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## Hawaii News

# Bill to make judges repeat confirmation is advanced

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Prominent lawyers including former Attorney General Margery Bronster turned out in force at a hearing last week to oppose requiring Hawaii judges seeking to serve more than one term on the bench to be reconfirmed by the state Senate.

Candidates applying to be judges are nominated by the governor or the chief justice of the state Supreme Court, and must win the consent of the Senate for their initial terms. Currently, the nine-member state Judicial Selection Commission then decides whether those judges are retained after their terms expire.

For the past two years lawmakers have considered proposals for a constitutional amendment that would require that sitting judges win the consent of the Senate before they can remain on the bench after their initial terms.

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That idea has been almost universally rejected by the Hawaii legal community. Opponents testified Wednesday at a hearing by the Senate Committee on Judiciary and Labor that reconfirmation hearings would inject politics into the judicial process.

Senate Bill 673 proposing the constitutional amendment on judges' retention was approved by the Judiciary Committee in a 3-2 vote Wednesday, with Judiciary Chairman Gil Keith-Agaran and Sens. Karl Rhoads and Donna Mercado Kim voting in favor of the bill, and Sens. Laura Thielen and Mike Gabbard voting against it.

The measure now goes to the Senate Ways and Means Committee for further consideration. If it is approved by the Legislature, the voters would be asked during the 2018 election whether they approve of the constitutional amendment requiring reconfirmation.

Some opponents expressed worry that judges might feel pressured to change their rulings on controversial cases if they knew their reconfirmations would be put to a Senate vote.

Honolulu lawyer Jeffrey Portnoy, who is also a member of the University of Hawaii Board of Regents, invited lawmakers to consider the possible impact if such a retention proposal were adopted for federal judges today given the current politics at the national level.

"And who knows what the politics of this state will be five years from now or 10 years from now? We have a need for a completely independent judiciary.

"One would have to suggest that maybe a bill like this is motivated by legitimate disagreement with a decision by a court or a judge, but that should not change the way we go through retention," Portnoy said.

Bronster told the Judiciary Committee that a confirmation hearing can be influenced by a disgruntled lawyer who lost a case, or a litigant who wants to influence the outcome of a pending case. She cited her own unsuccessful effort to be reconfirmed as state Attorney General during Gov. Ben Cayetano's administration.

The only person to publicly testify against her reconfirmation was William McCorriston, a lawyer who represented Bishop Estate at a time when Bronster as attorney general was pursuing a case against the estate, she said. The state Senate voted to reject her nomination in 1999.

Also testifying against the proposed constitutional amendment was state Democratic Party Chairman Tim Vandever, who argued that "we must have an independent judiciary and be very wary of politicizing the process."

The proposed constitutional amendment creating the reconfirmation process for judges is one of several proposals that Hawaii Supreme Court Chief Justice Mark

Recktenwald has identified that could pose threats to the independence of the state Judiciary.

Other proposals that raised concern are measures lawmakers considered last year to reduce judges' pensions and to require candidates to run for election in order to become judges.

Recktenwald has said that taken together, those actions by the Legislature "certainly are grounds for concern for us."

"Judicial independence is sort of the foundation of what we do, and our ability to be able to decide cases without outside influence, without pressure and only based on applying the law to the facts is, I think, what makes us worthy of trust and worthy of the public's trust," he said.

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