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March 12, 2022

TESTIMONY STRONGLY SUGGESTING MODIFICATIONS TO SB 3089 SD2

House Committee on Pandemic & Disaster Preparedness
Chair: Chair Linda Ichiyama
Vice Chair Stacelynn K. M. Eli

Hearing: SB 3089 SD2: Thursday, March 3, 2022 at 9:30 a.m.

Dear Chairman, Vice Chairman and Committee Members,

My name is Jim Hochberg and I am a civil rights attorney seeking to protect the Constitutional Rights of the people of Hawaii in the federal and state courts in Hawaii. I have practiced law in Hawaii since 1984 (38 years). With respect to SB 3089 SD2, I propose amendment to the language in the bill¹ to protect the people of Hawaii from abuse of emergency powers. I agree that Chapter 127A must be amended to ensure that e emergency powers are not abused. However, in order to protect the proper balance between the political power of government and the political power of the people being governed, revising Chapter 127A must give way to revising the Constitution of the State of Hawaii.

I propose that you amend SB 3089 SD2 to offer a Constitutional Amendment to add to Article 1, Section 1, new language to state that

any exercise of emergency powers must automatically terminate on the 60th day after the initiation of the first action pursuant to emergency power unless both the executive and legislative branches act to extend the emergency powers for that emergency.

I come to this conclusion as the result of litigating challenges to the exercise of emergency powers since 2020 based on the COVID 19 emergency.

¹ Perhaps providing for the amendment to the Hawaii Constitution should be put forth in a different bill that relates to Constitutional Amendments. If that is the case, this bill should not pass out of your committee because of the exacerbation of the negative effect it will have on the tension between the emergency powers and the people of Hawaii.

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Many people of Hawaii have sued to challenge HRS, Chapter 127A (Emergency Powers) in court numerous times since it was employed in the context of COVID 19, because the many residents believe that Hawaii's political leaders have abused those powers. I have litigated two such cases here since 2020. I offer this testimony based on the understanding I have gained in that process concerning how the courts are forced to analyze the challenges to government power under Chapter 127A.

SB 3089 SD2 states that the "purpose of this Act is to . . . further the goals of transparency and democratic accountability within our constitutional system" concerning state and county emergency management authority.

SB 3089 SD2 goes on to make several amendments to HRS Chapter 127A, including to Section 127A-14(d), (e) & (f). Section 127A-14(d) currently demands the automatic termination of the emergency powers on the sixtieth day after the proclamation of emergency. Several of the many challenges to the continuation of emergency powers have addressed this point. SB 3089 SD2 takes the completely wrong approach by weakening the protections of the people's political power rather than protecting the political power of the people of Hawaii.

While emergencies can require drastic action, such action must be clearly and purposefully limited to that period of time which is absolutely necessary to protect against infringement on our fundamental rights. The political leadership in many other countries around the world (and even many states within our United States of America) determined last year and earlier this year that the emergency from COVID 19 has ended, and these governments have eliminated the drastic emergency actions in their jurisdiction. Hawaii continues to exercise emergency powers concerning COVID 19 when it is unnecessary with 99% of current COVID 19 cases being omicron. SB 3089 SD2 takes the wrong approach to re-evaluating the statutory language to end emergency powers.

I agree that Chapter 127A must be amended to ensure that e emergency powers are not abused. However, in order to protect the proper balance between the political power of government and the political power of the people being governed, revising Chapter 127A must give way to revising the Constitution of the State of Hawaii. This is because judges must look at a statute in the context of the entire chapter in which it occurs. In this case, Chapter 127A broadly empowers the governor and

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