

ROBERT BRIAN BLACK 7659
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813
brian@civilbeatlawcenter.org
Telephone: (808) 531-4000
Facsimile: (808) 380-3580

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2018 SEP -5 AM 9:29

J. KUBO
CLERK

*Attorneys for Plaintiffs
League of Women Voters of Honolulu and
Common Cause*

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

LEAGUE OF WOMEN VOTERS OF
HONOLULU and COMMON CAUSE,

Plaintiffs,

vs.

STATE OF HAWAII,

Defendant.

CIVIL NO. 18-1-1376-09
(Other Civil Action)

GWBC

COMPLAINT; SUMMONS

JUDGE: NONE

TRIAL DATE: NONE

COMPLAINT

Plaintiffs League of Women Voters of Honolulu and Common Cause
(collectively, Plaintiffs), for their Complaint against Defendant State of Hawai'i (State),
allege as follows:

1. "Gut and replace" legislation is abhorrent to basic principles of democracy
and unconstitutional under article III, sections 14 and 15 of the Hawai'i Constitution.
The public must be able to reliably identify and follow potential changes to the law
being considered by the State Legislature. But deceptive practices that radically change

X COPY

bills shortly before the final vote deny the public any meaningful voice in the legislative process.

2. In its most common iteration, “gut and replace” concerns a bill that has progressed to late in the legislative process and is stripped of all content to be replaced with an entirely different topic that has no rational connection to the original bill. The bill becomes unrecognizable.

3. Hastily or stealthily enacting laws unconstitutionally deprives the public of adequate notice regarding legislation that will impact everyone in the State. And it deprives legislators of adequate notice and time to thoroughly review the consequences of proposed legislation prior to making a decision.

4. This action seeks to enforce the constitutional provisions that prohibit the State from using processes that avoid input from the electorate into how the people of Hawai'i should be governed.

5. Citizens elect and grant authority to legislators to pass laws for the public good. Democracy is a citizen-based process that depends on the will of the people as expressed in the Constitution. However good their intentions, legislators must respect the role of ordinary citizens in the legislative process. Gut and replace legislation reflects a fundamentally undemocratic disregard for the public.

PARTIES

6. The League of Women Voters of Honolulu is a nonpartisan Hawai'i nonprofit corporation that works to improve government function and impact public policies through citizen education and advocacy.

7. Common Cause is a national nonprofit grassroots organization dedicated to upholding the core values of American democracy, that is incorporated and based in Washington D.C. with a presence in thirty states, including Common Cause Hawai'i.

8. Defendant is the government for the State of Hawai'i as recognized in the Hawai'i Constitution.

JURISDICTION AND VENUE

9. The court has jurisdiction over this claim for declaratory relief because this action arises under the Constitution of the State of Hawai'i, Article III, sections 14 and 15; HRS § 632-1; and HRS § 603-21.5(a)(3).

10. Venue is proper in this court pursuant to the Constitution of the State of Hawai'i, Article III sections 14 and 15 and HRS § 603-36(5) for the following reasons: the prohibited act occurred and the claim for relief arose in this circuit.

FACTUAL BACKGROUND

11. The Constitution of the State of Hawai'i provides minimum procedures for enacting legislation.

12. Article III, section 14 of the Constitution of the State of Hawai'i provides in relevant part: "Each law shall embrace but one subject, which shall be expressed in its title."

13. Article III, section 15 of the Constitution of the State of Hawai'i provides in relevant part: "No bill shall become law unless it shall pass three readings in each house on separate days."

14. On January 24, 2018, during the 2018 legislative session, the Hawai'i Senate introduced Senate Bill 2858 (S.B. 2858), entitled simply "A bill for an act relating to public safety."

15. As originally introduced, S.B. 2858 required the Department of Public Safety to prepare an annual report with performance indicators regarding efforts to improve recidivism rates and inmate rehabilitation.

16. On January 24, 2018, S.B. 2858 passed its first reading in the Senate.

17. On February 6, 2018, the Senate Committee on Public Safety, Intergovernmental, and Military Affairs (PSM) recommended that S.B. 2858 be passed with amendments to include information about pretrial detainees in the Department's annual report.

18. On February 9, 2018, PSM reported to the Senate its proposed amendments, and S.B. 2858 passed its second reading in the Senate as amended (S.D. 1).

19. On February 23, 2018, the Senate Committee on Ways and Means (WAM) recommended that S.B. 2858 be passed with clarifying amendments about the Department's annual reports.

20. On March 6, 2018, WAM reported to the Senate its proposed amendments, and S.B. 2858 passed its third reading in the Senate as amended (S.D. 2).

21. S.B. 2858—as it related to reporting about community reentry by individuals in the custody of the Department of Public Safety—was read three times in the Senate with germane amendments after two committee hearings.

22. On March 15, 2018 the House Committee on Public Safety (PBS) recommended that the content of the bill be changed completely while keeping the title of the bill unchanged.

23. Instead of a bill concerning individuals held by the Department of Public Safety, PBS recommended a bill requiring that the design of new State buildings include hurricane shelter space; PBS removed all reference to the subject matter of the original bill, leaving only the original bill's title.

24. On March 21, 2018—the thirty-fifth day of the sixty day legislative session—the House had its second reading on S.B. 2858 and amended the bill according to PBS's recommendation, gutting and replacing the contents with something completely different (H.D.1).

25. In effect, the hurricane shelter version of S.B. 2858 had its first reading in the House on March 21.

26. On March 28, 2018, the House Committee on Finance recommended that the measure be passed, as it pertained to hurricane shelters, unamended.

27. On April 6, 2018, S.B. 2858 passed its third reading in the House, only the second reading for the hurricane shelter version of the bill.

28. On April 26, 2018, the Conference Committee recommended that the hurricane shelter version of S.B. 2858 be passed with amendments to only require that the State consider hurricane resistance criteria in the design of new schools (C.D. 1).

29. On May 1, 2018, the hurricane shelter version of S.B. 2858 passed its first reading in the Senate and its third reading in the House, with both chambers adopting the recommendation of the Conference Committee.

30. The May 1, 2018 reading was the only Senate reading of the bill after it had been fundamentally changed to pertain to hurricane shelters rather than reporting from the Department of Public Safety.

31. On July 5, 2018, S.B. 2858 became law, when signed by the governor, as Act 84.

COUNT I
“RELATING TO PUBLIC SAFETY” IS AN
UNCONSTITUTIONALLY BROAD TITLE FOR LEGISLATION

32. Article III, section 14 of the Constitution of the State of Hawai‘i provides in relevant part: “Each law shall embrace but one subject, which shall be expressed in its title.”

33. The purpose of this provision is to prevent hodge-podge or logrolling legislation; to prevent surprise or fraud upon the legislature by means of provisions in the bills of which the title give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and to fairly apprise the people through publication of legislative proceedings of the subjects of legislation that are being considered, in order that they may have the opportunity of being heard.

34. The title of a bill should not be so general that it tends to obscure the contents of the act.

35. The public and lawmakers must be able to rely on the title of bills to assess generally the proposed law's impact and any interest in the bill.

36. The title of a bill thus must be specific enough so as to provide notice of the general contents of the legislation.

37. The title "Relating to Public Safety" conveys nothing about the bill's contents.

38. The title "Relating to Public Safety" obscures the actual content of the legislation it proposes and is misleading.

39. Plaintiffs seek an order declaring Act 84 void because the title to S.B. 2858 does not satisfy the subject-in-title requirement of article III, section 14 of the Hawai'i Constitution.

COUNT II
THE HURRICANE SHELTER VERSION OF S.B. 2858
DID NOT HAVE THREE READINGS IN THE SENATE

40. Article III, section 15 of the Constitution of the State of Hawai'i provides in relevant part: "No bill shall become law unless it shall pass three readings in each house on separate days."

41. The three readings requirement provides the public and lawmakers adequate opportunity to assess the consequences of and comment on proposed legislation.

42. The purpose of this provision is to provide time for informed and meaningful deliberation on legislative proposals so the text of proposed legislation may be refined and modified and so the public interest is protected.

43. The hurricane shelter version of S.B. 2858 only had one reading in the Senate.

44. Enacting laws that bear no resemblance – other than title – to the bill as passed by the originating chamber completely eviscerates the three reading requirement.

45. Plaintiffs seek an order declaring Act 84 void because after the non-germane hurricane shelter amendments in the House, S.B. 2858 did not have the required three readings in the Senate under article III, section 15 of the Hawai'i Constitution.

DEMAND FOR RELIEF

Based on the foregoing, Plaintiffs respectfully request that this court:

A. Enter an order declaring that (1) the process for adopting Act 84 was unconstitutional; and (2) Act 84 is void.

B. Grant such other and further relief as the court deems reasonable and just.

DATED: Honolulu, Hawai'i, September 5, 2018


ROBERT BRIAN BLACK
Attorneys for Plaintiffs