



**STATE OF HAWAII  
ELECTIONS COMMISSION**

**MINUTES**

**WILLIAM B. MARSTON  
ELECTION COMMISSION CHAIR**

**REGULAR MEETING OF THE  
ELECTIONS COMMISSION**

**NOVEMBER 27, 2012 @ 10:00 AM  
STATE OFFICE TOWER  
235 SO. BERETANIA STREET, ROOM 204  
HONOLULU, HAWAII 96813**

**Commissioners in Attendance:**

**Mr. William Marston, Chair  
Ms. Patricia Berg  
Ms. Xara Marshall  
Ms. Zale Okazaki  
Mr. Warren Orikasa  
Mr. Danny Young**

**Technical Support Staff in Attendance:**

**Ms. Robyn Chun, Department of the Attorney General  
Mr. Scott Nago, Chief Election Officer  
Ms. Judy Gold, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Ms. Carolyn Roldan, Office of Elections  
Mr. David Rosenbrock, Office of Elections  
Mr. Rhowell Ruiz, Office of Elections  
Mr. Aaron Schulaner, Office of Elections  
Ms. Lori Tomczyk, Office of Elections**

**Guests in Attendance:**

**Mr. Guy Archer, Americans for Democratic Action – Hawaii Chapter  
Mr. Carroll Cox  
Mr. Nathan Eagle, Civil Beat  
Mr. Josh Frost  
Mr. Daniel Holt, Office of Senator Donna Kim  
Mr. George Hurd, Hawaii News Now  
Ms. Marsha Joyner, Martin Luther King, Jr. Coalition-Hawaii**

Mr. Justin Kanno, KHON  
Ms. Jamae Kawauchi, County of Hawaii  
Mr. Keoki Kerr, Hawaii News Now  
Mr. Jeffrey Kuwada, County of Maui  
Ms. Shirley Magarifuji, County of Maui  
Ms. Gina Mangieri, KHON  
Ms. Suzanne Mannelli, Public Access Room  
Ms. Rose Martinez  
Ms. Janet Mason, League of Women Voters  
Ms. Karleanne Matthews, Honolulu Weekly  
Ms. Bernice Mau, City and County of Honolulu  
Ms. Audrey McAvoy, Associated Press  
Mr. Dennis Oda, Star Bulletin  
Ms. Kendra Oishi  
Ms. Reena Rabago  
Senator Sam Slom  
Mr. Kimo Sutton  
Mr. Matt Sylva, Hawaii Independent  
Mr. Ross Tsukenjo, Office of the Senate President  
Ms. Melissa Vomvoris, Office of Senator Ihara  
Ms. Mary Vorcino, Star-Advertiser  
Mr. Andrew Walden, Hawaii Free Press  
Mr. Ricky Watanabe, County of Kauai  
Mr. Robin Yahiku, DAGS  
Ms. Lara Yamada, KITV  
Mr. Lyndon Yoshioka, County of Kauai  
Ms. Malia Zimmerman, Hawaii Reporter

## PROCEEDINGS

### I. Call to Order

Chair Marston called the meeting to order at 10:00 a.m. on November 27, 2012, at the State Office Tower, Room 204.

### II. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Commissioner Masunaga, Commissioner Kitaoka and Commissioner King were not in attendance.

### III. Approval of Minutes for the September 18, 2012, Elections Commission Meeting

Commissioner Berg noted that on page 8 of the minutes, she did not second the motion for the Commission to go into Executive Session. Commissioner Young

moved that the minutes be approved and Commissioner Berg seconded the motion and the minutes were approved unanimously by the Elections Commission.

IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item

County Clerk Jamae Kawauchi

Hawaii County Clerk Jamae Kawauchi testified that it is her strong recommendation that the State return the delegation of authority to the County of Hawaii because they now have adequate staffing and resources to handle future elections. She also noted that when the delegation was revoked by the State for the General Election, she was not consulted and it was done without her consent. She stated that when she was notified on October 2<sup>nd</sup>, she did not make a significant amount of protest on the action because she felt it would not be in the best interest of the voters. However, since the election has concluded and the challenge period has passed, she feels that she can share with the Commission that the State's action was disruptive and the approach used was negative. She also noted that the same negative approach was used with Hawaii County during the months leading up to the 2012 Election. In November 2011, she submitted a statement to the Commission outlining her concerns regarding the Office of Elections and these concerns have not been addressed by either the Office of Elections or the Elections Commission. She also stated that she was disturbed because the Chief Election Officer wrote a letter to Mayor Kenoi asking that certain election staff be reinstated because without these personnel, there would be serious mishaps during the elections process. She feels that the Chief Election Officer did not distinguish the difference between his professional and personal capacity when writing this letter to the Mayor.

County Clerk Kawauchi reminded the Commission that she appeared before them in May 2012 and was intensely questioned regarding the Primary and General Election and she assured the Commission at that time that Hawaii County would be fine. She also stated that the Hawaii County Elections Office met the goals that were set for the Primary Election. They began to run into problems a couple weeks prior to the Primary Election due to personnel and West Hawaii delivery issues. She noted that the Proclamation issued by the Governor was done because Hawaii County ran into unforeseen circumstances and emergency situations. She also feels that the Office of Elections did not take responsibility for some of the problems and her office was under constant attacks.

County Clerk Kawauchi stated that in July of 2012, she conducted an audit of the voter registration data base and found that there were some duplicate voter

registrations. Her office also found that there may have been instances of double voting in the previous election. Because of this audit, she felt that there was an unprecedented amount of media coverage and that her office was attacked. She also said she felt that they were speaking to the media before they were communicating with her putting her at a disadvantage. Commissioner Young asked for clarification of who was going to the media and County Clerk Kawauchi responded that the State Office of Elections issued correspondence which was directed to the media before she saw it.

County Clerk Kawauchi said that she takes responsibility for the failures during the Primary Election on the Big Island but will not take full responsibility for everything since it is a concurrent election and the responsibility lies with both the State and the County. She said that after the Primary, she took steps to correct the problems they encountered. She met with precinct workers and the State to correct any issues they had with election materials and supplies, communication and any other issues that existed. She also explained that on the following day after the election, she did a thorough review of all the election materials to see where and what the problems were. She feels that an outside party should investigate what happened during the Primary Election.

County Clerk Kawauchi again explained that when the State's delegation to the County of Hawaii was revoked on October 2nd, it was a great disruption to her staff and the County and in her opinion was handled inappropriately. She feels that in order to restore voter confidence, the State had the right to take back its delegation. She did not agree with the withdrawal but to avoid any disruption to the voters, she went along with it and provided support to the Office of Elections.

She noted that there were some problems during the General Election. She reported that in West Hawaii at the Kahakai precinct, a poll worker was signing in people who may not have been registered to vote. The OE Program Administrator assigned to the Big Island took care of the problem but County Clerk Kawauchi still wanted to inspect the record books and poll books so that she could better understand what happened and to date, she has not been notified by the State that she is able to review the books and she feels that this is unacceptable. A potential duplicate voting incident was also reported to her and logged in the record books which she, to date, has not been able to inspect. She reported this incident to the Chief Election Officer and also noted that any incident of duplicate voting will be referred to their law enforcement office.

County Clerk Kawauchi stated that with the State and the County working together on the General Election, the election did go well. However, the County now has adequate staffing and is able to conduct elections on its own and was also able to do it before the State revoked its authority.

One last notation she made was that her office received T-shirts from the Office of Elections. On the T-shirt there is a picture of a Big Island record book with a quote of "one for the record books". Because of the incident with the Office of Elections involving the Big Island record books, she wants to know if the Chief Election Officers attacks were so personal that a T-shirt showing her polling place was made. If this is true, she feels that this needs to be seriously addressed.

Commissioner Orikasa questioned the lack of attendance of the Hawaii County employees at the training sessions attended by the other county clerks and their staff. County Clerk Kawauchi stated that although she was unable to attend, her staff did attend the training session held in the County of Kauai and she attended the training sessions held on Maui and Honolulu.

Commissioner Berg wanted to clarify that the main purpose of County Clerk Kawauchi's testimony was to get the delegation back to the County of Hawaii. County Clerk Kawauchi confirmed that this was correct.

Senator Sam Slom

Senator Slom testified that he was there to testify for himself and his constituents who expressed their outrage over the election process. He noted that he is the Senate Minority Leader who is responsible for appointing two of the Commission members and he recognizes the work that the Commission does and how difficult it is. He testified that voting is a fundamental constitutional right and it is clear that things are not right and changes must be made. The Office of Elections is responsible to ensure this right and the process that goes with it. He further states that the Office has one basic responsibility of running an efficient, honest and error free election every two years. This year's election had a major failure which affected his district and other polling places on Oahu and a simple "I apologize" is not sufficient. He feels that all of the errors were avoidable and there must be a change in leadership. He further testified that in order to regain public trust, something different must be done.

Senator Slom presented to the Commission a list of problems that he has personally been involved with over the years. This list includes irregularities in the 1998 election tally and evidence of voter fraud in subsequent elections, irregularities in cost overruns in voter machine contracts, several errors under the leadership of former Chief Election Officer Kevin Cronin, a disenfranchisement of Hawaii overseas voters, action against the State of Hawaii by the Federal Government for late Military balloting, misinformation given by the Office of Elections on the tenure of Senate members during the 2010 elections, Office of Elections testimony against military voting during the 2011 Reapportionment, failure to increase voter turnout, Hawaii County meltdown during the Primary Election, duplicate ballots in the Manoa district, missing candidate names and

wrong districts on ballots, shortage of ballots in 24 polling places and long delays which resulted in some people not voting on November 6. He feels that something needs to be done and he is confident that the Commission can make the changes.

Senator Slom continued to testify that he just participated in a two month investigation involving the University of Hawaii and feels that the public is angry that institutions are not being led well. The public feels that no one is willing to take responsibility, be transparent and make the necessary changes. He testified that the Governor has now come forward because he is under pressure to make changes. However, it is the Legislature that will make the final determination of the necessary changes that need to be made. He also knows that the Governor has asked the Attorney General to conduct an investigation and that the Commission itself will be conducting an investigation of what happened but it is unknown when these investigations will be completed. He feels that these audits must be done differently from other audits since the public is unhappy because no one is willing to take responsibility and there are no consequences.

Senator Slom is aware that some have called for the Office of Elections to return under the supervision of the Lt. Governor or some other elected official. The Senator does not support this action since the Office should be independent. He also feels that the Commission needs to take action. He noted that he does not feel all mail voting will increase voter turnout since there are other problems. He feels that all mail voting will decrease costs but he also noted that he watched a news telecast that had a statement from the Office of Elections saying that the cost will not decrease but may even increase and he feels that this statement does not make any sense.

Senator Slom encourages the Commission to take strong and decisive action, expedite its internal review, and come up with a specific and fail safe future action plan and replacement of current leadership.

Commissioner Orikasa asked Senator Slom if he is open to accept the results of the investigation if it found that the problems were remediable and are not structurally deficient. Senator Slom responded that he could however, in his experience with the University of Hawaii, the Board of Regents and some of their friends tried very diligently to get the Senate not to investigate the University of Hawaii. One of the reasons they used was that they were working on a report and we will do our report. The report did not come out on time, it came out after the Senate was finished and it came out only after the Senate asked questions that were very enlightening. They found that the problems went far beyond the wonder blunder, it showed inherent structural and procedural weakness within the Administration of the University and Board of Regents.

Senator Slom further states that he is not here to either white wash or witch hunt. He can accept a good report with specific recommendations, someone being held accountable and making changes in leadership therefore sending a positive message to the public.

Kimo Sutton

Mr. Sutton testified that this horrendous General Election raises issues of the intent to change the results of the voters by the lack of ballots at the polling places. He feels that this was too well coordinated by the Chief Election Officer by not being able to respond to so many requests all day that it seems to be too well unorganized not to be planned. As vice chair of the previous elections appointment interview panel, he is appalled by the lack of foresight and the total failure of the Chief Election Officer. He further states that the Chief needs to be fired and there should be a dual oversight with the Lt. Governor's office of the elections process. He feels that there seems to be no election day job that is strictly for the Chief Election Officer and the CEO has also fired his subordinate who handles ballots and that was sent to the Big Island for the General Election as a scapegoat. He also stated that the Office makes press releases and he asked if they were running for office themselves. He also feels that the Office of Elections staff could have helped deliver ballots from the capitol to the polls by taxi or by driving it over themselves. He feels that this incident further reduces the already lowest voter turnout in the nation and he also feels that we did not have a fair election.

Mr. Sutton quoted Rep. Barbara Marumoto as saying on television that this miscalculation and lack of delivery of back up and appropriate ballots quickly could have conspiracy implications. In his opinion, Mr. Sutton feels that tens of thousands of voters could have been turned away or left waiting to use the one electronic machine. He feels that we must have faith in elections and that's why there is the Elections Commission. He feels that there should be an investigation of the incident done by the Commission, the Senate and the FBI.

Janet Mason – League of Women Voters

Ms. Mason testified the LWV has read the report prepared by the Chief Election Officer and feels that it is a good disclosure of what happened on election day. They are happy that a thorough review of the serious problems encountered on General Election day was done and because these problems were not deliberate, these problems can be corrected for future elections with systematic attention. She urgently asks the Elections Commission to let the public know what steps have been taken and what will be done to prevent a recurrence. The LWV has made other observations of the 2012 elections process and notified the Commission that the LWV will be active in election related measures during the 2013 Legislative Session.

On a more positive note, Ms. Mason testified that they observed some things going well during the election. There was no repeat of the problems which occurred during the Primary Election on the Big Island and they also feel that the reporting relationship for the Office of Elections along with an independent Chief Election Officer and the appointed Elections Commission, permits nonpartisan election administration which is independent of any political party or special interest groups.

She noted that there were few, if any, complaints about the tabulation of ballots. However, in fairness to both candidates and voters, they feel that there should be a provision allowing for automatic recounts if the difference in the final count is small. The LWV also knows that these recounts are expensive to conduct but feels that it is very important in keeping voter confidence.

She testified that there was public dissatisfaction with the conduct of the elections and the LWV agrees. Some of the complaints shared with the LWV was the long time needed to verify information with the Call Center, poll workers asking for picture ID's when a utility bill was sufficient, poll books were not up to date and voters not receiving their yellow cards before the election.

Ms. Mason also believes that the Office of Elections is besieged with unprecedented problems and they believe that this is the time for a visionary management plan that will modernize voting and make it possible for the Office of Elections, Counties and Elections Commission to work as a cohesive group. They endorse online voter registration but also understand that computer technology is not yet universal so manual registration systems must still be maintained. The LWV would like to see the Office of Elections develop a plan to modernize voting systematically and develop online voter registration where voters can check their own registration. A measure has been passed by the Legislature to make this possible by 2016. This should also allow the precinct workers to verify voter registration status directly instead of calling the Control Center on election day. She also notes that access to online voter information is already working in other states.

Ms. Mason testified that a secure registration data base would also make electronic poll books possible and this method is already used in 27 states. Same day voter registration is also essential for modernization. She notes that the LWV supports mail in and early voting since Hawaii voters like to use this method of voting. She suggests using a tracking system for these voters to allow them to track their ballots at all times from printing to the time the ballot is counted. This tracking system should also be in place before implementing an all mail process so that the success rate of the all mail process can be measured.



The LWV supports the strengthening of the statewide authority of the Office of Elections to avoid problems that occurred during the Primary Election with Hawaii County. They do not support calls for the reorganizing of the Elections Administration and placing this critical function under a politically elected executive. As for the Commission, she is pleased to note that in 2004, the Commission started out very secretive and partisan but now, since the later part of 2008, the Commission has become more open.

Also noted was the budget for the Office of Elections. The LWV feels that the budget has been inadequate for many years. The budget excluded such basics as continuing education and training for staff, adequate monies to compensate precinct chairs, voter services officers and being able to provide adequate telecommunication. The LWV also feels that there should be adequate compensation for precinct workers and although they already receive training, the LWV wants to see some type of mandatory testing and annual certification for precinct and control workers to avoid instances of providing misinformation to the public. She also notes that it has been a consistent problem for the Office of Elections to recruit and maintain poll workers. She testifies that an adequate budget must be provided for computer resources, both hardware and software, if there is to be modernization of voting operations.

Ms. Mason states that citizens should be prepared to invest in a secure, best practices election operation. She does not feel that this is the time to restrict or cut the budget, or leave positions vacant for the Elections Office. This is the time for the office to begin preparations for the 2014 elections.

#### Carroll Cox

Mr. Cox testified that his right to vote is very important and he feels that it has been violated and also noted that he voted by absentee ballot. He is concerned and based on his experience, he feels that there should be a change in leadership and a cleansing of the entire office. He states that he asked the staff of the Office of Elections to appear at a gathering for the handicap and blind and he was refused and was also refused a return phone call. He states that he submitted in writing, a request to the Elections Commission asking that they submit a request to the FBI to investigate the behavior of the staff and leader because it is unacceptable. The right to vote has been tainted and tattered by their behavior. He states that he would like to see the same aggressive and heavy handed behavior taken with the Hawaii County used on with the staff and leader of this office.

He states that he was notified by a precinct worker that the foreign language ballots do not arrive and appear at the polling place securely. They arrive in a utility box and the concern was who accounts for those. To allow the Chief Election Officer and his staff to stay on is unimaginable and he can't understand

why they have not been placed on some kind of leave. There should be something more aggressive done and none of these actions should be tolerated. He also believes that there may be criminal intent. He asks the Commission if they intend to answer the several requests he made to the Office of Elections which he feels have been ignored. He also asks the Commission if there is any justifiable reason for the Chief Election Officer to ignore him.

Chair Marston asked Mr. Cox to clarify his statement and Mr. Cox explained that he sent a number of questions and he has not gotten a response. He also asked the Commission if they valued or placed any importance on it. Commissioner Okazaki noted that in the two page email that she received, there were no questions. Mr. Cox responded that he expected this and it speaks to the inefficiency of the Office because he has sent it to the Office on numerous occasions asking that the questions be forwarded to the Commission.

Mr. Cox states that the staff will argue and be very rude and he wasn't calling the Office to buy a dog or sheep or car, he was calling to exercise his rights and enhance the rights of others to vote and he also states that he has received better treatment at other agencies. He states that this is painful and he feels that he has been robbed personally and how can he trust this system if we tolerate this. He feels that the Commission should be more aggressive in coming forward.

He further states that there was a news article that said that the Commission will be meeting the week of December 10<sup>th</sup> and suddenly the meeting is scheduled for November 27<sup>th</sup>. It is this kind of communication that belittles the whole voting process and he would like to see better efficiency and a greater respect for the voters.

Commissioner Marshall stated that the correspondence she has is dated November 8<sup>th</sup>. She then asked Mr. Cox if he knew the dates of the letters that he wanted forwarded to the Commission. Mr. Cox responded that it was one on the 8<sup>th</sup> and one on the 9<sup>th</sup>.

Commissioner Orikasa explained to Mr. Cox that when an attempt is made by the Commission to schedule a meeting, there is communication and forming a quorum is key so even though there is an attempt to schedule a meeting at a particular time, there are reasonable explanations and practical reasons why meeting dates change. There is also a required time to post the meeting notice. Mr. Cox said he understands but that is elementary, what he is speaking of is what transpired and what he is concerned with is that he gets the sense that the Commission is excusing this behavior. Commissioner Okazaki and Commissioner Orikasa both disagreed and Mr. Cox said that this was his opinion and asked if he was entitled to that. Commissioner Okazaki told Mr. Cox that he was entitled to his opinion but she wanted to clear the record and stated that

there are nine Commission members that need to meet. The Commissioners all work and they do not all live on the same island and that impacts why meeting dates are changed. Commissioner Okazaki also stated that there is nothing nefarious behind the change in dates. Mr. Cox stated that he understood and was speaking of the entire climate because it's one thing after another that contributes to the distrust and it's not just one single act. Mr. Cox continued to say that he is not accusing the Commission of being underhanded he was just sharing that as a voter, the Commission represents him and he was not there to sell them anything or to ask them for anything, he was there to exercise his right and share with them what went wrong as a voter and asked if that was okay. Commissioner Marshall asked Mr. Cox if she understood correctly, his comment about excusing behavior was a more generalized thing and that he felt in general that the way the Office of Elections has been run was not voter friendly to him and that he believes that the Commission's lack of action, in general, excuses the behavior. She also asked if he was speaking in general and not just about the meeting date. Mr. Cox stated, not to be disrespectful, but it is an insult, that's how deep it is. Mr. Cox noted that he was from Mississippi and he knows what it takes to vote, it did not come easy and when he sees this kind of behavior he cannot just stand by and have one explain to him the elementary aspects of this. He's saying address this because it is an ugly situation and it should be made uneasy for everyone and everyone should go away with the feeling of hurt and frustration. He further stated that you only have one vote whether it's women or minorities, we are American people and we need that to keep the Democracy going. He tells the Commission not to be offended, this is part of the process and this is very important and he would rather fight this for the next twenty years because it's not a Democracy and who's to say that this wasn't a plan in some dark room at midnight. He testifies that we need a complete investigation and he asks that an independent like the FBI or the US Attorney General do it to avoid the localism. He also states that he does not believe we need to tip toe.

Commissioner Young tells Mr. Cox that he has the right as a citizen, as we all do, but the Commission is not trying to put this aside. He further states that this is the first opportunity since the election to hear the public concerns and he doesn't feel that it is fair to say that the Commission is trying to sweep it under the rug. Commissioner Young also explained that several attempts were made to schedule a meeting, however, it is a challenge because the Commissioners live on four different islands, come from different walks of life and are employed so coordinating meetings are sometimes difficult and he asks Mr. Cox to try and understand. Mr. Cox stated that he does understand but stated that if they felt uneasy and offended now, he knows the process and will be watching this. Commissioner Young responded that he was not offended and encouraged Mr. Cox to watch this situation. Commissioner Young stated that he had two questions for Mr. Cox. One was about his statement, "obstruct voter access and influence the outcome of certain elections" adding that it is a very powerful

statement and asking the FBI to investigate is something that the Commission takes very seriously. He asked Mr. Cox if he had anything else to add to this besides his statement. Mr. Cox stated that his statement stands and it was a question, he also submits that there were a number of voters who were obstructed and denied access. Mr. Cox then stated that he was becoming uneasy with having to justify his questions. Commissioner Young explained that he was not asking for justification but was asking a question because he wanted to know if he had anything to substantiate his statements. Mr. Cox responded that the investigation should be completed.

Marsha Joyner

Ms. Joyner testified that she is here as the past president of the Martin Luther King Coalition and they have been in Hawaii for the past 25 years. She states that when you speak of Dr. Martin Luther King, you think I have a dream. Ms. Joyner states that there was much more to that, one of which was Bloody Sunday. She explains for those who may not know what Bloody Sunday was that in March of 1965, 8000 people crossed the Pettus Bridge, including Dr. King, and were beaten within an inch of their lives for the right to vote. After this incident, President Johnson signed the 1965 Voting Rights Act and he said as he signed it, we shall overcome and we were going to lose the South for generations. She states that she brings this up because she is offended by what happened during the General Election. She further explains that Dr. King once stated that he cannot sit idle and not feel that what happens to someone else happens to me. Ms. Joyner testified that she voted absentee and assumes that her vote has been counted. She also watched the cars in East Honolulu line up for two miles, waiting to get into the parking lot of a polling place and people were being turned away. Not printing and giving enough ballots equates to voter suppression. Ms. Joyner states that she was not sure if everyone was aware of the 1965 Voting Rights Act but not supplying enough ballots amounted to voter suppression.

Ms. Joyner testifies that in her letter to the Commission, which she states the Commission did not respond to, she told the Commission that not allowing enough ballots or a device to vote is a fraud and a felony. She notes for the Commission that the letter she sent to them was also copied to the Department of Justice, Civil Rights Division Voting Chief. She states that she has never missed an election in Hawaii for the last 40 years and has worked the last twenty years in all the election jobs except the Chief Election Officer and does not understand what the formula is and it makes no sense. She also reiterates that she has not received a response from the Commission to her letter and she has reported this to the Civil Rights Division.

Guy Archer

Mr. Archer testified that he registered to vote in Hawaii in 1974 and has also been a licensed attorney in Hawaii since 1974. During this time he served as a Deputy Attorney General for the State and worked for the County of Maui Corporation Council. He states that he is here today representing the Americans for Democratic Action – Hawaii Chapter. Following the election, they had a Board meeting and one of the issues discussed was if the citizens of Hawaii were deprived the right to vote and the Board has asked him to look into the legalities of that issue. He further testifies that if a citizen feels that he or she has been deprived the right to vote, the citizen may file a civil rights deprivation lawsuit. He has been asked by the Americans for Democratic Action, to see if this occurred during this past election and he is hoping that the Commission will investigate and issue a report giving the public information that they can use to make a decision on whether there should be a lawsuit filed. Mr. Archer states that, as mentioned previously by Commissioner Young, this is a “we” problem and he would like all parties to work together to resolve the problem because he prefers not to go to court.

V. Discussion and review of the County of Hawaii 2012 General Election to include recommendations for future elections held in that county

Chief Election Officer Nago stated that the 2012 General Election was unprecedented. The Office of Elections had to send a delegation to the County of Hawaii for precinct, control center and counting center operations. This action has never been done in the State’s history. He reports that for the most part the election there did go well with the help from the County Clerks Office. CEO Nago reported that there was an incident reported by the County Clerk in which voters names were added to the poll book. The incident was immediately addressed and when the list of voter names were checked, they found that all the names listed were registered to vote, however, 10 of them were in the wrong district. CEO Nago further explained that the decision to take back the delegation was not made for the long term but was only done for the General Election to insure that the issues experienced in the Primary Election would not reoccur. The Office wanted to assure the voters that they would have a good sound election.

Commissioner Orikasa asked CEO Nago how many staff members were sent to Hilo, CEO Nago responded that we sent one staff member and hired staff who were residents of that county to assist. Commissioner Berg wanted to clarify that we sent only one person from the Office of Elections and CEO Nago responded yes because the Office is not equipped to send any more staff since we were still running the elections on Oahu. Commissioner Okazaki asked if the staff member that was sent to Hilo was replaced with someone of the same caliber, CEO Nago explained that she was replaced with a team of people. He stated that he would not have made the decision to send someone over if he did not have adequate staffing to cover her position and he felt that sending someone over to Hawaii County was something that he had to do.

Chair Marston noted that County Clerk Kawauchi testified earlier that the delegated authority should be returned to Hawaii County and he asked CEO Nago how he felt about her statement. CEO Nago responded that rescinding the authority for the General Election was not a long term solution, it was only done for the General Election because there was a need at that time to insure a secure and honest election for the County of Hawaii. It was never viewed as a long term solution. Commissioner Berg asked if it was something the Office of Elections did reluctantly, CEO Nago responded that the staff decided that it was something that needed to be done and they were going to do it to try and bring back confidence to the voters of Hawaii County.

Because of earlier testimony, Commissioner Young asked CEO Nago if the Office followed proper protocol when they decided to rescind the authority. CEO Nago explained to the Commission that the delegation of authority was ours to rescind and the County Clerk was notified that day, however, looking back he could have notified her sooner.

Commissioner Berg asked if CEO Nago could explain what happened with the T-shirts. CEO Nago explained that we have an election day T-shirt and on the front of the T-shirt is a picture of a record book. Commissioner Young asked what the definition of the T-shirt was and CEO Nago said that since there was a high voter registration turnout, the front of the shirt says Elections 2012 with one for the record books. Commissioner Berg asked if all the poll workers had the T-shirts and CEO responded that the poll workers did not because we could not afford to give all of them a T-shirt, only election day workers wear the shirt.

Commissioner Orikasa asked CEO Nago if the person sent to the Big Island was a key personnel. CEO Nago responded that she is a section head and a valued member of the staff who brings a lot to the table. Commissioner Orikasa asked if not having her in Honolulu compromised the Oahu operations, CEO Nago said it's hard to say but it may have compromised our ability to cope with the ballot issue.

Commissioner Young wanted to comment on the earlier statements made by County Clerk Kawauchi in which she felt that there was no communication with her office regarding the withdrawal of delegation. Commissioner Young feels that some procedures and protocol should be established so there is no misunderstanding. Commissioner Orikasa noted that this was a unique situation and there were no existing protocols in place since this was never done before. CEO Nago said that the Office will discuss this should the Office ever have to do it again.

Commissioner Marshall asked CEO Nago if it was ever discussed with the Commission that the delegation would be taken back by the State. She also

noted that she had never read it in the minutes. CEO Nago responded that it was never discussed with the Commission. It was an action taken because the Office felt that it was necessary to insure a secure 2012 General Election for the County of Hawaii.

VI. Discussion and review of the State 2012 General Elections

a. Report from the Chief Election Officer

CEO Nago reported that the ballot shortage was due to the use of the wrong formula. The formula used did not allot the correct number of ballots for the polling places. Normally the numbers used would be based on the previous general election. However, because this was a Reapportionment year, we did not have historical data since there was a change in the districting. Using voter numbers from the 2010 General Elections would not be comparable because there was a change in geographical boundaries and the registration numbers would be different. So what was used was the numbers from the 2012 Primary Election increased by 125% to account for the higher General Election voter turnout, however, that number still gave us an insufficient amount of ballots. Fifty-one (51) polling places ran low on ballots and twenty-four (24) polling places actually ran out of ballots. CEO Nago said that the Office of Elections would like to thank all the staff who worked hard on election day to get the ballots out. Even though we did not have available staff, we sent out as many as we could. We sent out the DC team members and warehouse staff and whoever else could be spared to deliver ballots to the polling places.

Chair Marston asked why there has to be a formula when figuring out how many ballots to send to the polling places. If there are 1000 registered voters at a polling place, why can't we deliver 1000 ballots? CEO Nago explained that sending out the total amount of ballots presents a logistical problem. At the current time, taxis deliver the ballots to the polling places. If the number of ballots increases to the amounts suggested, we will have to find other ways to deliver ballots. Chair Marston asked if cost was an issue and CEO Nago explained that it is more of a logistical and security issue since every ballot voted or not is logged, inventoried and accounted for. The number of ballots issued is usually correct but this time it was not.

Chair Marston asked when this concept of using a formula started. CEO Nago explained that the formula has been around for a while and was used even before he started working at the Office of Elections. They guessed it was probably used since the 1980's and the formula has always worked however this year's numbers were different because of Reapportionment.

Commissioner Marshall stated that she thinks there's a miscommunication. She stated that in the past, the formula was being used with the General and a decision was made to use numbers from the primary and it was her understanding that there is a 5% lower turnout in 2008 than in 2012 and yet we still had a shortage of ballots. CEO Nago explained that they used the numbers for the 2012 Primary turnout rather than the 2008 General Election because the geographical boundaries were changed. Commissioner Marshall then asked if there were geographical boundaries that changed on the outer islands. CEO Nago said yes. Commissioner Marshall then asked if any of their polling places ran out of ballots. CEO Nago answered that they did not run out of ballots but they did run low. The County of Kauai ran low at eleven (11) polling places and they were able to cope with replenishing the ballots. As a precaution, the County of Maui delivered reserve ballots to eleven (11) polling places. Due to its big geography, the County of Hawaii had sent out reserve ballots in the morning on election day. He further stated that this was not a problem just limited to only Oahu. Commissioner Marshall stated that she felt that it is a problem just limited to Oahu because she does not know of any complaints from the island of Maui where voters felt that their civil rights were violated or that they were disenfranchised because of the lack of ballots. She further states that she lives on Maui and is very careful to try and get input from the Maui voters and she did not hear of any voters complaining that they felt disenfranchised even though they did have reapportionment issues. She also states that from what she has heard today, voters who felt disenfranchised were from Oahu. CEO Nago said that was correct however, he explained that his statement was that ballots did run low on other Counties but they were able to cope and replenish the ballots before they ran out.

Commissioner Berg states that there should be a review done of the model now being used and suggested that we consider going to other states and see what their best practices are. CEO Nago agreed and stated that the Office admits that they used the wrong formula and that is unacceptable. The Office will be looking for another model and will also look into other alternatives such as ordering a 100% of the ballots so that we do not run into this situation again. Commissioner Berg also suggested that any remaining ballots on election day should be sent out to the polling place in the morning. CEO Nago agreed and explained that the reason there are reserve ballots is in cases of emergencies where there is an unforeseen situation where the ballots could not be delivered on time, a batch of reserve ballots can still be delivered by other methods to the polling place. He also noted that one of the things the Office is looking into is instead of storing the reserve ballots in the Counting Center, we should store the ballots at a location in the field that is closer and easier to deliver to the polling place.



Commissioner Young asked CEO Nago if he already has a new formula in mind to use. CEO Nago said yes and that one of the formulas they are looking at is taking the total voter registration count, minus out the absentee voters since they use different ballots, and then taking 80% of that number for the polling place and allocating the balance as the reserve. This number would amount to Chair Marston's recommendation of ordering 100%. Commissioner Young stated again that this situation with fifty-one polling places running out of ballots is a serious situation.

Commissioner Okazaki asked CEO Nago if other states use formulas. CEO Nago responded yes everyone uses a formula because it is hard to order 100%. One of the issues we have is that ballots need to be ordered early in order to meet the overseas voter deadline. Commissioner Young asked if the ballots are printed off island and CEO Nago responded no. The ballots are printed on island, which is a requirement of our contract. We are also able to order additional ballots if necessary.

Commissioner Marshall stated that she is still not clear on why we are not able to print enough ballots. CEO Nago responded that he shares the same frustration as everyone else and is asking the same questions. Commissioner Berg asked if there were any complaints filed by any candidates. CEO Nago responded yes, there was one filed by a candidate on the North Shore, and it dealt with the candidate not being able to distribute campaign materials at the Polynesian Cultural Center.

Commissioner Marshall asked for clarification on why ballots were delivered to the wrong polling places. CEO Nago explained that in our rush to replenish ballots to 19-03 Waialae Elementary School and 20-04 Hokulani Elementary School, the volunteer who was delivering ballots had delivered ballots to the wrong polling place. He further explained that voting machines will count ballots for only their designated polling place. When the wrong ballots were fed into the voting machine, it would not count it. The ballots were placed in a separate bin because it was thought the voting machine was broken. The ballots were brought back to the Counting Center and duplicated and the votes were counted in the races that the voters were eligible to vote in. Commissioner Marshall asked if this was a cascading effect from having to rush ballots out and CEO Nago said yes.

**b. Commissioner's Observations**

Commissioner Young commented that in visiting several polling places, he did notice the long lines. He reiterated that he feels there should be one ballot for each registered voter.

Commissioner Okazaki commented that she and her family are permanent absentee voters and she prefers to vote that way because does not interfere with her time. The attorneys that work with her go to City Hall to vote and there were no negative comments from them. She did comment that it was difficult for her to witness the long lines of voters waiting to vote at the polling places. She also does not understand why we cannot have one ballot for each voter and she feels there needs to be a fix soon.

Commissioner Berg stated that she was happy to report that the County of Kauai had a very smooth election. She had a tour of the Counting Center in Kauai and left there with a feeling that everything was in control and contingencies were planned for. She also stated that she called a few polling places on Kauai and spoke with the officials. They reported to her that they did have some minor incidents. Some of the incidents reported involved a pollwatcher who entered the polling place before the polls were officially open, a few of the polling places ran short of ballots but they did not run out, teachers who were protesting were within the proper distance of the polling place, some late closings due to polls staying open to accommodate voters who were in line at 6:00 pm and lastly, voter complaints of Voter Assistance Officials saying the voters social security number out loud when speaking to the Control Center.

Commissioner Marshall reported that for the County of Maui, County Clerk Kuwada did an excellent job in anticipating any problems and having a plan in place to resolve them. She also noted that because of redistricting, there were a number of people that showed up at the wrong polling place and the poll workers were well trained to handle these situations.

Commissioner Orikasa reported that he was able to visit a few polling places and agreed with Commissioner Marshall's assessment of the excellent job the election day workers and County Clerk's office did. He felt that the workers were well trained and handled the voters very well.

c. Office of Elections and Elections Commission recommendations for future elections

CEO Nago reported that one of the major issues the Office of Elections is working on is developing a formula that will insure never running out of ballots again and developing a contingency plan in case a similar incident ever occurs. This would include storing reserve ballots in a closer location to the polling places.

Commissioner Berg asked how the City Clerk fits into what happened here on Oahu. CEO Nago responded that Oahu follows a different model and the City

Clerk is responsible for voter registration and absentee voting and the Office of Elections is responsible for everything else on election day.

With no other discussion, Chair Marston moved for the Commission to go into executive session. Motion was seconded by Commissioner Young and carried unanimously.

The Commission resolved into executive session at 12:07 pm.

#### VII. Executive Session

Approval of Minutes for the September 18, 2012

Pursuant to Haw. Rev. Stat. 92-5 (a) and (5)

Consider and evaluate the role/performance of the Office of Elections and Chief Election Officer in preparing for, and conducting, the 2012 General Election and take action, if appropriate; and

Consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities.

The Commission reconvened in open session at 1:15 pm.

#### XIII. Adjournment

Chair Marston reminded the audience that the Commissioners serving are volunteers who are appointed. There are eight (8) Commissioners, four (4) Republicans and four (4) Democrats. The ninth person is the Chair who is selected by the Commissioners. As Chair, Mr. Marston states that he is not the leader but the spokesperson for the Commission. He further states that even though they are a volunteer Commission, they take their job and responsibilities very seriously.

Chair Marston continued by making the following statement: *The Commission takes very seriously the communities civil rights and the fundamental right for every citizen to vote. Based on the testimony raised today regarding the communities concerns over the situations that occurred during the General Election and acknowledging the Commission's concerns to maintain the integrity of the election process in Hawaii, the Commission has appointed a special sub-committee to secure all pertinent facts that will be presented to the Commission at its next Commission meeting which is being scheduled the week of January 7th.*

With no other business before the Commission, Chair Marston moved that the meeting be adjourned. Motion was seconded by Commissioner Young and approved unanimously by the remaining Commissioners.

Elections Commission meeting was adjourned at 1:21 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carolyn L. Roldan", written over a horizontal line.

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Carolyn L. Roldan  
Elections Commission Secretary