

**Electronically Filed
Supreme Court
SCPW-18-0000733
19-OCT-2018
03:18 PM**

SCPW-18-0000733

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

CITY AND COUNTY OF HONOLULU; COUNTY OF HAWAI‘I;
COUNTY OF MAUI; COUNTY OF KAUA‘I, Petitioners,

vs.

STATE OF HAWAI‘I; SCOTT T. NAGO, in his capacity as
Chief Election Officer, Respondents.

ORIGINAL PROCEEDING
(CIVIL NO. 18-1-1326-08)

ORDER REGARDING PETITION FOR EXTRAORDINARY WRIT
SEEKING PRE-ELECTION RELIEF

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

The court has considered petitioners' petition for extraordinary writ seeking pre-election relief, filed on September 26, 2018, respondents' answer to the petition for extraordinary writ seeking pre-election relief, filed on October 11, 2018, petitioners' reply memorandum, filed on October 16, 2018, the respective supporting documents, and the record, and has heard this matter by oral argument on October 18, 2018. During the 2018 legislative session, the Hawai'i State Legislature passed Senate Bill 2922, S.D. 1, H.D. 1, which proposed amendments to articles VIII and X of the Hawai'i Constitution and set forth the ballot question to be submitted to the electorate in order for the amendments to be

approved or rejected. Petitioners challenge the ballot question as unclear and misleading in violation of Hawaii Revised Statutes (HRS) § 11-118.5 (2011), which provides in relevant part, "The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive." The ballot question is as follows:

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

The proposed constitutional amendments to article VIII, section 3 and article X, section 1 of the Hawai'i Constitution would provide that the exclusive authority of the counties¹ over functions, powers and duties relating to the taxation of real property be amended to also authorize the state legislature to impose a "surcharge on investment real property" to support public education. The ballot question as written does not comply with the requirements of HRS § 11-118.5 that the language and meaning of the ballot question be clear and not misleading. Accordingly,

IT IS HEREBY ORDERED that the ballot question is declared invalid. The Chief Election Officer shall issue a public proclamation stating that the ballot question is invalid and that any votes for or against the measure will not be counted and will have no impact. A written opinion will follow.

DATED: Honolulu, Hawai'i, October 19, 2018.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



¹ The County of Kalawao is excluded from this grant of exclusive authority. See Haw. Const. art. VIII, § 3.