



# 1978 Hawaii State Constitution

## I. History

Constitutional Conventions have been relatively commonplace throughout Hawaii's young statehood. Delegates to the 1949 convention drafted what would, in 1959, be accepted by the US Congress and President Eisenhower as the first official constitution for the newly admitted US State of Hawaii. A decade later, another Constitutional Convention was called to address the deficiencies of the 1949 document, and a second Constitutional Convention in 1978 finalized the Constitution that is still operating today. According to state law, every ten years Hawaiians get to vote on whether or not to call for a new Constitutional Convention.

Attempts to rewrite the Constitution of 1978 were defeated at the ballot in 1986, but emerged victorious in 1996. However, the Hawaii Supreme Court threw out the results of the 1996 Con Con ballot question after deciding that blank votes counted as "no" votes. As required by law, voters were asked whether or not to call a Constitutional Convention in 2008. In rejecting the ballot measure, Hawaiians reasserted their confidence in the Constitution written at the 1978 convention.

## II. Summary

In the years leading up to and immediately following statehood, Hawaii's constitution reflected the distinct attributes of the new island state and its path towards a workable, uniquely Hawaiian state government. Just ten years after statehood, Hawaii convened its first Constitutional Convention to make revisions to the flaws in the original constitutions reapportionment mechanism. "Ten years later", writes Dan Nakaso in a *Time* magazine article about the 2008 Con Con ballot question,

"the islands' second Con Con began with no particular agenda, just a feeling in the post-Watergate era that Hawaii's government needed to be more accountable to its people."<sup>1</sup>

The 1978 Constitutional Convention is generally considered to be a major victory for ethnic Hawaiians, who had been engaged in a sort of cultural renaissance and rediscovery. Hawaiian joined English as the official language of the state, and the Office of Hawaiian Affairs was created to help preserve native culture.

## III. Popularity

The durability of the 1978 Constitution, is generally considered to be a testament to its continued popularity, particularly among natives, and especially given Hawaii's history of openness to the Constitutional Convention process. As mentioned above, Hawaiians have twice rejected calls to rewrite the 1978 Constitution. The 1986 ballot question received little support, and was soundly defeated at the ballot box. The 1996 vote narrowly succeeded, but was tossed out by the State Supreme Court on a technicality, and the subsequent revote on a Con Con was defeated in 1998. Finally, in 2008 Hawaiians voted (65%) to retain the Constitution from the 1978 Convention.

---

<sup>1</sup> Nakaso, Dana K. "Should Hawaii rewrite its Constitution-Again?." 30 Oct. 2008. 30 June 2009  
<<http://www.time.com/time/nation/article/0,8599,1855215,00.html>>.

#### IV. Key Features

The 1978 Convention established term limits for state office holders, provided a requirement for an annual balanced budget, laid the groundwork for the return of federal land such as the island of Kaho'olawe, and created the Office of Hawaiian Affairs.<sup>2</sup>

Among other reforms, the 1978 Convention is credited with making the following changes:

- *Bill of Rights: incorporated a right to privacy, requirement of a twelve-person jury in criminal trials and creation of independent counsel for grand juries;*
- *The period between the primary and the general was expanded, and open primaries were reinstated;*
- *Staggered senate terms added, requirements for open meetings, and a mandated legislative recess period added; limits to governor and lieutenant governor's terms to two consecutive four year terms; a judicial selection commission and a new intermediate court of appeals was created.*<sup>3</sup>

#### V. Criticisms

According to paid advertisements and media coverage of the 2008 Con Con campaign, the motivating forces behind revising the 1978 constitution via a Constitutional Convention appear to have been such kitchen table issues as education and crime. This is in contrast to the more "grand-scheme" factors motivating Con Con campaigns in other states, like political reform in Michigan or budget reform in California.

Hawaii's education system, whereby the State Board of Education is governed by board members who are elected statewide, is under particular criticism for being ineffective. Hawaii State Attorney General even argued this as the central reason to hold a Con Con, saying

*"The number one most important issue this Con Con could take up is education... This could be the education Con Con. There's virtually no one that believes the current system we have--an elected statewide school board--is the best way to govern the board of education... Local school boards, make it a cabinet level department, island by island. The only way we're ever going to have that opportunity to fundamentally change the way the department of education is governed is through a Con Con."*<sup>4</sup>

In the same interview, the Attorney General stressed the need to toughen Hawaii's criminal justice system, which he describes as among the most lax in the nation.

---

<sup>2</sup> "Establishment of OHA." OHA.org. 21 July 2003. Office of Hawaiian Affairs. 30 June 2009 <[http:// www.oha.org/index.php?option=com\\_content&task=view&id=25&Itemid=118](http://www.oha.org/index.php?option=com_content&task=view&id=25&Itemid=118)>.

<sup>3</sup> "Vote in Opposition to a Constitutional Convention: Explanation." HawaiiAlliance.org. Hawaii Alliance. 1 July 2009 <[www.hawaiialliance.org/media/uploads/2008/09/vote.pdf](http://www.hawaiialliance.org/media/uploads/2008/09/vote.pdf)>.

<sup>4</sup> Belatti, Della S., and Mark Bennett. Interview; October 2008. News Behind the News. 25 June 2009 <<http://hawaiiiconcon.ning.com/video/2056472:Video:8951>>.

## **VI. Key Lessons**

- Even when the state functions well, Hawaiians have historically embraced the principle that government should be regularly opened up for broad review. This seems to be a natural outgrowth from what is perhaps a uniquely Hawaiian spirit of openness, confidence, and community.