



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
CHIEF ELECTION OFFICER

May 23, 2012

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: STATUS OF OPERATIONS

The Office of Elections' normal preparations for the 2012 Elections have been impacted due to litigation regarding the decennial reapportionment plan. The purpose of this report is to discuss that impact and to provide a progress report on our overall preparation for the 2012 Elections.

Reapportionment

As previously reported to the Elections Commission, on January 4, 2012, the Hawaii Supreme Court invalidated the most recent reapportionment plan and ordered the Reapportionment Commission to develop a new one that properly extracted non-residents from the population base that would be used to draw the boundaries for the state senate and state house seats.

The Office of ElectionS, in coordination with the county clerks, submitted testimony to the Reapportionment Commission on January 30, 2012, explaining the impact of a delay in its issuing a new plan (i.e. (1) Without the boundaries for each seat, we would not be able to issue nomination papers to prospective candidates; (2) Without the boundaries, we would not be able to proceed with the drawing of precinct lines; (3) Without precincts, we would not be able to determine and design the various ballot types which contain the specific contests that voters in a precinct can vote on; and (4) Without precincts we could not be able to assign voters to their proper polling places or send them the traditional "yellow card" notice telling them where to vote on election day, so as to avoid voter confusion).

While we had asked for the plan to be completed no later than February 29, 2012, the Reapportionment Commission was not able to adopt its new plan until March 8, 2012. However, our preparations for the elections were put into

more jeopardy when new litigation regarding the March 8, 2012 plan was initiated. Specifically, on April 6, 2012, nearly a month after we had started working with the March 8, 2012 plan, a complaint was filed in the U.S. District Court for the District of Hawaii challenging the March 8, 2012 plan and seeking for the formulation and implementation of a new reapportionment plan. A motion for preliminary injunction seeking the revision of the plan was scheduled for May 18, 2012.

The Office of Elections took the position that a change in the reapportionment plan at this late date would compromise our ability to conduct the elections. Staff time was consumed with having to address this risk to our elections. Computer Services Section Head David Rosenbrock, who had served as the Reapportionment Commission Project Manager, was enlisted by the Department of the Attorney General to assist it with explaining the technical details of the reapportionment process. Chief Election Officer Scott Nago was required to testify at the hearing, but prior to that he had to be deposed by the Plaintiff and had to assist the Department of the Attorney General in preparing declarations and other documents for the Court to explain the logistical and administrative issues that would occur if the plan were to be revised at this late date.

Ultimately, on May 22, 2012, the Court issued its order denying Plaintiff's motion. Essentially, Plaintiffs' failed to meet their burden to obtain a preliminary injunction. The Court, in issuing its decision, noted the following:

Any effort to implement an alternative plan at this stage would result in significant delay, grave confusion and potential chaos at the polls. Such a result is directly contrary to the powerful public interest in avoiding disruption of the primary election, which "is an integral part of the entire election process." Burdick v. Takushi, 504 U.S. 428, 439 (1992).

* * *

Although Kostick's counsel opined at the hearing that the task would be "mission difficult, not mission impossible," we disagree. The above chronology leaves little doubt that, at this late date, there is no room for judicial intervention without significantly interrupting the election process. **Spawning chaos rather than confidence in the election process is a result we cannot endorse.** Absent compelling evidence that the election will not be interrupted, we find that the equities and public interest weigh decisively against granting the preliminary injunction.

Order at pages 48 and 51-52 (footnote omitted, emphasis added).

Preparations for the 2012 Elections

With the denial of the motion for preliminary injunction, the office is able to continue forward with our preparations for the 2012 Election. However, as noted previously, our preparations this year have been impacted by the delay in the issuance of the reapportionment plan to March 8, 2012.

Voter Education

In the area of voter education, adjustments had to be made due to the delayed reapportionment plan. The first is the “Hawaii Votes Brochure” and the second is the timely mailing of voter notification cards.

One of the cornerstones of our voter education program is the Hawaii Votes Brochure (i.e. 2012 Hawaii Votes – Everything you need to know to cast your vote...A Guide to Voting in Hawaii) which is mailed to every registered voter household. This seven page brochure’s table of contents include the following: (1) Voter Registration, (2) Absentee Voting, (3) Primary Election, (4) General Election, (5) How to Mark Your Ballot, (6) Election Day Information, (7) At the Polling Place, (8) Provisional Voting, (9) Complaints, (10) Questions? Call 211, (11) Contact information, and (12) Voter Requiring Special Assistance.

Due to the long lead time necessary for the design, production and mailing of the brochure and the fact that it had election specific dates, which could have changed as a result of the litigation,¹ we would have had to commit to the production of the brochure around the time the federal litigation was filed. Given the uncertainty of the litigation, the significant financial resources associated with the brochure (i.e. approximately \$143,000), and the possibility that the brochures could not be used, the difficult decision was made to cancel its production and to focus instead on print, radio, and television advertisements for voter information.

The second impacted item is the “Notice of Voter Registration and Address Confirmation Card,” also referred to as the “yellow card” which is normally mailed out prior to the election proclamation, which this year is

¹ If the Court had ordered a new reapportionment plan to be used for the 2012 Elections, there was the risk that the Primary Election and General Election would be delayed or that multiple sets of elections could have been ordered (i.e. a federal stand alone primary and general election in combination with a delayed state primary and general election, and issues regarding whether the county elections would be held in combination with the federal or state elections). Against this backdrop it was not possible to confidently say that the information in the Hawaii Votes Brochure going to the printers would ultimately be correct or beneficial to its recipients.

scheduled for May 26, 2012. This year, due to delays in the finalizing of the current reapportionment plan, the “yellow cards” normally sent to voters to inform them of their voter registration status and their polling place are anticipated to be mailed in early to mid-July.

This card confirms that you are registered to vote, when the election is, and where your polling place is located. Additionally, the card tells you in which representative, congressional, and council district you live in and are eligible to vote. Finally, the card informs you if you have previously signed up for a permanent absentee ballot and as such, will be receiving your ballot in the mail.

In a reapportionment year, the polling place location information is especially necessary, as the voter’s polling place may have changed from the one he or she has used for the last ten years. Additionally, a voter knows when he or she receives the card that he or she is properly registered to vote. In the past, if the voter did not receive a card it would trigger the voter to contact the county clerk’s office to update their voter registration status or to fill out a voter registration application. With the cards not being mailed out until sometime in July and the voter registration deadline being July 12, 2012 (i.e. 30th day prior to the election), there is the possibility that prospective voters will not have time to register to vote if they hear that the cards have been mailed out and realize that they have not received a card.

Voter education will be critical in making sure that the above two items do not negatively impact the ability of voters to participate in the electoral process this year.

Candidate Filing

In regards to candidate filing, the delay in finalizing the plan until March 8, 2012 has resulted in the filing of candidates to be more cumbersome. There are less calendar days for candidates to file and when they do file, it takes longer to process the nomination papers.

For example, nomination papers for state offices were to be made available on February 1, 2012. HRS § 12-2.5. The invalidation of the original plan on January 4, 2012 by the Hawaii State Supreme Court and the delay in filing a new plan until March 8, 2012 meant that state candidates could not file until March 9, 2012. Additionally, many candidates may have held off on filing nomination papers until the resolution of the most recent federal litigation, which was completed on May 22, 2012, out of concern that their nomination papers would be invalidated if the March 8, 2012 plan was ordered to be revised. The

result is that between now and the close of filing on June 5, 2012 we expect that there may even be more filings than we typically receive during this period.

The filing of nomination papers is contingent on the precincting process and the assigning of voters process being completed. Specifically, one needs to be a resident of the relevant senate district or house district in order to file nomination papers or to be one of the 15 or 25 registered voters signing in support of the prospective candidate. Article III, Section 6, HRS §§ 12-3, 12-4, and 12-5.

With the assignment process not being fully completed, it is not always easy to determine for a prospective candidate or a prospective signatory if such a representation could be made in good faith, and for election officials to confirm that such representations are correct. Previously, one could simply pull up the candidate or signatory's name in the statewide voter registration system and it would indicate in what district the person is registered to vote.

As voter assignments have not been completed, one can only pull up the voter's name in the statewide voter registration system and confirm that they are registered, their voter registration address, but not what district they are in as only the 2001 district would be provided. Given this, the Office of Elections was able to implement an administrative work around where we type in the street address for the voter and it will indicate in which district the voter resides. This two part process of using the statewide voter registration system and subsequently looking up each voter's street address on a separate program to determine their district is time consuming. However, in the end we expect to be able to complete candidate filing with no major problems.

Polling Places

All 231 polling places have been reserved for the 2012 Elections. The difficult task of recruiting and training approximately 3,160 precinct officials is currently in progress. About half of those officials have been recruited at this time, which is on track for a normal election year. Various training sessions for these precinct officials will be conducted across the state beginning this month and running all the way to August.

The recruitment of precinct officials is always a difficult and time consuming task given the low pay and long hours that our precinct officials work. Specifically, precinct officials, who are legally considered stipended volunteers, are paid between \$85 and \$175, depending on their position, and they work from 5:30 a.m. to approximately 6:30 p.m. or sometimes as late as 7:00 p.m., as they need to open and close the polling places which are open from 7:00 a.m. to 6:00

p.m. HRS § 11-131. The work of these stipended volunteers is greatly appreciated and without them we could not conduct our elections.

A total of 17 polling places will not be opened for the 2012 Elections due to the corresponding precincts having less than 500 voters assigned to them. Voters of these precincts will be mailed an absentee ballot in lieu of opening a polling place for the precinct. Act 100, SLH 2012. A postcard is planned to be sent to each voter explaining that they will be receiving an absentee ballot by mail in lieu of being assigned a polling place.

The mailing of absentee ballots to these pocket precincts is a result of legislation to address one of the vagaries of the reapportionment process. Specifically, the precincting process attempts, to the extent possible, to have the boundaries created by the Hawaii State Reapportionment Commission, City and County of Honolulu Redistricting Commission, and County of Hawaii Redistricting Commission line up with each other, so as to avoid areas being unnecessarily divided up on the basis of county council, state representative, state senator, and congressional lines.²

However, at times small population pockets will occur that will each need to have their own unique ballot type developed. A ballot type contains the specific contests, questions, or issues that voters who reside in a specific area are entitled to vote on. Each unique ballot type corresponds to at least one precinct and a corresponding polling place, where voters who reside in that area are able to vote on the appropriate contests.

The average polling place is typically within the range of 2,500 to 3,000 registered voters. Given the financial resources and personnel required to establish and operate a polling place, Act 100, SLH 2012 determined that pocket precincts of less than 500 registered voters would not be required to establish a polling place and instead an absentee ballot would be mailed to each voter. We will be monitoring the efficacy of utilizing absentee ballots in lieu of opening a polling place for these pocket precincts this election and will determine if it should continue in 2014.

Other Preparations

The other administrative and logistical preparations for the elections such as ballots layout and printing, voting system testing and mobilization, counting centers, computer support services, and numerous other behind the scenes

² The County of Kauai and the County of Maui do not have redistricting commissions as their council members are elected at-large.

details that go into conducting a statewide election are on track for the successful execution of the 2012 Elections.

Coordination with Counties

The Office of Elections has been coordinating with the various county election offices to help ensure the successful execution of our combined state/county elections. Our most recent meetings with all the counties or specific counties, such as the County of Hawaii, were held on March 28, 2012, April 10, 2012, May 8, 2012, May 11, 2012, and May 14, 2012. These meetings focused on the coordination with our voting system vendor, candidate filing, precinct operations, administrative matters, and coordination between the county clerks and the Chief Election Officer on election day procedures. Additionally, our office was and continues to be available by email and telephone to discuss election matters with the counties.

While the counties and Office of Elections work together for our mutual goal of successful elections, it is important to note that we each have our own unique duties and responsibilities. Attached for your consideration is our “Primer on Hawaii’s Elections” which explains this in greater detail. The following is a quick overview of those duties and responsibilities:

The neighbor island counties carry out election day responsibilities on behalf of the State in addition to their responsibilities of maintaining their respective voter registration roll and absentee voting (both AB Walk and AB Mail). The City and County of Honolulu does not conduct election day polling place activities. However, it takes on the considerable task of caring and feeding the Statewide Voter Registration System (SVRS) and often serves as the coordinator for shared county-related program areas such as the “Yellow Card” mailout. The Office of Elections is responsible for election day services, which include the administration of polling places, counting of ballots, and elections results.

Primer on Hawaii’s Elections at page 1.