] Stand. Comm. Rep. No. 46 in 1 Proceedings of 1968, at 215, 217-18; Comm. of the Whole Report No. 12 in 1 Proceedings of 1968, at 347. They did not, as the Majority does now, impose a requirement that the three readings must commence anew when there is a non-germane amendment to a bill.

Unlike the Majority, I conclude that the 1968 proceedings are highly relevant even though a three readings requirement has been part of our Constitution since statehood. The requirement cannot be viewed in isolation from the rest of

[1] The period was extended to 48 hours by the 1978 Constitutional Convention. Stand. Comm. Rep. No. 46 in 1 Proceedings of the Constitutional Convention of Hawaii of 1978, at 603, 607 (1980).

article III, section 15; rather, the section should be read as a whole, and the history of the printed copy requirement is relevant to interpreting the remainder of the section, including the three readings requirement. Moreover, when the 1968 delegates proposed amendments to what is now section 15, they decided to retain the three readings requirement, with only a minor amendment. Stand. Comm. Rep. No. 46 in 1 Proceedings of 1968, at 215. Thus, the 1968 delegates' understanding of that requirement is very much relevant here.

Third, the Majority's reasoning for importing principles of germaneness developed in the distinct context of article III, section 14 is, respectfully, flawed. While our cases appropriately examine germaneness in the context of that section, there is a crucial distinction: there is a textual basis for that inquiry, which is lacking in section 15. The provisions at issue in section 14 (the single subject and subject-in-title requirements) by their very terms require an inquiry into the subject matter of legislation, and in particular, the degree of similarity between different parts of a bill ("but one subject") and between those parts and the title ("which shall be expressed in its title"). Haw. Const. art. III, § 14. In contrast, there is no such indication in the text of section 15 that the subject of legislation is relevant to applying the three readings requirement.

In conclusion, the plaintiffs' commitment to advocating for more accessible and open government is admirable. However, they bear a very heavy burden in this case: Act 84 is presumed to be constitutional, and plaintiffs must show that that it is unconstitutional beyond a reasonable doubt. Schwab v. Ariyoshi, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977). They have failed to do so, and accordingly, I respectfully dissent.

## II. DISCUSSION

### A. The Constitution's Plain Language Does Not Prescribe What a "Reading" Must Entail or Compel that Amendments Must Be Germane

The starting point for our analysis is the plain language of the Constitution. Hanabusa v. Lingle, 105 Hawai'i 28, 31, 93 P.3d 670, 673 (2004) ("[T]he fundamental principle in interpreting a constitutional provision is to give effect to the intent of the framers and the people adopting it . . . . This intent is to be found in the instrument itself."); Pray v. Judicial Selection Comm'n, 75 Haw. 333, 341, 861 P.2d 723, 727 (1993) ("[I]f the words used in a constitutional provision . . . are clear and unambiguous, they are to be construed as they are written." (quoting Blair v. Cayetano, 73 Haw. 536, 543, 836 P.2d 1066, 1070 (1992)).

Section 15 of article III of the Hawai'i Constitution provides as follows:

> No bill shall become law unless it shall pass three readings in each house on separate days. No bill shall pass third or final reading in either house unless printed copies of the bill in the form to be passed shall have been made available to the members of that house for at least forty-eight hours.
>
> Every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.
>
> Any bill pending at the final adjournment of a regular session in an odd-numbered year shall carry over with the same status to the next regular session. Before the carried-over bill is enacted, it shall pass at least one reading in the house in which the bill originated.

(Emphasis added.)

The three readings provision does not define what constitutes a reading, nor does it contain any reference to the effect of amendments – whether "germane" or not – in restarting the reading process. The Majority contends that germaneness is rooted in the plain language of section 15 because "if the body of the bill is so changed as to constitute a different bill, then it is no longer the same bill and the three readings begin anew." Majority at 43. Respectfully, the Majority's chain of inferences has no root in the constitutional text. The Hawaiʻi Constitution by its own terms certainly does not define the outer bounds of how much a bill may change before it is, by law, a new bill altogether.[2]

[2] But it could have – Pennsylvania, for instance, provides that a bill cannot be "so altered or amended . . . as to change its original purpose." Pa. Const. art. III, § 1 ("[N]o bill shall be so altered or

In the absence of instruction in the constitution itself on the permitted scope of amendments and what constitutes a "reading," the House and the Senate have the power to address the matter in their rules. Section 12 of article III expressly provides the legislature with rulemaking authority: "Each house shall . . . determine the rules of its proceedings . . . ." We have recognized:

> As a general rule, the role of the court in supervising the activity of the legislature is confined to seeing that the actions of the legislature do not violate any constitutional provision. We will not interfere with the conduct of legislative affairs in absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutionally guaranteed rights.

Schwab, 58 Haw. at 37, 564 P.2d at 143 (citations omitted); see also id. at 39, 564 P.2d at 144 ("The power of the legislature should not be interfered with unless it is exercised in a manner which plainly conflicts with some higher law." (citation omitted)).

When S.B. 2858 was enacted in 2018, both the House and the Senate had adopted rules that addressed the three readings requirement. The rules of both chambers allowed bills to be

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amended, on its passage through either House, as to change its original purpose."); see also Mich. Const. art. IV, § 24 ("No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."). The framers of our Constitution could have adopted similar provisions, or the Majority's approach of requiring the three readings to restart anew, but did not do so.

read by title only, which is exactly what happened here.[3] Moreover, neither chamber's rules required that the three readings be restarted if a non-germane amendment was made to a bill in committee.[4]

Finally, I respectfully disagree with the Majority's suggestion that the interpretation of the three readings requirement I advance here would "render[] meaningless" the bill introduction deadline and mid-session recess provisions. Majority at 47. Rather, those provisions have limitations that the Majority fails to acknowledge, which are unaffected by my interpretation.

While the five-day recess does provide a break in proceedings on the floor of the House and Senate, it does not

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[3] See Rules of the House of Representatives (2017-18), Rules 34-36 (all three readings of a bill may be by "title only"); Rules of the Senate (2017-18), Rules 48-50 (the first Senate reading of a bill "shall be for information," with the second and third readings permissibly being by "title only").

[4] Contrary to the suggestion of the Majority, Majority at 54 n.34, Senate Rule 54(2) does not appear to impose a germaneness limit on amendments made by Senate committees. When read in the context of the other parts of Rule 54, Rule 54(2) appears to address only amendments proposed on the Senate floor. This interpretation is supported by Senate Rule 46(5), which specifically addresses amendments made in committee, and provides that the Senate President may re-refer a bill when a committee draft makes "major amendments or wholesale changes" to a bill. Rules of the Senate (2017-18), Rule 46(5). In any event, the role of this court is to judge violations of the constitution, not legislative rules. See Schwab, 58 Haw. at 38, 564 P.2d at 143 ("We will not interfere with the conduct of legislative affairs in absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutionally guaranteed rights."). The outcome of this case would therefore be unaffected, whether or not Rule 54(2) imposed a germaneness limit on all amendments.

apply to committee hearings.[5] Thus, legislative activity in fact continues throughout the session, including during the five-day recess. Fortunately, technology has provided the public with powerful tools, available on the Legislature's website, to monitor the legislative process and to have online access to committee reports and drafts of bills throughout the session. Rather than waiting until the recess to sift through stacks of paper bills, observers now have access to the relevant materials in close to real time.

With regard to the bill introduction provision, the original 1978 version of that provision required that bills be introduced after the nineteenth day of the session but before the mandatory recess. See State Constitution in 1 Proceedings of the Constitutional Convention of Hawaii of 1978, at 1154 (1980). In 1984, the legislature proposed, and the voters subsequently approved, an amendment that gave the legislature discretion to set the deadline. See 1984 Session Laws of Hawai'i at 904. Although the expectation was that the legislature would set the deadline earlier in the process, Stand. Comm. Rep. No.

[5] The Hawai'i Legislature's 2021 Session Calendar states, "Hawaii's Constitution mandates a 5-day recess between the 20th and 40th days of the regular session. Neither the House of Representatives nor the Senate convene or assemble formally in chamber on recess days. Committee hearings do take place." Haw. Legis. 2021 Session Calendar (March 11, 2021), https://www.capitol.hawaii.gov/docs/sessioncalendar.pdf [https://perma.cc/2X6E-H3B2].

417-84, in 1984 House Journal at 1031, the plain language of the provision allows the legislature to set the deadline later in the session, including after the five-day recess.[6] It is difficult to see how my interpretation of the three readings requirement would frustrate a provision that allows such broad discretion to the legislature.

Moreover, the legislature's deliberations on the 1984 amendment are instructive here. Some Senators spoke out against providing that much discretion to the legislature. 1984 Senate Journal, at 775 (remarks of Senator Carpenter, expressing concern that the deadline could be set at the fiftieth day). In contrast, Senator Chang, a supporter of the amendment, argued:

> By permitting the establishment of this particular item in the legislative timetable, it would be consistent with the remaining Section XII of Article 3, whereby, each house chooses its own officers, determines the rules of its proceedings and keeps a journal. We might note, Mr. President, that there is no constitutional provision that relates to the date of the first crossover or that of the second crossover or the date by which substantive resolutions shall be introduced. All of these items are crucial to the faith of every proposition presented to both bodies.
>
> This particular proposal merely permits the Legislature to establish a timetable that is appropriate to the conditions that it must deal with in its proceedings each year and I believe that it is a proposition well worth considering and will enhance the effectiveness of this body.

1984 Senate Journal, at 775.

[6] Article III, section 12 of the Hawaiʻi Constitution provides in relevant part: "By rule of its proceedings, applicable to both houses, each house shall provide for the date by which all bills to be considered in a regular session shall be introduced."

As illustrated by the history of the bill introduction provision, our constitution reflects carefully crafted judgments as to whether to entrust specific decisions about managing the legislative process to the legislature itself, or whether to specify them in the constitution. When the plain language of the constitution gives discretion to the legislature to determine how to manage its affairs, we should respect that judgment. That is precisely the case here: the three readings procedure adopted by the House and Senate, and followed by them in passing S.B. 2858, does not violate the plain language of article III, section 15, and accordingly should be upheld.

**B. The Legislature's Rules Are Consistent with the Purpose of Article III, Section 15**

Moreover, nothing in the history or purpose of the three readings requirement mandates a different result. The three readings requirement can be traced to the 1900 Organic Act, and was incorporated by the 1950 Constitutional Convention into what became our constitution in 1959. Majority at 27; see also Stand. Comm. Rep. No. 92 in 1 Proceedings of the Constitutional Convention of Hawaii of 1950, at 253 (1960) ("Proceedings of 1950"). The Majority places great weight upon a report by the Committee on Revision, Amendments, Initiative, Referendum and Recall during the 1950 proceedings. Majority at 26-27. However, the discussions quoted by the Majority are not

part of the committee report that proposed what is now section 15. Rather, they were included in a report setting forth a detailed rationale for rejecting proposals to incorporate initiative and referendum into our constitution. Compare Stand. Comm. Rep. No. 47 in 1 Proceedings of 1950, at 182-85, with Stand. Comm. Rep. No. 92 in 1 Proceedings of 1950, at 253 and Comm. of the Whole Debates Rep. No. 24 in 1 Proceedings of 1950, at 344. The remarks thus are more fairly understood as a defense of the legislative process as a whole, rather than the three readings requirement in particular.

In contrast, the actual legislative history of what is now section 15 provides no rationale for the inclusion of the three readings requirement other than that it would be "as is provided in section 46 of the Organic Act." Stand. Comm. Rep. No. 92 in 1 Proceedings of 1950, at 253. Unlike the Majority, I believe the history of the Constitutional Convention of 1968 is highly relevant to understanding how the three readings provision operates within section 15 as a whole. Article III, section 15 should be read as a whole, and its respective provisions interpreted in light of each other. The 1968 delegates recommended, and the voters adopted, the requirement in article III, section 15 that a bill be printed and made available to members of each house for 24 (now 48) hours before

passage.[7] Stand. Comm. Rep. No. 46 in 1 Proceedings of 1968, at 215, 217-18; Comm. of the Whole Report No. 12 in 1 Proceedings of 1968, at 347. In so doing, the Constitutional Convention of 1968 considered the entirety of the section – as evidenced by their technical amendment to the three readings clause[8] – and made the deliberate choice to leave the three readings requirement intact, while adding the final printing requirement to address specific concerns. Accordingly, the history of the final printing requirement, adopted in 1968, can and should inform our understanding of the three readings requirement.

That history indicates that the 1968 delegates were well aware that what the Majority would call "non-germane" amendments could occur during the legislative process, and does not suggest that they believed the three readings requirement would start anew in such circumstances. Rather, the history indicates that the delegates concluded that the proper way to ensure that legislators (and the public) knew what they were passing was to adopt a 24 (now 48) hour requirement.

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[7] Notably, the plain language of that provision – by referring to the "form to be passed" of legislation – acknowledges that bills can be changed during the legislative process. Stand. Comm. Rep. No. 46 in 1 Proceedings of 1968, at 215, 217-18; Comm. of the Whole Report No. 12 in 1 Proceedings of 1968, at 347.

[8] See Stand. Comm. Rep. No. 46 in 1 Proceedings of 1968, at 215 (1973) (retaining the three readings requirement, with a minor amendment of deleting a comma).

As explained by Standing Committee Report of the Committee on Legislative Powers and Functions, the requirement of a mandatory notice period, prior to a bill's third or final reading, was meant to provide legislators with the opportunity to review bills in their final form:

> Your Committee has included the twenty-four hour rule as a requirement for the passage of bills. The purpose of this rule is to assure members of the legislature an opportunity to take informed action on the final contents of proposed legislation. This is accomplished by requiring the printing and availability of each bill in the "form to be passed" to the members of a house and a twenty-four hour delay between such printing and availability before final reading in each house. "Form to be passed" means the form in which a bill is passed on third reading in each house, concurrence of one house to amendments made by the other, and the form in which a bill is passed by both houses after conference on a bill. The twenty-four hour rule not only aids the legislator but also gives the public additional time and opportunity to inform itself of bills facing imminent passage.

Stand. Comm. Rpt. No. 46 in 1 Proceedings of 1968, at 216 (emphases added).

The floor debates on this proposal make clear that the delegates understood that there could be significant changes in the text of bills during the legislative process, including changes that would run afoul of the Majority's rule that non-germane amendments restart the three readings requirement. Rather than incorporating the Majority's rule as part of the express language of the constitution,[9] the delegates left the

[9] As noted above, see supra note 2, at 6, the delegates could have drawn from the constitutions of other states to expressly limit the legislature's ability to make non-germane amendments to a bill.

three readings provision intact, recommending its re-adoption with the deletion of a comma, Stand. Comm. Rep. No. 46 in 1 Proceedings of 1968, at 215. The delegates then adopted another approach to the challenge of ensuring that bills would receive adequate review: the final printing requirement.

Delegate Hung Wo Ching, Chairman of the Committee on Legislative Powers and Functions that proposed the "final form" amendments to section 16, expressly acknowledged that bills may be "substantially changed" during the legislative process, and argued that providing advance notice to both houses of a bill's "final form" would ensure that the legislature and public will understand what is being proposed:

> The original intent of a bill having passed one house can be substantially changed in legislative conferences. A bill in final form can then pass third reading in both houses without a reasonable opportunity for members of the legislature and the public for review in its final form. To correct this situation, our proposal will require that a bill be printed in its final form and be made available to the legislators and to the public for at least 24 hours before final passage.

Comm. of the Whole Debates in 2 Proceedings of 1968, at 145 (emphases added).

Moreover, the following exchange between Delegate Charles E. Kauhane and Delegate Donald D.H. Ching further confirmed the delegates' understanding that even a significant change to the language of a bill would not require three additional readings:

> DELEGATE KAUHANE: . . . My next question, Mr. Chairman, where a bill has been substituted for the original bill, the original bill having been read once, have passed first and second reading [sic], and possibly third reading, and the bill is referred to conference because of a disagreement, it becomes a conference-substituted bill for the original bill in some instances; will the substituted bill be required to pass three readings because of a complete change of the substance of the bill?
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> . . . .
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> DELEGATE DONALD CHING: . . . The proposed amendment will not change the manner in which a bill is handled as under the present Constitution and the present legislative procedures as far as the conference committee draft is concerned. What it will mean is that the only change that will be brought about is – that after the conference committee has deliberated and come up with its conference draft, that draft will have to be printed and lay on the table for 24 hours or be made available to the members and the public for 24 hours before either house can act on it. That's the only change. As to what is substituted or what will happen in there, there will be no change as from the present procedure.

Id. at 145-46 (emphases added).

Delegate Kauhane also reiterated that providing legislators with adequate time to consider an amended bill's "final form" would be the appropriate remedy:

> DELEGATE KAUHANE: . . . I'm for the principle of a bill having been reported out of the committee on third reading lay on the table for 24 hours. . . .
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> . . . .
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> . . . The most important thing comes to third reading of the bill. When the bill comes out of the committee, we send an elephant into the committee in the first instance. The committee reports the bill entirely new in concept, not the changing of one figure when appropriation of dollars are needed, but a whole complete change with the contents in which the bill was originally introduced may contain one page. That bill comes out either 14 or 10 pages, different than the original. The committee recommends that the bill pass third reading in its amended form. You may have intended to request consideration of the matter of the caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill. . . .

> . . . .
>
> [The 24 hour requirement is intended] to plug that loophole and to make sure that all of these actions undertaken by the legislature are legal and beyond any question of doubt have met the conditions under which those are to be considered, first, second and third reading.

Id. at 168-69 (emphases added).

The delegates also briefly discussed the impact of the final printing requirement on the procedure for third reading of a bill, and recognized the authority of the legislature to provide that a bill could be read by title only:

> DELEGATE KAUHANE: . . . Mr. Chairman, does the reading of the bill by title on the third day constitute the bill having been read completely throughout?
>
> . . . .
>
> DELEGATE MIYAKE: The constitutional provision as proposed by the committee on Section 16 does not state that the bill has to be read throughout. Therefore, it would be permissive for the legislative bodies [to] provide the requirements as to how final reading will be interpreted in its own house or senate rules.

Id. at 145.

In sum, the delegates to the Constitutional Convention of 1968 identified the same concern that we are addressing today: whether legislators, and the public, would have sufficient time to study the content of bills that have been significantly amended before those bills are adopted. The delegates understood that significant amendments would occur during the legislative process, including at its closing stages. Rather than implement the remedy that the Majority adopts now – requiring that the three readings restart anew – the delegates

took a different approach and instead required that the final form of the bill be printed and made available to legislators for 24 hours. We should view the history of the three readings requirement in light of the evolution of the whole section; doing so reveals that the purpose of the provision does not support the Majority's rule.

### C. The Majority Imports "Germaneness" From an Altogether Different Constitutional Provision

Respectfully, the Majority's decision to import principles of "germaneness" from our cases interpreting article III, section 14 of the constitution into the context of section 15 disregards the text of the respective provisions. Section 14 provides that "[e]ach law shall embrace but one subject, which shall be expressed in its title." Haw. Const. art. III, § 14. Significantly, this provision necessarily requires inquiry into the subject matter of a bill, i.e., whether a bill encompasses one or more than one subject. The "germaneness" inquiry is a product of that express language: there needs to be a test for determining whether a bill has a single subject which is expressed in its title.

For example, in Territory v. Kua, 22 Haw. 307, 313 (1914), this court used a germaneness inquiry in evaluating the

single subject requirement of section 45 of the Organic Act,[10] which was the predecessor to the language currently in section 14. There we considered a challenge to a bill entitled "An Act to Amend Section 1323 of the Revised Laws . . . , Relating to the Issuance of Licenses"; the question was whether a proviso to the Act, which required applicants to demonstrate that they were current in their taxes, violated section 45. Id. at 308. We stated: "To determine the question now being considered[,] we must search in the title and object of the statute for the subject thereof." Id. at 309. We held that a statute "must relate to but one subject and that subject must be expressed in the title of the statute." Id. at 311. Further, we concluded that the payment of taxes was "not germane" to the subject of the act as reflected in its title, which was "who shall issue the license." Id. at 313.

Thus, the germaneness inquiry in the context of section 14 is required by and consistent with the plain language of that provision, which requires comparing various parts of a bill to the subject as reflected in the bill's title. There is no such textual basis for a germaneness inquiry in section 15. Both the single subject-in-title requirement of section 14, and

[10] Section 45 provided "[t]hat each law shall embrace but one subject, which shall be expressed in its title." Kua, 22 Haw. at 308.

three readings requirement of section 15, trace their roots back to the 1900 Organic Act. While Kua and other cases cited by the Majority reflect long, well-established precedent applying a germaneness test to actions under section 14, the Majority has cited to no such prior precedent in Hawaiʻi regarding the three readings requirement. Respectfully, we should not graft such an inquiry into section 15 when the language of the section does not require it.

### D. Mason's Manual Expressly Acknowledges that Non-Germane Amendments Are Generally Permissible

Respectfully, I disagree with the Majority's suggestion that the procedure followed in enacting S.B. 2858 was contrary to Mason's Manual of Legislative Procedure (Mason's Manual). Majority at 53-54. As a threshold matter, Mason's Manual itself provides that it only applies when not in conflict with the rules of a particular house. See, e.g., Nat'l Conference of State Legislatures, Mason's Manual of Legislative Procedure (2010 ed.) § 4 para. 2 ("[a]dopted rules" take precedence over "[a]dopted parliamentary authority"), § 30 para. 1 ("[L]egislative bodies adopt a manual of legislative procedure as the authority to apply in all cases not covered by constitutional provisions, legislative rules or statutes.").

But there simply is no "explicit[] require[ment] that amendments are germane to a bill's original purpose" in Mason's

Manual. Majority at 53. To the contrary, as argued by the State, Mason's Manual authorizes the complete substitution of the text of a bill by a committee as long as the new language complies with the subject-in-title requirement. Specifically, the manual provides:

> A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted as long as the new matter is relevant to the title and subject of the original bill. A substitute bill is considered as an amendment and not as a new bill.

Mason's Manual § 617 para. 1; id. § 722 para. 1 ("The constitutional requirement that bills be read three times is not generally interpreted to apply to amendments, so that bills are required to be read the specified number of times after amendments . . . ."); id. § 722 para. 3 ("Where a substituted bill may be considered as an amendment, the rule with reference to reading a bill on three separate days does not require the bill be to read three times after substitution.").[11]

[11] Contrary to the suggestion of the Majority, section 415 of Mason's Manual does not mandate a germaneness inquiry as part of the three readings requirement when a bill has been amended by a committee. Majority at 53-54. Rather, that section is located in a chapter entitled "Motion to Amend," which speaks to the practices on the floor of each house.

Likewise, the Majority's discussion of several other provisions in Mason's Manual regarding germaneness appear to relate to the subject-in-title requirement, and thus, they are not dispositive here. See, e.g., Mason's Manual § 617 para. 1 ("A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted as long as the new matter is relevant to the title and subject of the original bill." (emphasis added)); id. § 616 para. 3 ("Amendments may be so numerous as to amount to a substitute version of the bill.").

### E. The Majority Overstates the Extent of a "Germane Amendment" Rule in Other States

Ultimately, this court is compelled to apply the Hawaiʻi Constitution with fidelity to its terms, so cases from other jurisdictions considering the impact of amendments to a bill on the three readings requirement are of limited relevance here given the plain language of article I, section 15, as informed by its history and purpose. In any event, as the Majority acknowledges, Tennessee has not adopted the Majority's approach of assessing whether amendments to legislation are germane to the text (as opposed to the title) of prior versions of the bill. D.M.C. Corp. v. Shriver, 461 S.W.2d 389, 392 (Tenn. 1970) ("[O]n third and final reading a bill can be amended to any extent, even to striking the body of the bill and substituting the amendment therefor so long as the amendment is germane to and within the scope of the title." (emphasis added) (citations omitted)).

To the extent that some jurisdictions have adopted the Majority's approach, they are distinguishable because their constitutions differ significantly from the Hawaiʻi Constitution. Specifically, several states that measure compliance with constitutional three readings requirements according to germaneness have provisions in their constitutions that expressly limit the amount that a bill may change before it

becomes a new bill altogether. See Washington v. Dep't of Public Welfare, 647 Pa. 220, 246 (Pa. 2018); Magee v. Boyd, 175 So.3d 79, 112 (Ala. 2015); Casey v. S. Baptist Hosp., 526 So. 2d 1332, 1336 (La. Ct. App. 1988); U.S. Gypsum Co. v. State Dep't of Revenue, 363 Mich. 548, 553 (Mich. 1961). The Pennsylvania constitution, as the Majority notes, contains an explicit provision that "no bill shall be so altered or amended, on its passage through either House, as to change its original purpose." Pa. Const. art. III, § 1. The constitutions of Alabama, Arkansas, Colorado, Louisiana, Michigan, Mississippi, Missouri, Montana, New Mexico, North Dakota, Texas, and Wyoming contain similar provisions.[12]

[12] See Ala. Const. art. IV, § 61 ("No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose."); Ark. Const. art. V, § 21 ("No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house, as to change its original purpose."); Colo. Const. art. V, § 17 ("No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose."); La. Const. art. III, § 15(C) ("No bill shall be amended in either house to make a change not germane to the bill as introduced."); Mich. Const. art. IV, § 24 ("No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."); Miss. Const. art. IV, § 60 ("No bill shall be so amended in its passage through either house as to change its original purpose . . . ."); Mo. Const. art III, § 21 ("No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose."); Mont. Const. art. V, § 11 ("A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose."); N.M. Const. art. IV, § 15 ("No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose."); N.D. Const. art. IV, § 13 ("No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter."); Tex. Const. art. III, § 30 ("No law shall be passed, except by bill, and no bill

In those states that have an "original purpose" provision, the three readings requirement must be read in light of that provision, which specifically defines the inquiry into whether a bill has changed so much as to be a new bill. Put another way, the framers in those states have explicitly limited the extent to which a bill could be amended, and their courts have implemented that restriction by applying a germaneness test. It makes sense for those states to utilize the same germaneness test in analyzing whether a bill has been amended to the point that the three readings must begin anew. In contrast, Hawaiʻi has no "original purpose" requirement, and there is accordingly no textual basis in our constitution for applying a germaneness test to our three readings requirement.

Jurisdictions that have followed the majority's approach in the absence of an "original purpose" provision appear to focus on whether the amendments are within the scope of the bill's original title. See Bevin v. Commonwealth ex. rel. Beshear, 563 S.W.3d 74, 90-91 (Ky. 2018) (holding that the three readings requirement was not met when a bill about pensions was read by the title "relating to the local provision of wastewater services," given "[t]he complete elimination of

shall be so amended in its passage through either House, as to change its original purpose."); Wyo. Const. art. III, § 20 ("No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.").

all the words of the prior readings and their total replacement with words bearing no relationship to the title of the bill"); see also Van Brunt v. State, 653 P.2d 343, 345 (Alaska Ct. App. 1982) (citing DMC Corp. with approval, and noting that "a bill may be completely revised without having to be read three times," so long as the amendments do not change the subject of the bill). This distinction is significant, since the substance of S.B. 2858 as enacted, which related to hurricane resistant criteria for the design of public schools, was within the scope of (or, "expressed in") the bill's title, "Relating to Public Safety." Haw. Const. art. III, § 14 ("Each law shall embrace but one subject, which shall be expressed in its title.").

**F. The Majority's Policy Arguments Are Unavailing**

Respectfully, the suggestion that legislators and the public lacked sufficient opportunity to assess S.B. 2858 once its text was changed from recidivism reporting to hurricane preparedness is misplaced. The House Standing Committee Report reflecting that change was adopted by the House and the amended bill passed second reading on March 21, 2018 — the 35th day of the 60-day legislative session. 2018 House Journal, at 379 (Reports of Standing Committees). The amended bill was heard a week later in the Finance Committee, so there was an opportunity for the public to provide testimony. Notice of Hearing, Hawaii State Legislature (2018), available at

https://www.capitol.hawaii.gov/session2018/hearingnotices/HEARING_FIN_03-28-18_2_.HTM [https://perma.cc/YYG2-FTTX].

After the bill passed third reading in the House on April 6, 2018, 2018 House Journal, at 485 (Reports of Standing Committees), it was transmitted to the Senate on April 10, which was the 46th day of the session. 2018 Senate Journal, at 496 (House Communications). The Senate Journal reflects that on that day, the full Senate voted to disagree with the amendments of the House, id., and the two houses subsequently appointed conferees. See id., at 571 (Appointment and Discharge of Conferees); 2018 House Journal, at 556 (House Communications). After the conferees agreed to a Conference Draft 1, that draft was presented to the full Senate by the Senate conference chair on April 27, 2018, the 58th day of the session. 2018 Senate Journal, at 626 (Conference Committee Reports). It then passed final reading in the Senate on May 1, 2018 the 59th day. 2018 Senate Journal, at 643 (Final Reading).

In short, the hurricane preparedness version of the bill was publicly available for 25 legislative days, or almost half of the session. The House version was before the Senate when it voted to disagree with the House amendments, and the conference version was before the Senate when it was reported from the committee and subjected to the 48-hour notice requirement. While those were not formal readings of the bill,

the bill's content was nevertheless before the full Senate on each occasion, and it could readily be monitored and accessed through the legislature's website.

## III. CONCLUSION

The interpretation of the three readings requirement advanced by the Majority is required neither by the plain language nor the history of article III, section 15. Accordingly, the legislature could properly address the three readings requirements through its constitutional rule making authority. The rules adopted by the legislature, and the process followed by the legislature in adopting S.B. 2858, complied with the constitution. Accordingly, I respectfully dissent.

/s/ Mark E. Recktenwald

/s/ Shirley M. Kawamura