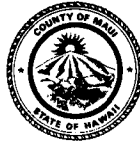


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Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

May 26, 2016

Ms. Vanessa Chong, Executive Director
ACLU of Hawai'i
P.O. Box 3410
Honolulu, Hawaii 96801

BY U.S. MAIL AND EMAIL TO legislative@acluhawaii.org

Dear Ms. Chong:

SUBJECT: **PROPOSED CHARTER AMENDMENTS RESTRICTING
COUNTY OFFICIALS' POLITICAL ACTIVITY**
(PIA-10(10); PIA-10(13))

The Maui County Council's Policy and Intergovernmental Affairs Committee is considering two proposed Charter amendments that would place restrictions on some political activities of public employees. The attached resolutions would propose amendments to the County Charter that would, respectively, prohibit:

- (1) the County's top civil attorney (the Corporation Counsel), top criminal attorney (the Prosecuting Attorney), and their respective deputies from aiding in the election or defeat of any candidate for County elected office (PIA-10(10)); and
- (2) County employees from making campaign contributions to support or oppose any candidate for County elected office (PIA-10(13)).

In different ways, the two proposals seek to implement the declared policy of the Code of Ethics, which Section 10-1 of the Charter sets forth as follows:

Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

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It is clear, however, these proposals raise First Amendment and perhaps other constitutional and policy issues. The body of case law addressing the constitutional issues appears to be complex and varied across the country. The Committee would welcome your perspective on the constitutional and policy merits of each of the proposed Charter amendments.

The County's Policy and Intergovernmental Affairs Committee will take up the resolutions at its meeting commencing at 9:00 a.m. on June 1, 2016, at the Kalana O Maui Building, 200 S. High Street, in Wailuku, Maui, Hawaii.

We would like to invite you or a representative to attend the meeting or submit written testimony to the Committee to aid in its consideration of these proposals.

To ensure efficient processing, please include the relevant Committee item numbers in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Kimberley Willenbrink at 808-270-7761, or Tammy Frias at 808-270-8005).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Victorino". The signature is fluid and cursive, with a large initial "M" and a distinct "V".

MICHAEL P. VICTORINO, Chair
Policy and Intergovernmental Affairs
Committee

pia:ltr:010(10 and 13)a04:kcw

Attachments

Resolution

No. _____

PROPOSING AN AMENDMENT TO THE
REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, TO PROHIBIT THE
CORPORATION COUNSEL AND THE
PROSECUTING ATTORNEY, AND THEIR
DEPUTIES, FROM AIDING IN THE ELECTION
OR DEFEAT OF ANY CANDIDATE FOR COUNTY
PUBLIC OFFICE

WHEREAS, to maintain neutrality, promote public trust, avoid undue political influence, and properly exercise the powers, duties, and functions of the Office of the County Auditor, Section 3-9.1(3) of the Revised Charter of the County of Maui (1983), as amended, provides: "Except for exercising the right to vote, neither the county auditor nor any staff member of the office of the county auditor shall support, advocate, or aid in the election or defeat of any candidate for county public office."; and

WHEREAS, attorneys within the Department of the Corporation Counsel and the Department of the Prosecuting Attorney are charged with important, confidential, and politically sensitive responsibilities that warrant similar safeguards with respect to the conduct of the Corporation Counsel, Prosecuting Attorney, and their respective deputies; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That, pursuant to Section 14-1(1), Revised Charter of the County of Maui (1983), as amended, it hereby proposes that Section 8-2.2 of the Charter, pertaining to the Corporation Counsel, be amended to read as follows:

"Section 8-2.2. Corporation Counsel.

1. The corporation counsel shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The corporation counsel shall be an attorney licensed to practice and in good

Resolution No. _____

standing before the Supreme Court of the State and shall have engaged in the practice of law for at least three years.

2. Except for exercising the right to vote, neither the corporation counsel nor any deputy corporation counsel shall support, advocate, or aid in the election or defeat of any candidate for county public office.”; and

2. That, pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-3.2 of the Charter, pertaining to the Prosecuting Attorney, be amended to read as follows:

“Section 8-3.2. Prosecuting Attorney.

1. The prosecuting attorney shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least three years.

2. Except for exercising the right to vote, neither the prosecuting attorney nor any deputy prosecuting attorney shall support, advocate, or aid in the election or defeat of any candidate for county public office.”; and

3. That new material is underscored; and

4. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election; and

5. That, pursuant to Section 14-2(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

Shall the Charter be amended to prohibit the Corporation Counsel and the Prosecuting Attorney, and their deputies, from supporting, advocating, or aiding in the election or defeat of any candidate for

Resolution No. _____

County public office, except for exercising the right to vote?; and

6. That, pursuant to Section 14-2(2) of the Charter, the County Clerk publish the proposed amendment in a newspaper of general circulation; and

7. That, pursuant to Section 14-2(3) of the Charter, upon approval by the majority of the voters voting on the proposed amendment and upon official certification of such result, the amendment proposed herein shall take effect; and

8. That certified copies of this resolution be transmitted to the Mayor and the County Clerk.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

paf:cmn:16-001a