

No. SCPW-18-0000733

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IN THE SUPREME COURT OF THE STATE OF HAWAII

CITY AND COUNTY OF HONOLULU,
COUNTY OF HAWAII, COUNTY OF
MAUI, COUNTY OF KAUA`I,

Petitioners,

vs.

STATE OF HAWAII; SCOTT NAGO, in his
capacity as Chief Election Officer; RONALD
D. KOUCHI, in his capacity as President of
the Hawai`i Senate; SCOTT K. SAIKI, in his
capacity as Speaker of the Hawai`i House,

Respondents.

ORIGINAL PROCEEDING

CIVIL NO. 18-1-1326-08 (JPC)
(Declaratory Judgment; Injunctive Relief)

**MOTION OF TAX FOUNDATION OF HAWAII; GRASSROOT INSTITUTE OF
HAWAII; RETAIL MERCHANTS OF HAWAII; WAIKIKI IMPROVEMENT
ASSOCIATION; ALOHA PETROLEUM, LTD.; CASTLE & COOKE HOMES HAWAII,
INC.; FERGUS & COMPANY; KILPATRICK ENTERPRISES, INC.; MULKERN
LANDSCAPING & NURSERY; WALTZ ENGINEERING, INC.; BRUCE AND DEDE
HEIMAN; BARBARA MARUMOTO-COONS; ANSON O. REGO; AND WILLIS YAP
FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS**

EXHIBIT "1"

CERTIFICATE OF SERVICE

THOMAS YAMACHIKA 3504
TAX FOUNDATION OF HAWAII
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Counsel for Movants.

MOTION OF TAX FOUNDATION OF HAWAI‘I; GRASSROOT INSTITUTE OF HAWAI‘I; RETAIL MERCHANTS OF HAWAI‘I; WAIKĪKĪ IMPROVEMENT ASSOCIATION; ALOHA PETROLEUM, LTD.; CASTLE & COOKE HOMES HAWAII, INC.; FERGUS & COMPANY; KILPATRICK ENTERPRISES, INC.; MULKERN LANDSCAPING & NURSERY; WALTZ ENGINEERING, INC.; BRUCE AND DEDE HEIMAN; BARBARA MARUMOTO-COONS; ANSON O. REGO; AND WILLIS YAP FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS


The above mentioned organizations, businesses, and individuals hereby move this Court, pursuant to Rules 27 and 28(g) of the Hawai‘i Rules of Appellate Procedure, for leave to appear as *amicus curiae* and to file a brief, in the form attached hereto as Exhibit “1”, in support of Petitioners.

Each of the organizations, businesses, and individuals joining in this motion has a profound interest in the issue presented here, which is whether the ballot measure required by Senate Bill 2922 (2018) is clearly presented to the electorate with the ballot question specified therein, or whether it is misleading or deceptive in violation of HRS § 11-118.5. The specific interest statement for each is set forth in the Appendix to Exhibit “1”.

The proposed brief of *amici curiae* will provide this Court with a broader, taxpayer-focused policy perspective on the issues being debated and for that reason Movants seek leave to file this brief.

For the above reasons, Movants respectfully request that this Court grant their motion to submit the proposed brief.

DATED: Honolulu, Hawai‘i, September 27, 2018.



THOMAS YAMACHIKA
Attorney for Movants

No. SCPW-18-0000733

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WILLIS YAP IN SUPPORT OF PETITIONERS**

CERTIFICATE OF SERVICE

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AMICUS CURIAE BRIEF OF TAX FOUNDATION OF HAWAI‘I; GRASSROOT INSTITUTE OF HAWAI‘I; RETAIL MERCHANTS OF HAWAI‘I; WAIKĪKĪ IMPROVEMENT ASSOCIATION; ALOHA PETROLEUM, LTD.; CASTLE & COOKE HOMES HAWAII, INC.; FERGUS & COMPANY; MULKERN LANDSCAPING & NURSERY; WALTZ ENGINEERING, INC.; BRUCE AND DEDE HEIMAN; ANSON O. REGO; AND WILLIS YAP IN SUPPORT OF PETITIONERS

Pursuant to this Court’s Order Granting Motion for Leave to File *Amicus Curiae* Brief in Support of Petitioners, and Rule 28(g) of the Hawai‘i Rules of Appellate Procedure, the above named *amici curiae* submit this brief in support of Petitioners, respectfully urging this Court to declare that the ballot measure actuated by Senate Bill 2922 (2018) contains a misleading or deceptive ballot question, and, given that there is insufficient time to correct the ballots, invalidate the measure.

I. IDENTITY AND INTEREST OF AMICI CURIAE

Each of the individuals and organizations joining in this motion has a profound interest in the issue presented here, which is whether the ballot measure required by Senate Bill 2922 (2018) is clearly presented to the electorate with the ballot question specified therein, or whether it is misleading or deceptive in violation of HRS § 11-118.5. The specific interest statement for each is set forth in the Appendix hereto.

II. STATEMENT OF FACTS

This brief relies on, and incorporates by reference, the facts referenced in the Petition.

III. STANDARD OF REVIEW

In an original proceeding such as this, “there is no standard of review as such.” *Watland v. Lingle*, 104 Haw. 128, 85 P.3d 1079, 1084 (2004). However, for over a hundred years, this Court has followed the rule that requirements applicable to an election must be strictly complied with, at least prior to an election, with some flexibility to uphold the result thereof against formalistic post-election attacks:

It is the duty of the courts to uphold the law by sustaining elections thereunder that have resulted in a full and fair expression of the public will and, from the current of authority, the following may be stated as the approved rule: All provisions of the election law are mandatory if enforcement is sought before election in a direct proceeding for that purpose; but after election, all should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote, or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

Lane v. Fern, 20 Haw. 290, 301-02 (1910); *Willis v. Kanealii*, 17 Haw. 243, 247 (1905) (citations omitted).

This Court has adopted a “strict observance” standard for procedural requirements relating to the ratification of an amendment. *Watland v. Lingle*, 104 Haw. 128, 85 P.3d 1079, 1094 (2004); *Blair v. Cayetano*, 73 Haw. 536, 543, 836 P.2d 1066, 1070 (1992). One of these is the “essential requirement ... that the ballot not be misleading.” *Kahalekai v. Doi*, 60 Haw. 324, 333, 590 P.2d 543, 550 (1979); HRS §11-118.5.¹ “[T]he ballot must enable the voters to express their choice on the amendments presented and be in such form and language as not to deceive or mislead the public.” 60 Haw. at 338, 590 P.2d at 552-53.

The rationale for a rule such as this was explained by the Supreme Court of Florida:

¹ HRS § 11-118.5 provides: “**Constitutional amendments, proposed.** Any constitutional amendment proposed by the legislature shall include in final form the exact constitutional ratification question to be printed on a ballot. The constitutional ratification question shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a ‘yes’ or ‘no’ response. The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive.”

In recent years, advantageous but misleading “wordsmithing” has been employed in the crafting of ballot titles and summaries. Sponsors attempt to use phrases and wording techniques in an attempt to persuade voters to vote in favor of the proposal. When such wording selections render a ballot title and summary deceptive or misleading to voters, the law requires that such proposal be removed from the ballot — regardless of the substantive merit of the proposed changes. ... The voters ... deserve nothing less than clarity when faced with the decision of whether to amend our state constitution, for it is the foundational document that embodies the fundamental principles through which organized government functions.

Florida Department of State v. Slough, 992 So. 2d 142, 149 (Fla. 2008).

In addition, as a policy matter there is a special and acute need for the courts to insist on clarity when, as here, the Legislature is putting forward a constitutional amendment that would increase its own power. The Executive has no veto option against a constitutional amendment thus proposed, Haw. Const. art. XVII, sec. 4, leaving the Judiciary as the only remaining check and balance against a Legislature that otherwise could, intentionally or not, arrogate power from a deceived or misled electorate. The standard of review, therefore, must not be excessively deferential.

IV. ARGUMENT

A. THE BALLOT QUESTION PRESENTED BY SB 2922 IS DECEPTIVE OR MISLEADING BECAUSE, ALTHOUGH IT IS A MEASURE CONFERRING NEW TAXING POWER, IT HIDES “TAX” FROM THE ELECTORATE.

This lawsuit involves S.B. 2922 (2018), a measure passed by the Legislature that places before voters a ballot question that reads:

Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?

S.B. 2922, sec. 4 (2018).

The effect of the constitutional amendment is to give the Hawaii Legislature power to levy *real property tax*, in an unspecified amount, on “investment real property,” whatever that is. This is a *new power to tax*. The people of Hawaii have for the last forty years vested the power to tax real property in the counties *exclusively*. *State ex rel. Anzai v. City & County of Honolulu*, 99 Haw. 508, 57 P.3d 433, 444 (2002); *In re Gardens at West Maui Vacation Club*, 90 Haw. 334, 978 P.2d 772, 779-80 (1999). Yet there is no mention whatsoever of *tax* in anything to appear on the ballot.

Walton v. McDonald, 192 Ark. 1155, 97 S.W.2d 81 (1936), involved an act by initiative. The ballot title of the proposed act read, “An Act to provide for the assistance of aged and/or blind persons and funds therefor, the administration and distribution of same, penalties for the violation of Act, and for other purposes.” But it proposed to levy a permanent 2% general sales tax to provide that assistance. The omission of any mention of tax was held to be misleading enough to invalidate the act:

The proposed ballot title fails to disclose the vital portion of this act, which is, not whether some provision shall be made for the aged and the blind, but how that provision is to be made. We do not hold that it is essential that the ballot title should have disclosed what the provisions for the aged and blind should be, or the amount thereof. But we do hold that the manner of making this provision is of the essence of the act. It is an essential fact which should be disclosed to the elector, and could have been done by the addition of only a few more words and without recitation of details. Every one knows the general

operation of a sales tax. The undisclosed fact is that such a law will be put in operation. The ballot title does not, therefore, meet the test that it shall be free from any misleading tendency, whether of amplification or of omission, and we, therefore, hold it insufficient.

Id., 97 S.W.2d at 83.

The Arkansas court's decision is similar to the issue presented here. The ballot question says that the measure is about supporting public education, just as the Arkansas measure was about supporting the aged and blind. Yes, the ballot question before this Court mentions money, as the Arkansas measure did; but the critical flaw was the omission of the term "tax." Use of that term triggers a visceral reaction in some; its absence lulls the electorate into forgetting that the support for public education which they are urged to endorse is to come from a new way to pick their pockets. That the Arkansas case involved an act by initiative rather than a constitutional amendment does not diminish its significance; as pointed out earlier, a constitutional amendment changes our foundational document, so it is even more important that the electorate be properly informed and not misled. *Florida Department of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008).

Boyd v. Jordan, 1 Cal. 2d 468, 35 P.2d 533 (1934), involved a proposed constitutional amendment with a short title reading "Initiative Measure Providing for Adoption of Gross Receipts Act." The proposed amendment would have imposed a gross receipts *tax*, but nothing in the title alerted the voter that the measure was about tax. The court stated:

The petition before us asks that an amendment to the Constitution be submitted to the people, which amendment has for its sole purpose the raising of revenue for the support of the state government. The short title used in this petition makes no reference to a tax or to the fact that the proposed amendment is a revenue measure. We think it is clear that the short title neither shows the nature of the petition, nor does it show the subject to which it

relates. There is nothing in this short title which informed the elector who was asked to sign it that the proposed measure provided for the levy of any tax whatever. He was informed that the petition provided for the adoption of a gross receipt act, but no information was given him as to the character of the proposed legislation regarding that subject. He was as much in the dark regarding the real purpose of the proposed measure after reading the short title as he was before he had read it. The short title did not bring to his mind any idea or suggestion whatever that the amendment proposed related to taxation in any form whatever. It, therefore, gave him no information upon the very subject with which he was then concerned, and as to which the law gave him the right to be informed. In our opinion, this vital defect in the short title vitiates the whole petition and renders it inadequate for any purpose.

Id. at 472-73. The court didn't stop there, but continued with illustrations of other titles that it considered to be deficient for failing to mention that they dealt with tax:

We might illustrate the insufficiency of this short title by recalling the proposed constitutional amendment which at different times during the past few years has been submitted to the voters of the state providing for the so-called single tax system for raising state revenues. This proposed measure provided that all governmental revenues should be raised by a tax on land. Would a short title simply stating that the proposed measure was an "Initiative Measure Providing for Adoption of Land Act", have given to the electors any information that the proposed constitutional amendment was to wipe out all existing laws relative to taxation and to substitute in their place an entirely new system placing the entire burden of maintaining our state and its subdivisions upon the land of the state? To ask this question is to answer it in the negative. A further illustration might be had from our present

law respecting the gasoline tax. Had the statute creating this tax been entitled, “Gasoline Act” or “A Measure Providing for Adoption of Gasoline Act”, would anyone contend that this title expressed the subject to which the act related, or gave any information to anybody that the proposed measure contemplated a tax on gasoline sold throughout the state? We hardly think anyone would care to risk his professional reputation by answering this question in the affirmative. So with the short title used in the present petition. It makes no reference directly or indirectly to the subject of taxation concerning which the proposed measure primarily and exclusively deals.

Id. at 474. The court, accordingly, issued a writ of mandate ordering that the proposed amendment not appear on the ballot.

B. THE BALLOT QUESTION SPEAKS OF A “SURCHARGE,” WHICH IS DEMONSTRABLY DIFFERENT FROM A “TAX.”

The ballot question here proposed does use the word “surcharge,” but use of that word is misleading at best because it is a much broader term than “tax.”

In *Hawaii Insurers Council v. Lingle*, 120 Haw. 51, 201 P.3d 564 (2008), this Court took great pains to distinguish “taxes” from “regulatory assessments,” while in *State v. Medeiros*, 89 Haw. 361, 973 P.2d 736 (1999), this Court had to differentiate “taxes” from “user fees.”

Generally, a user fee is exchanged for a service rendered or a benefit conferred, and the amount of the fee normally bears a relationship to the value of the service or benefit. *Lingle*, 201 P.3d at 572.

A regulatory fee is typically “not used for a general purpose but rather to defray the expenses generated [by a regulatory agency] needed for the operations provided by law for the [payor].” *Id.*, 201 P.3d at 579 (quoting *San Juan Cellular Telephone Co. v. Public Service Commission of Puerto Rico*, 967 F.2d 683, 686 (1st Cir.1992)). A tax, therefore, normally supports the general operations of government with no specialized benefits to or services rendered for the taxpayer.

A “surcharge” could refer to an amount added to a usual charge for a specific product, purpose, or service, or it could be a surtax.² Thus a surcharge could be a user fee, regulatory fee, or a tax.

In the First Circuit Court, the Attorney General indicated that the surcharge might not be a “tax” at all but would be some form of exaction dependent on and measured by the value of real property. In *Aloha Airlines v. Director of Taxation*, 464 U.S. 7 (1983), the Supreme Court held that a property tax measured by gross receipts is a gross receipts tax and, therefore, ran afoul of a federal statute preempting such a tax on air passengers or cargo. Similarly, a charge that looks like a real property tax and quacks like a real property tax is a real property tax, and cannot be imposed without amending Haw. Const. art. VIII, sec. 3, as S.B. 2922 proposes.

This ballot measure imposes tax, specifically real property tax, and is cleverly worded to bury this critical fact.

V. CONCLUSION

For these reasons, *amici* support invalidation of the ballot measure because of the deceptive and misleading ballot question, and urges this Court to issue the writ prayed for by petitioners.

Amici express no view on any other issues raised in this appeal.

DATED: Honolulu, Hawai`i, September ____, 2018.

THOMAS YAMACHIKA
Attorney for *Amici Curiae*

² <http://www.businessdictionary.com/definition/surcharge.html>.

APPENDIX

A. Statement of Interest of the Tax Foundation of Hawaii

The Tax Foundation of Hawaii is a non-partisan, non-political 501(c)(3) organization whose mission is to educate taxpayers and lawmakers on taxation and public finance. We educate and encourage the efficient and effective use of public funds (our tax dollars) to operate government and deliver public services. To do that, we track changes in tax law and how taxpayer dollars are used. Our work is published and distributed as widely as possible and free of charge. A well-informed public (and this includes lawmakers) that understands the impact of our tax system can more effectively participate in pressing for greater government efficiency and accountability.

Over the years, the Foundation has also functioned as a taxpayer watchdog organization, on many occasions scrutinizing and then calling out the government's legislative proposals to upset the delicate balance of fiscal powers between the state and county governments.

The Foundation's interest is in ensuring the transparency and clarity of the election, and that the people of Hawaii, from whom all governmental power is derived, are not misled or deceived by this ballot measure.

Thomas Yamachika
Tax Foundation of Hawaii
126 Queen Street, Suite 304
Honolulu, HI 96813

B. Statement of Interest of the Grassroot Institute of Hawaii

The Grassroot Institute of Hawaii is a non-profit, public policy think tank dedicated to advancing the values of individual liberty, government accountability, and the free market. Through publications, commentary, and educational events, the Grassroot Institute seeks to inform the public on issues affecting the citizens of Hawaii, especially in the areas of taxation

and government spending. The Grassroot Institute has a long history of involvement on state tax issues and has offered input and commentary, both at the legislature and in the public square, on the effects of various tax and budget proposals.

Keli'i Akina
Grassroot Institute of Hawaii
1050 Bishop St. #508
Honolulu, HI 96813

C. Statement of Interest of Retail Merchants of Hawaii

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization that is committed to supporting the retail industry and business in general in Hawaii. We strongly do not support the misleading ballot question “Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?” Retailers adamantly do not support this new tax.

Tina Yamaki
Retail Merchants of Hawaii
3610 Waialae Ave.
Honolulu, HI 96816

D. Statement of Interest of Waikiki Improvement Association

The Waikīkī Improvement Association is a non-profit 501(c)(4) organization, dedicated to making Waikīkī a great place to invest, work, live and play.

The Waikīkī Improvement Association has major concerns regarding the proposed amendment to the Constitution of the State of Hawaii to allow the Legislature to impose real property tax on investment property to support public education.

The language of the ballot measure is vague and misleading – it does not define “investment real property” nor does the ballot measure set forth any limits on the “the taxes” the Legislature may impose. Further the ballot measure does not insure that any additional money would be available for public education. The legislature may simply reallocate existing state

funding for education resulting in little or no net gain in funding. The proposed amendment is poorly written, vague and misleading. Passage of the amendment will not necessarily accomplish the stated purpose.

Rick Egged
Waikīkī Improvement Association
2250 Kalākaua Ave. Suite 315
Honolulu, Hawaii 96815

E. Statement of Interest of Aloha Petroleum, Ltd.

Aloha Petroleum, Ltd. (“Aloha”) opposes the 2018 General Election ballot measure seeking to amend the Constitution of the State of Hawaii to allow the Legislature to impose real property tax on investment property to support public education.

Aloha has been in business since 1977, is locally-operated and employs roughly 800 workers in Hawaii. Aloha owns and leases real property in the state of Hawaii to operate gas stations, convenience stores, quick service restaurants and fuel terminals. The language of the ballot measure is vague and misleading – it does not define “investment real property” nor does the ballot measure set forth any limits on the “surcharge” the Legislature may impose. Accordingly, the ballot measure is ill-conceived, poorly written, vague and misleading and, if passed, will almost certainly increase the cost of living and doing business in Hawaii.

The ballot measure would also amend the Hawaii State Constitution to give the Legislature a power that it does not currently have, namely the power to tax real property. The Hawaii State Constitution expressly provides that “**all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties**, with the exception of the county of Kalawao.” This ballot measure would carve away at the counties’ “exclusive” power to tax real property and their primary source of revenue, and would create a bad precedent to use this taxing power to fund other special interests in Hawaii.

Thomas A. Grimes
Aloha Petroleum, Ltd.
1132 Bishop Street
Honolulu, Hawaii 96813

F. Statement of Interest of Castle & Cooke Homes Hawaii, Inc.

Castle & Cooke Homes Hawaii, Inc. is a Hawaii corporation which continues 50 years of Hawaii homebuilding operations of our parent company, Castle & Cooke, Inc. which was established in Hawaii in 1851. Castle & Cooke has diversified Hawaii operations to meet the needs of the people of Hawaii in development of master planned communities and commercial and agricultural related operations.

As a corporate citizen, Castle & Cooke appreciates that funding public education is an investment in the future of Hawaii and its residents. However, good intention and a noble cause do not obviate the need for strict scrutiny and healthy distrust of any proposal that would loosen constitutional checks and balances on the taxing authority of government. As funding needs and spending increase, anyone could someday become a “safe” target for future taxes.

Additional tax burdens will likely have unintended negative impacts on residents, businesses and the economy. Based upon the vague and undefined terms and parameters of the ballot question, the potential scope, reach and impacts of the new tax do not appear to have been thought through or quantified. What is “investment real property” and what are the parameters of support of “public education”?

Responsible governance and informed ballot voting might be better fostered if researched and vetted details and consequences of a new tax preceded a constitutional amendment granting authority to implement the tax. A ballot question granting very broad taxing authority based on vague, undefined terms may confuse or mislead voters and open the door to unsound policy decisions.

Harry A. Saunders
Castle & Cooke Homes Hawaii, Inc.
680 Iwilei Road, Suite 510
Honolulu, HI 96817

G. Statement of Interest of Fergus & Company

Fergus & Company is a Hawaii-based corporation with operations on Oahu and Maui, engaged in commercial real estate investment and development and alternative energy investment.

As active community members, we support fair taxation of businesses to fund the activities of government. However, the proposed ballot measure as drafted is not only bad policy, it is so vaguely written that, if passed, it could result in increased taxation well beyond the intent of the legislature and the funds could be used for anything, not specifically public education.

We support other ways to raise tax revenues, such as taxing income earned by REITs in Hawaii and using sales values for real property assessment of large properties. Otherwise, we believe the tax system in place is adequate if properly managed and enforced by our taxing agency.

Michael J. Fergus
Fergus & Company
A Limited Liability Company
125 Merchant Street, Suite 200
Honolulu, HI 96813

H. Statement of Interest of Kilpatrick Enterprises, Inc.

We support the Amicus Brief as put forth by the Tax Foundation of Hawaii and are willing to be listed as such a supporter.

And should we all prevail in court, it is hoped that the Supreme Court of Hawaii will further instruct those who might draft replacement ballot measures in the future to be very clear and specific on the descriptions used and avoid “wordsmithing”.

J. Douglas Kilpatrick III
Kilpatrick Enterprises, Inc.
3880 Lurline Drive
Honolulu, Hawaii 96816

I. Statement of Interest of Mulkern Landscaping & Nursery

Mulkern Landscaping & Nursery has been in business in Hawaii since 1975. We are family owned and operated.

We are opposed to the constitutional amendment to tax real property to fund education proposed for the November 2018 election. We are concerned that the wording is vague and does not state specifically how the tax will be applied and in what amount. Further, it also does not specify how the funds would be used to improve the quality of education in our public schools.

Kevin J. and Susan S. Mulkern
Mulkern Landscaping & Nursery
7040 Hawaii Kai Drive
P. O. Box 25491
Honolulu, HI 96825

J. Statement of Interest of Waltz Engineering, Inc.

Waltz Engineering is a 32-year old family-owned and operated small business employing 18 individuals in Hawaii. We are concerned that this proposed ballot measure is deceptive and misleading and would, if adopted, lead to untoward increases in Hawaii's cost of living for our business, their employees, and their families.

Waltz Engineering, Inc. is interested in assuring that voters are not misled by a ballot summary and ballot question that do not once mention "tax" or "taxation" when the substantive effect of the measure is to grant sweeping new powers to the State Legislature in relation to real property taxation in Hawaii.

Lorinda L.S. Waltz
Waltz Engineering
500 Alakawa Street, Building 119
Honolulu, HI 96817

K. Statement of Interest of Bruce and Dede Heiman

Bruce Heiman, Ph. D., is a professor of international business at San Francisco State University. Dede Heiman owns and manages real property on Oahu. We are concerned that not only is the ballot question presented by SB 2922 misleading, but it may cause serious unintended negative consequences to renters, homeowners, and investors/investment in Hawaii.

Bruce and Dede Heiman
San Mateo, CA 94402

L. Statement of Interest of Barbara Marumoto-Coons

I am a taxpayer and registered voter. I was a delegate to the 1978 Constitutional Convention.

I am concerned that the ballot proposal is misleading. It does not mention taxes but instead, a "surcharge" on investment properties, a term not generally used by the public.

I am concerned about renters. The proposal does not state that it will affect more people than just owners of investment properties. Voters assume that only owners will pay this state property tax. It is not apparent that it will be passed on to renters of almost all homes and apartments who may then see increases in their rents.

I am concerned about businesses. Businesses - stores, offices, restaurants - will pay more rent. Because it is not clearly stated that lessors and lessees can pass the tax on, lessees and sub-lessees will end up being charged more for this new state surcharge - not just owners.

I am concerned because we are all consumers. The untold and unforeseen consequences of this amendment change will result in higher prices because we currently allow business owners, renters, and sub-renters to pass on higher taxes.

I am concerned that this state surcharge will affect our tourism industry. Hotel guests and vacation rental users will pay more taxes when their properties are charged higher state property taxes.

I am concerned about the counties because the amendment will take away each county's prerogative to control its principal means of revenue - the property tax. The counties will lose control of their revenues and cannot budget for out years.

It is not apparent how high or what percentage the Hawaii State Legislature will enact for education. Exactly what are we voting for?

The constitutional proposal does not clarify that currently the counties do not have a role in education and that the proposal will allow the State to dip into county property tax revenues for the statewide education system. Instead the Legislature should appropriate sufficient funds for public education.

Barbara Marumoto-Coons
Honolulu, HI 96821

M. Statement of Interest of Anson Rego

I am an attorney, registered voter, and taxpayer. I own investment real estate. I am concerned because the proposed amendment is vague and therefore subject to misinterpretation or several interpretations, as it fails to clearly state specifically and procedurally how the tax works and in what amount.

Anson Rego
85-833 Farrington Highway
Waianae, HI 96792

N. Statement of Interest of Willis Yap

I am opposed to the initiative allowing the State of Hawaii Legislature to establish a surcharge on investment real property to be used to support public education. I'm an

independent businessman with a couple of rentals that provide me with much needed retirement income and am wary of any legislative attempt to tax that income under the guise of a surcharge. The initiative is discriminatory as education is a fundamental goal whose benefit and cost burden should be shared by all citizens of Hawaii, not just those who own real estate. It's shameful that our legislature doesn't have the moral courage to face up to its responsibilities and fund education properly. Aloha.

Willis Yap
934 8th Avenue
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document will be served on counsel of record indicated below through JEFS upon the filing hereof:

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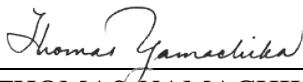
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DATED: Honolulu, Hawai'i, September 27, 2018.



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Attorney for Movants