WHAT YOUR VOTE MEANS: A “YES” vote means you are IN FAVOR of the amendment and the State Constitution or County Charter will be changed as proposed. A “NO” vote means you are AGAINST the amendment and the State Constitution or County Charter will not be changed as proposed.

In Hawai‘i, proposed constitutional amendments by the Hawai‘i State Legislature must be adopted by a two-thirds vote in each chamber during a legislative session or by a majority vote of each chamber in two successive legislative sessions. A constitutional amendment is approved by voters if two qualifications are met: (1) Yes votes receive a majority of votes cast on that particular proposal, excluding blank and over votes, AND (2) Yes votes receive at least fifty percent (50%) of the total votes cast, including blank and over votes in that election. This is known as a double majority.

CON AMEND #1, Relating to Increasing the Threshold Value in Controversy Requirement for Jury Trials: “Shall the threshold value in controversy requirement for jury trials in civil cases at common law be increased from $5,000 to $10,000?”

WHAT YOUR VOTE MEANS:
A “YES” vote means you are IN FAVOR of the amendment to increase the threshold value in controversy requirement for jury trials in civil cases at common law to $10,000.
A “NO” vote means you are AGAINST the amendment and the threshold value will remain at $5,000.

BACKGROUND: The purpose of this measure is to propose an amendment to Article I, Section 13, of the Constitution of the State of Hawai‘i to increase the threshold value in controversy requirement for jury trials in civil cases at common law from $5,000 to $10,000.

The Seventh Amendment to the U.S. Constitution preserves the right to trial by jury in certain civil cases. It also sets a nominal threshold “value in controversy” of $20, which was added in a closed Senate session with no explanation nor arguments for or against. Unlike most provisions of the Bill of Rights, the Seventh Amendment has never been incorporated (i.e., applied to the states). However, almost every state voluntarily complies with the Amendment’s provision for jury trials in civil cases. The vast majority of states (41), have a threshold value at $20 or zero. Only two states, Louisiana ($50,000) and Maryland ($15,000), have a threshold value higher than Hawai‘i.

The proposed amendment will be the third time voters will vote on a threshold value of controversy for jury trials in civil cases. Voters approved an increase in 1978 from $100 to $1,000, and in 1988 from $1,000 to $5,000.\[^1\]

All jury trials are held in state Circuit Court. District Court has trials by judge, which are handled more expeditiously and at less cost than in Circuit Court. Circuit Courts share concurrent jurisdiction with District Courts in civil non-jury cases in which the amounts in controversy are between $10,000 and $40,000\[^2\]. Increasing the threshold value may lessen costs to the parties involved with matters not involving large sums of money.

At the end of the 2014-15 fiscal year, 13,164 (75%) of all 17,589 Circuit Court filings were civil cases; 4,424 (25%) were criminal cases. A total of 53,218 cases were pending, of which 12,375 (23%) were criminal cases. The number of pending cases remained steady the past three years but is significantly more than ten years ago (32,505 in FY2004-05) \[^3\].

SUPPORTERS SAY:
• A higher threshold means fewer jury trials which will lower costs to taxpayers and the parties involved.
• Fewer jury trials will speed up civil cases and unclog court dockets.
• Fewer jury trials will reduce the number of jurors needed.

OPPONENTS SAY:
• A higher threshold in civil cases robs state residents of their constitutional right to a trial before a jury of their peers and tells people that their rights are worth less because the amount in controversy is less.
• The increasing use of alternative dispute resolution such as arbitration and mediation means fewer civil cases go to trial.
• Hawaii is one of a handful of states that limits a citizen’s constitutional right to a trial by jury. Only two states, Louisiana and Maryland, have a jury trial threshold greater than Hawai‘i.

1 Inter-university Consortium for Political and Social Research, “Referenda and Primary Election Materials,” Part 50: Referenda Elections for Hawaii, p. 26, 49
2 Hawai‘i State Judiciary, “Overview of the Hawai‘i Judicial System,” www.courts.state.hi.us
CON AMEND #2, Relating to the Disposition of Excess Revenues: “Shall the legislature be provided, when the state general fund balance at the close of each of two successive fiscal years exceeds five per cent of the general fund revenues for each of the two fiscal years, the additional alternatives of appropriating general funds for the pre-payment of either or both of the following:

1. Debt service for general obligation bonds issued by the State; or
2. Pension or other post-employment benefit liabilities accrued for state employees?”

WHAT YOUR VOTE MEANS:
A “YES” vote means you are IN FAVOR of adding bond and pension payments as alternative dispositions of excess general fund revenues.
A “NO” vote means you are AGAINST the amendment and keeping only the existing dispositions of excess general fund revenues.

BACKGROUND: Hawai‘i Constitutional Amendment #2 (SB2554) is a legislatively initiated amendment on the November 8, 2016 ballot to change Article VII, Section 6 of the Hawai‘i Constitution. It expands the options to appropriate excess general fund revenues when the state has a budget surplus for two years in a row, and changes the allowable uses for disposing of excess revenue.

Currently, the legislature must dispose of excess revenue in one of two ways (Article VII, section 6):
1. Provide a tax refund or tax credit; OR
2. Make a deposit into one or more funds, which shall serve as temporary supplemental sources of funding for the State in times of emergency, economic downturn, or unforeseen reduction in revenue.

The proposed amendment adds another option which has two sub-options, one or both of which may be chosen:
3a. Pre-pay debt service for general obligation bonds issued by the State; and/or
3b. Pre-pay pension or other post-employment benefit liabilities accrued for state employees.

“Pre-payment” is defined in the amendment as a “payment for a fiscal year in excess of the minimum payment required for that fiscal year by bond covenant or law.”

Excess revenue occurs when the state general fund balance at the close of each of two successive fiscal years exceeds five per cent of the general fund revenues for each of the two fiscal years. The state general fund balances have exceeded five percent in fiscal years 2013, 2014, 2015, and 2016.[4]

In June 2016, for example, the state appropriated excess revenue to the Emergency and Budget Reserve Fund (EBRF) for fiscal years 2015-2016 to comply with Article VII, section 6.[5]

The Council on Revenues, however, is forecasting smaller state budget surpluses in future years, which means that the conditions that trigger Article VII, section 6 might not be met.[6]

The proposed amendment also makes clear that the legislature must enact statutory provisions to establish the conditions in order to dispose of the excess revenue, meaning that the conditions will be vetted through the legislative process with the opportunity for public input.

Voters approved in 1978 an amendment to Article VII Section 6. The amendment required the legislature to dispose of excess revenue through a tax rebate or credit. The legislature approved a tax rebate in 1992, 1994, and 2010.[7]

In 2010 voters approved the Hawai‘i Tax Rebates Amendment, SB2807. This amendment allowed the legislature to dispose of excess revenue as a tax rebate/credit or payment to an emergency reserve fund.

SUPPORTERS SAY:
• The State will be able to apply “excess revenue” to meet State pension and bond fund debt service obligations.
• “Prepayment” of pension and debt service obligations will reduce fixed cost for future generations, which could provide long-term savings for taxpayers.
• The public will have an opportunity to weigh in on the conditions for disposing of the excess revenue through the legislative process.

The League of Women Voters, a nonpartisan, political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.
OPPONENTS SAY:
• Taxpayers might not receive tax refunds/credits when there is excess revenue.
• The State would not be required to dispose of excess revenue into an emergency reserve fund, which provides fiscal stability and benefits the state’s credit rating.
• The State could take financial risks or postpone making difficult budget decisions based on the prospect of using excess revenue to pre-pay pensions and debt service on bonds.
• The State should restructure the budget to meet state obligations rather than rely on using excess revenue, which might not be available every year.

5 Act 064 SB2555

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TEXT OF PROPOSED CONSTITUTIONAL CHANGES

Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

CON AMEND #1, Relating to Increasing the Threshold Value in Controversy Requirement for Jury Trials

Article I, section 13 of the Constitution of the State of Hawaii is amended to read as follows:

“TRIAL BY JURY, CIVIL CASES.

Section 13. In suits at common law where the value in controversy shall exceed five thousand dollars, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury.”

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CON AMEND #2, Relating to the Disposition of Excess Revenues

Article VII, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

“Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide:
(1) Provide for a tax refund or tax credit to the taxpayers of the State, as provided by law;
(2) Make a deposit into one or more funds, as provided by law, which shall serve as temporary supplemental sources of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue, as provided by law;
(3) Appropriate general funds for the pre-payment of either or both of the following, as provided by law:
   (A) Debt service for general obligation bonds issued by the State; or
   (B) Pension or other post-employment benefit liabilities accrued for state employees.
For the purpose of this paragraph, “pre-payment” means a payment for a fiscal year in excess of the minimum payment required for that fiscal year by bond covenant or law.”

For more election information, visit our websites
www.vote411.org and www.lwv-hawaii.com

General Election ♦ Tuesday, November 8, 2016 ♦ polls open 7 a.m. to 6 p.m.
October 10 ♦ Last day to register to vote
November 1 ♦ Last day to request an absentee ballot
October 25 – November 5 ♦ Period for early walk-in voting-in-person