



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

December 14, 2012

To: Elections Commission

From: Scott T. Nago
Chief Election Officer

Re: STATUS OF OPERATIONS

Since our last meeting, on November 27, 2012, the Office of Elections has been finalizing payroll, preparing for the conducting of the Electoral College, and addressing recent election related litigation.

Payroll

The Office of Elections has finalized its payroll for the 2012 General Election and has mailed out a little under 4,000 paychecks to the various election day officials who volunteered their valuable time to make the election possible. The bulk of the positions are the precinct officials, voter assistance, chairpersons, and facility officials associated with each of the 233 polling places statewide. Additionally, there were the counting center, control center, delivery/collection, supply collection, and assorted personnel that operate out of the main base of operations in each county.

Electoral College

The Office of Elections has been coordinating the conducting of the Electoral College, which is scheduled for December 17, 2012, at which time the four electoral college votes for President and Vice President will be cast.

Election Cases

Two election cases were filed following the General Election.

1. Beirne v. Fale, SCEC-12-0001039 (Supreme Court)

Following the General Election, the law provides a twenty day window of time to file an election contest, in the Hawaii Supreme Court, challenging the results of the election. HRS § 11-174.5. Danielle Ululani Beirne, a candidate for State Representative, District 47, filed a pro se complaint, on November 26, 2012, challenging Richard Fale's election. The complaint generally appears to allege that BYU-Hawaii influenced students to vote for Mr. Fale, that this compromised its tax exempt status, and ultimately this is a basis to contest his election.

The Department of the Attorney General has submitted a letter to the Supreme Court noting that Ms. Beirne "has not presented any evidence or 'information of mistakes or errors sufficient to change the result (citations omitted).'" In the same letter, it is noted that as the State is not listed as a party, the State has not formally "made an appearance or responded to the Complaint," but it will participate in the matter if the Supreme Court would like it to.

Defendants Richard Fale and BYU-Hawaii have filed motions to dismiss and it is hoped that the matter will be resolved shortly, as the certificate of election for State Representative, District 47 cannot be delivered until the resolution of the litigation.

2. Green Party, et al. v. Nago and State of Hawaii,
Civ. No. 12-1-0956 (2nd Circuit Court)

The Green Party of Hawaii has filed a lawsuit regarding the ballot inventory issues experienced during the General Election. Essentially, it contends that administrative rules should have been in place to describe: (1) the methodology to determine how many ballots would be printed; (2) the procedure by which precincts would request additional ballots; and (3) the procedure to rectify the situation when a voter votes a ballot that contain some races to which the voter is not entitled to vote. As such, it seeks an injunction to prevent the conducting of any election until such rules are in place.

The following is an update on cases that were pending before the General Election.

1. Kostick, et al. v. Nago, et al., Civ. No. 12-00184 (USDC)

This reapportionment case is currently scheduled for oral argument on January 14, 2013 at 10:00 a.m. before a three judge panel at U.S. District Court.

2. Justice Party v. Nago, Civ. No. 12-00403 JMS-BMK (USDC)

Elections Commission
December 14, 2012
Page 3

This case involves the Justice Party's challenge to the constitutionality of our statutory requirements to form a political party. HRS § 11-62. A scheduling order has been issued with a bench trial date of August 6, 2013 and a dispositive motions cut-off date of January 31, 2013.