



**STATE OF HAWAII
ELECTIONS COMMISSION**

F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

MINUTES

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

DECEMBER 15, 2020 @ 10:00 AM

Pursuant to the Governor's Fifteenth Proclamation Related to the COVID-19 Emergency dated November 16, 2020, the Elections Commission held this meeting using remote videoconferencing technology. Members of the public may have participated in the meeting via Microsoft Teams.

Commissioners in Attendance:

F.M. Scotty Anderson, Chair
Michael Curtis
William Dean
Stafford Kiguchi
Lillian Koller
Jeffrey Kuwada
Carol Seielstad
Cynthia Takenaka

Technical Support Staff in Attendance:

Lori Tanigawa, Department of the Attorney General (AG)
Scott Nago, Chief Election Officer (CEO)
Nedielyn Bueno, Office of Elections
Jaime Kataoka, Office of Elections
Jasmine Ko, Office of Elections
Aaron Schulaner, Office of Elections
'Auli'i Tenn, Office of Elections
Kristen Uyeda, Office of Elections
Kimberly Yamada, Office of Elections

Guests in Attendance:

Edwin Boyette
Jon Henricks, Hawaii County Elections Division
Kathy Kaohu, Maui County Elections Division
Kelly Kitashima
James Krueger
Brett Kulbis
Blaze Lovell, Civil Beat
Greg Lussier, Maui County Republican Party
Sandy Ma, Common Cause Hawaii
Suzanne Marinelli
Peggy Regentine
Henry Vincent
Delfin Yoshida

PROCEEDINGS

I. Call to Order

Chair Anderson called the meeting to order at 10:03 a.m. on December 15, 2020.

II. Roll Call and Determination of a Quorum

Elections Commission (EC) Secretary conducted roll call. Commissioner Vierra was not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the Meeting of July 23, 2020

Commissioner Seielstad moved that the minutes be approved; the motion was seconded by Commissioner Curtis, and approved unanimously by the Commissioners.

IV. Status of Operations Report from the Chief Election Officer

CEO Nago stated that the EC has his *Status of Operations* report in front of them. He reported that yesterday, the Hawaii State Supreme Court dismissed the last election contest for cause, so the 2020 Elections are now certified. CEO Nago stated that this election had its challenges for many reasons: this is the first year Hawaii moved to all mail elections statewide, the presidential

election created national attention, and the pandemic played a role. He recognized his staff for their work in helping to minimize these issues. CEO Nago explained that OE was unable to conduct outreach in the community due to the pandemic, and instead needed to find other avenues including social media, Facebook Live events, advertisements in the newspaper and on digital media like Pandora, fliers, and spades. He added that OE also created partnerships with the "It's a Hawaii Thing" podcast on Spectrum, Spotlight Hawaii through Star Advertiser's website, Meals on Wheels for brochure distribution, and the State Foundation on Culture and the Arts to provide art and literature that was shared on social media and distributed at their various locations throughout town.

CEO Nago stated that what they have learned from this election is in their report to the Legislature, which the EC can read, but one thing they have learned was the flexibility with the dates. He said that one example was that there was a special vacancy for a state senate seat for which the deadline would have been after the candidate filing deadline. This would have required legislation to change the dates to coincide with the candidate filing deadline. CEO Nago added that they also wanted flexibility with the dates and times for the ballot mailout to ensure that voters would receive their ballot at least 18 days prior to the election, as well as opening the places of deposit earlier.

Commissioner Koller referenced an OE advertisement featuring Frank Delima, which read, "Make sure your address is current. General election registration deadline: October 5." She said that the advertisement is misleading because registration was available at voter service centers (VSCs) for 10 days prior to and through election day. Commissioner Koller asked CEO Nago who is responsible for the advertisement, and said that it could have led to disenfranchisement and suppression. CEO Nago replied that the state is responsible for the advertisement, and that the October 5 registration deadline is by law. He told Commissioner Koller that the spadea includes a section with information regarding in-person registration and voting at the VSCs. Commissioner Koller said that the advertisement she had did not have information about the VSCs. CEO Nago explained that the message they wanted to get across was that October 5 was the registration deadline to receive a ballot in the mail. He added that they did not want people to believe that they could register after the deadline and still receive a ballot in the mail. Commissioner Koller asked CEO Nago if he agrees that the advertisement is misleading, as it does not specify that the deadline is to receive a ballot by mail, or that registration was available at VSCs. CEO Nago stated that he was unsure which advertisement Commissioner Koller was looking at, but that the advertisements after the October 5 deadline included information about registration at VSCs. Commissioner Koller requested to see that advertisement. Commissioner Curtis mentioned that he had raised this

issue previously and has since seen a number of advertisements with information regarding registration at VSCs.

Commissioner Takenaka asked CEO Nago if the legislation that OE is submitting will be an administrative bill. CEO Nago answered that it is not going to be an administrative bill, but because of the way the law is written, they will be submitting their bills directly as an elections package to the House Speaker and the Senate President.

Chair Anderson suggested that for future elections, OE should show how the processing of ballots works so that the public understands that their ballots are not being tampered with. CEO Nago stated that based on the time they had for the 2020 Elections, ballots were only trackable after they were received back by the County Elections Divisions. He added that with more time, they can look into expanding the tracking to other offices.

Commissioner Koller recalled that in the minutes for the last EC meeting, it had been brought up that ballots should be trackable through the United States Postal Service (USPS) mail stream, and that CEO Nago said that he would work with USPS on that. She asked CEO Nago for a status update. CEO Nago clarified that when he said they would work on it, he meant for the 2022 Elections, as it would have been too late to implement for the 2020 Elections. Commissioner Koller asked CEO Nago for a status update on tracking ballots through the mail stream for the 2022 Elections. CEO Nago stated that currently, voters can track their ballots once it is received by the County Elections Divisions. He said that they are working with USPS to see if they would be able to begin tracking ballots once they are mailed out. CEO Nago explained that this would require things on OE's part, such as printing some sort of identifier on the ballot return envelope. Commissioner Koller asked CEO Nago if he expects to implement that by 2022, to which CEO Nago replied that they will do everything they can to make that happen. Commissioner Koller said that is not what she is asking, and that CEO Nago will not commit to implementing the tracking of ballots through the mail stream by 2022.

Commissioner Koller stated that Ms. Laura Nakanelua, the new GOP Hawaii chairwoman, has been on hold for over 11 minutes and is unable to get into the EC meeting. EC Secretary asked Ms. Kimberly Yamada, Office of Elections, to assist her. Ms. Yamada told Commissioner Koller that she will send her an email, as she did not want her to share Ms. Nakanelua's phone number in the public meeting.

Commissioner Koller referenced page three of CEO Nago's *Status of Operations* report, on which he reported that there were 723,978 mail ballots delivered to

USPS between October 5 through October 9. She also referred to a chart on pages four and five that shows the mail and in-person totals.

Commissioner Koller went on to say that in the second paragraph on page five, CEO Nago describes how the envelopes with signature issues were remedied for five days after the election. At the end of the second paragraph on page five, Commissioner Koller quoted, "The final statewide results report is then released upon the completion of all County post-election counts. All voted ballots are then secured for storage for 22 months pursuant to federal law." Commissioner Koller asked, given all of these references to numbers, which one, if any, reflects the final count including the remedied ballots. She said it does not appear that this information is in the report, and asked CEO Nago if he could amend his report to include it. CEO Nago explained that the purpose of the table on pages four and five was to show the differences in the results reports on election day through the final report on election night. He offered to provide the EC with the final result report, which is posted on the OE website. Commissioner Koller stated that she would like the *Status of Operations* report to include the final numbers, and that having it on the website is not an efficient way to communicate with the EC.

Commissioner Koller referenced page five of the *Status of Operations* report, where CEO Nago mentioned that OE provided an update to the Legislature on November 20, 2020 called *Implementing Elections by Mail*. She stated that Act 136, SLH 2019 requires that OE submit a report for every election through 2025, with the first one submitted on November 6, 2019. Commissioner Koller said that when she attempted to view the report on the OE website, she instead pulled up a four-page letter dated December 31, 2019 to the Senate President and the House Speaker regarding projections and cost comparisons for all mail elections versus polling places. She asked CEO Nago if this four-page letter is the report to the Legislature he referred to in his *Status of Operations* report. CEO Nago stated that he is looking at the website now, and the language says, "Act 136, Session Laws 2019 requires the Office of Elections to submit a report to the Legislature addressing the office's progress in implementing elections by mail." Below this statement, he pointed to a link that says, "View the report here," which takes one to the November 20, 2020 report.

Commissioner Koller referenced page six of the *Status of Operations* report, where CEO Nago describes their recommendations to the Legislature, including, "By allowing voter service centers to be established at differing dates and times, the County Elections Divisions may be able to establish additional locations in remote areas or establish more locations on Election Day." She asked CEO Nago what is restricting the counties under the current law from establishing more VSCs than the single one that was available on Maui where she lives. She added that the VSC on Maui remained open past 10:00 PM on election day with over 100 people standing in line to vote. CEO Nago stated that there is nothing preventing the counties from opening additional VSCs with the

way the law is currently written, but the only requirement is that the VSC has to be available for 10 days prior to election day. He said that if a county was unable to find a facility that could be open for 10 days, which could be an issue in remote areas like Hana, they would not be able to open that VSC. The new recommendation would still require that one VSC be open for 10 days, but allow the counties flexibility in opening other facilities for less than 10 days, if necessary.

Commissioner Koller asked CEO Nago what OE's relationship is with the County Elections Divisions, and if he hires the county clerks. CEO Nago replied that all county clerks are appointed by their council.

Commissioner Koller asked CEO Nago what OE's responsibility is in terms of opening additional VSCs. CEO Nago explained that with the way the law is currently written, there is very little overlap between the duties of the state and the counties, but that they do work cooperatively. He said the state is responsible for ballot printing, the counting of ballots, and voter education, and the counties are responsible for the mailing and receipt of ballots, VSCs, places of deposit, and voter registration. Commissioner Koller asked CEO Nago if he has any power with respect to opening additional VSCs, to which CEO Nago answered that he does not.

Commissioner Koller asked CEO Nago if he has anything to do with the security of the drop boxes or the distance observers are required to stand away from the processing of ballots. CEO Nago replied that the counties are responsible for the drop boxes and the VSCs, whereas the state is responsible for the official observers at the counting centers. He added that OE sends letters to the political parties in February asking for official observer recruits.

Commissioner Koller told CEO Nago that one of the complaints he will hear today is regarding the GOP not being given the opportunity to provide names for official observers. She said that she personally knows about it because she signed up for every one of the ten days and was not called to service. Commissioner Koller reported that when she inquired with the GOP Chair, Greg Lussier, she was told that the spots had already been filled by the County Elections Division. She asked CEO Nago if these complaints should be directed to the Maui County Elections Division. CEO Nago reiterated that the official observers are the state's responsibility, and that OE sends notification to the political parties in February asking for a list of names. He went on to say that OE did not receive any names from the Republican Party, so they did have to move on with recruitment. CEO Nago stated that the Republican Party did reach out to OE after, and OE did try to make every accommodation to include at least one Republican observer on every shift on Maui. Commissioner Koller asked

CEO Nago if what he is saying is that the Republican Party's State Chairman, Shirlene Ostrov, failed to provide the list of names in a timely manner. CEO Nago replied that they had not received any names from the Republican Party, but in the end did accommodate at least one Republican observer on every shift.

Commissioner Koller stated that one observer per shift is not sufficient to observe all of the activity, including, for example, the collection of ballots from the drop boxes to ensure a chain of custody. CEO Nago explained that the drop boxes and the VSCs are a county responsibility, so observers monitoring these activities would fall under the jurisdiction of the counties. He added that the observers at the counting centers are the state's responsibility, which is where they were able to accommodate at least one Republican observer per shift.

Commissioner Koller asked CEO Nago if he is responsible for the requirement that observers are to stand 50 feet away from the activities. CEO Nago replied that he is unaware of any such rule in the counting center, and that he believes she is referring to a rule of a VSC, which is a county responsibility.

In reference to OE's suggestions to the Legislature, Commissioner Koller stated that CEO Nago does not seem concerned with chain of custody regarding the drop boxes. CEO Nago clarified that ballots do not go directly from the drop boxes to the counting centers. First, the counties verify the signature and conduct a check to ensure that the voter has not already voted. Only then are the ballots transferred from the county to the state to be processed for counting. Commissioner Koller said that an example of chain of custody would be to implement cameras recording the drop boxes 24/7, through which you could view voters depositing their ballots, as well as transport of the box itself. She recalled that these types of activities used to be observable by representatives when there were polling places, and asked CEO Nago why OE is not making suggestions to the Legislature to better align the process with the way it used to be. Commissioner Koller stated that if in-person voting is now limited, they should at least maintain the same level of transparency and security. CEO Nago agreed that cameras would make the drop boxes more secure, and that a law change would not be required to implement that.

Commissioner Koller said that she received another text message regarding two other individuals who are unable to join the meeting. She asked Chair Anderson if they would be able to switch from Microsoft Teams to Zoom since they are continuing to experience issues. Chair Anderson agreed with Commissioner Koller, and said that he will have that conversation after today's meeting.

- VI. Open Forum: Any interested person may conduct a 3-minute presentation of a matter(s) for the Commission's potential consideration at a future meeting.

Greg Lussier: Mr. Lussier introduced himself as the Chair for the Maui County Republican Party, and recalled that CEO Nago said that the Republican Party was provided an opportunity to submit a list of names to be official observers. He claimed that is not accurate, and that they were told before the deadline that the positions had already been filled.

Chair Anderson asked CEO Nago if he would like to respond. CEO Nago said that he does not know how to respond to that statement, and that he said what he believes to be true. Chair Anderson asked CEO Nago if OE's response was sent to the state chair or the county chair, to which CEO Nago replied that the request was sent to the state chair of all parties.

Commissioner Dean stated that there should not be any arbitrary deadlines imposed for political parties to submit names for official observers, since the purpose is to build confidence in the electoral process. CEO Nago agreed, and reiterated that they worked with the Republican Party to accommodate at least one Republican observer on every shift. Mr. Lussier said that the Republican Party was told that the positions had already been filled, that the situation was brought to CEO Nago's attention, and that he did nothing to help them. CEO Nago stated that is not his recollection. Commissioner Dean requested an inquiry into Mr. Lussier's complaint with OE's internal investigation, to which CEO Nago agreed. Mr. Lussier mentioned that he did submit his complaint in writing to State Chairman Shirlene Ostrov who then met with CEO Nago regarding these issues.

Brett Kolbis: Mr. Kolbis identified himself as the Chair of the Honolulu County Republican Party, and said after speaking with the Republican Party official observers, some, if not all, acted as election workers rather than observers, which violates HRS 16-45. He stated that during the administrative rules hearing, the Republican Party raised the issue that official observers were not identified in the administrative rules, and it was not addressed.

Commissioner Koller referenced page four, second paragraph of CEO Nago's *Status of Operations* report, and said that the language speaks of election workers and official observers as if they are one and the same. She quoted, "Volunteers are also recruited to help with the processing of ballots and serve as Official Observers. Despite COVID-19, volunteers were eager to serve at the counting centers and we had more than enough people interested in participating. All shifts had ample coverage and many volunteers were willing to sign up for additional shifts as they became available." Commissioner Koller

stated that it is true that many Republican Party members were eager to be observers but were not allowed to participate, and that the language blurs the distinction between an election worker and an official observer. She added that if the distinction is not clear, it needs to be clarified in the law and added to the recommendations to the Legislature to fix in 2021.

Commissioner Dean stated that if the observers were also election workers, it would create more confidence in the electoral process to simply state that there were no observers, rather than blurring the distinction between the two roles. CEO Nago stated that he never witnessed any official observer acting as an election worker, and that the official observers were clearly distinguished with orange shirts and separate duties from the election workers.

Commissioner Koller reported that what she heard was that the Republican Party observers were asked by officials in the counting center to do certain tasks that interfered with their responsibilities as official observers. She asked CEO Nago if he will ensure that each political party is allotted an equal number of more than one observer for future elections, to which CEO Nago agreed.

Commissioner Koller raised another issue with HRS Section 11-17, regarding the removal of voters who have not voted in previous elections for a certain period of time. She said her understanding is that there are 124,000 voters who have not voted in the last four primary and general elections as of the end of September 2020, according to the Hawaii Republican Party voter data center. Commissioner Koller asked CEO Nago if he will ensure the removal of voters as required by HRS Section 11-17. CEO Nago stated that HRS Section 11-17 is in conflict with federal law, the National Voter Registration Act, which does not allow the removal of voters for failure to vote. He explained that the only way a voter can be removed is if a voter cancels their registration, or if a mailing sent to a voter is returned as undeliverable. In this circumstance, a forwardable follow-up mailing would be sent, allowing the voter two general elections to update their registration. If the voter does not update their registration within this timeframe, only then can they be removed from the voter rolls. Commissioner Koller suggested that CEO Nago make a recommendation to the Legislature to revise HRS Section 11-17 to be consistent with the federal law to avoid confusion. CEO Nago said that OE has tried to amend HRS Section 11-17 in the past, but was unsuccessful. He added that they can make the recommendation again to the Legislature, but cannot guarantee that it will pass. Commissioner Koller asked CEO Nago to add this issue to OE's request to the Legislature. She stated that the Legislature is a dynamic body, and that it is responsive to the public to some extent, so maybe it will pass this time.

Chair Anderson asked CEO Nago if he could prepare something in writing in the coming weeks to address the questions and concerns that have been raised, to which CEO Nago agreed.

- V. Public Testimony – Any interested person may submit comments or testimony on any agenda item.

Sandy Ma: Ms. Ma identified herself as a representative of Common Cause Hawaii, and said that she has questions for CEO Nago regarding the CARES Act funding referenced on page one of his *Status of Operations* report. She stated that there was some breakdown in the report and also in the report to the Legislature that was submitted in November, but wanted to know how much money was left and how much was allocated to the counties, if any. Ms. Ma said that it does not seem like any money was spent for the counties for more VSCs or drop boxes even though a request was made. She added that she had also requested for the number of registrations at VSCs, a breakdown of ballots received for the primary and general elections by day from USPS, drop boxes, and VSCs, and the number of ballots received after election day. Ms. Ma stated that this information could be helpful in determining the need for additional VSCs and placement of drop boxes in the future.

Ms. Ma asked if there has been any consideration to change the deadline for the one-time absentee (AB) ballot request. She recalled that the AB ballot request deadline for the general election was one week prior to election day, which did not allow enough time for a ballot to be sent and returned by the deadline. Ms. Ma asked CEO Nago if OE would be amenable to receiving a briefing from Ms. Mindy Romero, a researcher at the Center for Inclusive Democracy at USC Sol Price School of Public Policy. She added that Ms. Romero has done free mapping on the locations and numbers of VSCs and drop boxes for red and blue states including California, Colorado, Arizona, Texas, Georgia, Florida, Pennsylvania, Wisconsin, Michigan, and North Carolina. Ms. Ma said that this can be helpful in determining the timing and locations for VSCs and drop boxes, and that the invitation to meet with Ms. Romero is extended to the EC, OE, and the County Elections Divisions.

CEO Nago stated that OE can meet with Ms. Romero and invite the County Elections Divisions. He reiterated that the establishment of VSCs is under the jurisdiction of the counties, so they would need to be included in the conversation if they are discussing additional VSCs. Regarding the 7-day deadline for AB ballot requests, CEO Nago said he believes it is a federal requirement, but going forward they will ensure that their messaging urges individuals to submit their request as soon as possible, rather than waiting until the last day. CEO Nago reported that they received \$3 million in CARES Act funding, and spent over \$2

million of it on: larger facilities to allow for social distancing at counting centers on Oahu and Hawaii island; personal protective equipment and cleaning supplies like hand sanitizer and face masks; and additional messaging to make up for the lack of outreach due to the pandemic. He explained that the CARES Act funding required that they report how the money was spent shortly after the election, so it was simpler to reimburse the counties after the fact. CEO Nago said that the counties did use the CARES Act funding to purchase additional drop boxes for the general election, cleaning supplies, and facilities, and that the Honolulu City Clerk's Office used some of the money for voter education and commercials.

Ms. Ma asked CEO Nago how many counties used the CARES Act funding for additional drop boxes. CEO Nago replied that all counties purchased additional drop boxes for the general election, but was not sure if all utilized the CARES Act funding to do so. Ms. Ma reiterated her request for a breakdown of how ballots were received. CEO Nago stated that they do not have that information, but can ask the counties for it.

- VI. Open Forum: Any interested person may conduct a 3-minute presentation of a matter(s) for the Commission's potential consideration at a future meeting.

Brett Kolbis: Mr. Kolbis identified himself again as the Chair of the Honolulu County Republican Party, and stated that he thinks Honolulu County may have violated HRS Section 11-109 (d) by authorizing that the drop boxes open on October 6. He said the law reads that the clerks may designate a place of deposit to be open five business days before the election. Mr. Kolbis stated that October 6 was much earlier than five days before election day, which questions the security of the drop boxes, as previously mentioned by Commissioner Koller. He requested that the EC inquire with the counties to ensure they are following the law so that the public can feel confident about the security of the drop boxes.

Chair Anderson asked CEO Nago if he would like to respond. CEO Nago replied that his understanding is that the law says, "at least five days." This was an interpretation by the counties' corporation counsel, which allowed them to open drop boxes early. Mr. Kolbis said that the law does not say "at least five days," but states, "...places of deposit to be open five business days before the election." He stated that he understands that is a legal interpretation, but as a high school graduate, he reads the words the way they are written. Mr. Kolbis suggested that this revision be added to OE's recommendations to the Legislature.

Commissioner Koller stated that her opinion is that the public's confidence in ballot security is more diminished the longer the drop boxes are open, and that five days should be the maximum, rather than the minimum. She suggested that

CEO Nago include this clarification in OE's recommendations to the Legislature. CEO Nago explained that it is in OE's legislative package to allow for the flexibility of drop box dates due to the issues they had with the mail in the general election. He said that USPS had recommended that ballots be mailed at least seven days before election day, so the counties decided to open drop boxes earlier to allow voters more time to deposit their ballots if they did not have confidence in the mail system. Commissioner Koller asked CEO Nago to clarify OE's recommendation to the Legislature. CEO Nago answered that it is being made clear that drop boxes will be open at least five days prior to election day. Commissioner Koller asked CEO Nago if this means that it could be twenty days prior, to which CEO Nago confirmed to be true. Commissioner Koller stated that she believes that being able to open the boxes much earlier is bad for public confidence in the electoral process because it creates a security issue. She said that the earlier the drop boxes are open, the more difficult it is to secure them for that longer period of time. Commissioner Koller recommended that instead of "at least" five days, the language should be changed to "no earlier than" five or however many days, and to remove that flexibility.

Commissioner Seielstad requested that the EC table this issue for further discussion and a vote at another time, as she does not agree with limiting the drop boxes to be open only five days prior to election day. Chair Anderson agreed that drop boxes should not be limited to only five days prior to election day. Commissioner Koller said that seven, ten, or however many days would be fine, but she thinks a maximum number of days should be set, rather than leaving the determination up to the counties. Chair Anderson stated that the security of the drop boxes was never an issue during this election, no matter how long the drop boxes were open. Commissioner Koller said that the issue is with the opening of the drop boxes.

Ms. Ma stated that Common Cause Hawaii supports the earlier opening of drop boxes, and explained that if voters received their ballots three weeks prior to the election, it does not make sense to open the drop boxes only five days prior. She recalled that this occurred during the primary election in the counties of Hawaii, Maui, and Kauai, which created a lot of issues. Ms. Ma also mentioned the importance of collecting ballots from drop boxes in secure locations and on a regular basis. Referring to page 19 of OE's November 20, 2020 report to the Legislature, Ms. Ma asked CEO Nago who the new contractor is for the new DRE machines. CEO Nago replied that OE awarded the RFP to Hart InterCivic. He added that they are the same vendor, but OE will be utilizing the newer version of the voting equipment, called Verity.

Peggy Regentine: Ms. Regentine stated that she wanted to raise a concern that she reported at the debrief meeting on November 12. She explained that as an election worker, her responsibility on October 27 was to verify the military

APO/FPO ballots and report any discrepancies. Ms. Regentine said that she observed approximately 98% of votes for Biden, and 2% of votes for Trump, and checked over half of the 1500 APO/FPO ballots. She stated that she was surprised to see only 2% of votes for Trump, when most individuals in the military that she knows support Trump. Ms. Regentine then compared these numbers to the statewide result, where Trump received 33% of votes, which was not consistent with the 2% that she saw. She reported that she wrote letters to the newspaper, though they did not publish them. Ms. Regentine stated that she also wrote letters to Lin Wood, Trump's advisor, who said he would get back to her, and to U.S. Representative Ed Case, who did not respond. She said that she wanted to bring this issue to the attention of the EC because she believes there were issues with the APO/FPO ballots throughout the nation.

Commissioner Koller requested an internal investigation into Ms. Regentine's concern. Chair Anderson asked CEO Nago where the APO/FPO ballots are sent to. CEO Nago replied that they are sent to the County Elections Divisions for validation, then to the State for counting. He explained that the military and overseas ballots are HTML alternate format ballots that need to be duplicated to be counted. CEO Nago asked if the duplication was correct or incorrect.

Commissioner Koller asked CEO Nago if there were observers from all of the political parties observing the duplication. CEO Nago confirmed that there were, and explained that the ballot is first duplicated by an election worker, then validated and signed off on by an observer. He added that there were at least 10 pairs of election workers and observers participating in this task, and no others had raised this concern.

Commissioner Koller stated that it is difficult for observers to be of any help if they are required to stand 50 feet away. CEO Nago said that the observers were not 50 feet away; instead they were right next to the activity, as they were required to sign the ballots. Commissioner Koller asked CEO Nago to confirm that the workers who were required to stand 50 feet away on a platform on Maui were not the same individuals observing the duplication process. CEO Nago clarified that the platform requirement was implemented at VSCs where voters voted; they are currently discussing observers watching the processing and counting of ballots.

Mr. Kolbis asked CEO Nago to clarify the process for absentee (AB) ballots. He was told that the AB ballots were included in the mail totals on the result report, though his understanding was that AB ballots require a completely separate request accompanied by proof of identification from the voter. CEO Nago explained that there are two categories of voting: in-person voting, by voters at a VSC, and mail voting, which includes voters who receive their ballot at their

home address, as well as voters who request that their ballot be sent to an alternate location. Commissioner Koller asked CEO Nago if there is a difference between someone who votes on an AB ballot versus someone who automatically receives a ballot by mail as per Act 136. She stated that it is important to be able to distinguish between the two, since she believes that AB ballots are more integrous than unrequested universal mail ballots. Commissioner Koller asked CEO Nago if the two types can be separated, totaled, and provided in a report. CEO Nago replied that it is not possible to obtain those separate totals since all mail ballots are processed together. Commissioner Koller asked CEO Nago if this is something that can be done in 2022, to which CEO Nago answered that doing so would require the counties to make a distinction between AB ballots and regular mail ballots, and keep them separated through processing.

Mr. Kolbis asked CEO Nago to confirm that a person who requested an AB ballot would not receive their regular mail ballot in addition to a second AB ballot. CEO Nago explained that an individual voter record is associated with a unique voter ID number, and there is only one ballot printed per voter ID number. He added that depending on the timing of the AB request, two ballots may be sent to the same voter, however the counties would know to invalidate the first ballot and wait for the AB ballot to process.

Greg Lussier: Mr. Lussier reintroduced himself as the Chair for the Maui County Republican Party, and stated that they experienced many issues that he wanted to share with the EC. He reported that they were told by the Maui County Elections Division that they would not be able to accommodate their party members as observers, as the positions had already been filled. Mr. Lussier said that he raised his concern with new Maui County Clerk, Ms. Kathy Kaohu, who allowed them to have one observer rotate between the four counting stations, rather than accommodating their request for four observers. Regarding their poll watchers, Mr. Lussier stated that the Maui County Elections Division removed names from their list and changed their schedules. They were also required to stand on a platform 50 feet away, and were restricted from moving around freely in certain areas, such as the parking lot. He said that during the last few days, they were allowed to move around freely to observe, as there was no established rule that required them to stand 50 feet away. Mr. Lussier stated that the Republican Party feels that the political parties should be able to fill the official observer positions with their own representatives before other volunteers are considered. He added that he wants to know who made these decisions and why these issues occurred.

Commissioner Dean told Mr. Lussier that if he wants remediation, he should put all of his concerns into writing with exhibits, statements, videos, and other corroborating data to provide the EC with a formal report. Mr. Lussier replied that

they were not allowed to take photos, but he can get written testimony from their 28 VSC poll watchers.

Commissioner Koller stated that she wanted to add on to Mr. Lussier's testimony and referenced the July 23, 2020 EC meeting minutes, page three, paragraph two, "CEO Nago reported that OE will be conducting the logic and accuracy test of the vote counting system this Saturday in the presence of Official Observers. He explained that Official Observers are representatives of the political parties who serve as the 'eyes and ears' of the general public." She said there is in writing and speech from CEO Nago regarding the need for observers from the political parties, however what occurred on Maui did not reflect this. Commissioner Koller requested that these issues be officially reported and investigated. Chair Anderson asked Mr. Lussier if he could put his concerns into writing, to which Mr. Lussier agreed.

Commissioner Kiguchi left the meeting at 11:45 AM.

Sandy Ma: Ms. Ma, Common Cause Hawaii, stated that she had one question regarding the 2017 Memorandum of Agreement between the Department of Transportation (DOT) and OE on the electronic transport of data for voter registration. She asked CEO Nago if OE is moving away from paper registration, to which CEO Nago answered that he would need to get back to her on the details for that.

Laura Nakanelua: Ms. Nakanelua introduced herself as the RNC national committeewoman representing Hawaii, and asked CEO Nago what body approved the extended timeframe for the ballot drop boxes. CEO Nago replied that the drop boxes are the responsibility of each county, so their respective corporation counsel, or their legal advisor, would have approved that decision. Ms. Nakanelua asked CEO Nago if the law requires that no less than one member of each political party shall observe the pickup or transport of the ballots from the drop boxes. CEO Nago answered that he does not believe there is anything in law, so if that occurred, it would have simply been a voluntary practice implemented by the county. Ms. Nakanelua stated that she served as an official observer on several occasions, and there seems to be a glaring lack of chain of custody of the ballots via USPS mail and the drop boxes. She said that USPS does not deliver the mail ballots to the location where the signature verification is done, but instead the Honolulu City Clerk's Office picks up the ballots from USPS unobserved. Ms. Nakanelua stated that there are many people in Hawaii who have concerns about the security of the mail ballot process, and the ability to observe what happens to the ballots once they have left the voters' hands. She said she is unsure if this is a question for CEO Nago or the EC, but wants to know how the chain of custody issue can be addressed.

Commissioner Koller stated that she has been a poll watcher for many years and has never witnessed anything like this. She said that when there was in-person voting at the polling places, there were observers from the political parties present for the collection and transportation of the ballots, but in this transition to all mail elections, everything in place was thrown out. Commissioner Koller requested that CEO Nago include in his recommendation to the Legislature that they standardize some chain of custody and require observers to be present for the transportation and delivery of the voted ballots from the drop boxes and USPS.

Ms. Nakanelua asked CEO Nago if he could address this concern in writing in his next report to the Legislature. CEO Nago replied that the receipt of ballots via USPS mail and drop boxes are the responsibility of the counties, so he can make the recommendation, but cannot guarantee that they will be on board.

Commissioner Koller stated that she understands CEO Nago does not have the power to tell the counties what to do, and suggested that he recommend in his report to the Legislature that they give him that authority, or adopt a law that standardizes the requirements with regard to the chain of custody for ballots, including the requirement that the process be observed by the political parties. She told CEO Nago that he should be insisting that the Legislature reign in the counties' discretion because the counties have gone too far in abandoning any semblance of chain of custody of ballots.

Commissioner Koller told CEO Nago that she did not read his November 20, 2020 report to the Legislature because she had clicked on the wrong link, so instead referred to his first report to the Legislature dated November 6, 2019. She referenced pages five through seven, which reported that new signature capture cards were sent to all voters in Hawaii, providing an opportunity to update their signature on file. Commissioner Koller asked CEO Nago if he could identify where in Act 136 he is given the authority to send new signature capture cards. CEO Nago explained that HRS Section 11-20 allows for the updating of voter registration, and the signature capture card was one method of doing so. Commissioner Koller stated that CEO Nago was admonished by the Hawaii State Supreme Court in 2016 for not adopting by administrative rule the method by which OE projected the number of ballots needed in 2012, which resulted in a ballot shortage. She asked CEO Nago to confirm that this situation is similar, in that they should have gone through the rule making process with a public hearing prior to sending out new signature capture cards. Commissioner Koller said that this is especially problematic with all mail elections, since every registered voter, rather than just those who requested an AB ballot, has an opportunity to provide an updated signature. As an example, she said a signature capture card may be delivered at a residence for an individual who no longer lives there, and if the recipient provides their own

signature, they become a fraudulent voter. Commissioner Koller asked CEO Nago why he did not go through the rule making process prior to sending out the signature capture cards. CEO Nago answered that their belief is that HRS Section 11-20 allows the counties to update and maintain voter registration, which was accomplished through mailings including the signature capture card. Commissioner Koller said that there was nothing explicit or implied in Act 136 regarding signature capture cards being sent to every registered voter.

Ms. Regentine stated that in 2001, she hosted a biometrics conference at Windward Community College, and suggested fingerprint identification, which is something that does not change. She added that she thinks Hawaiian Airlines had some sort of hand identification, and some condominiums use retinal identification, which could possibly be considered for the future. Commissioner Dean shared that he has a background in cybersecurity and software development, and that this would not be feasible because it is very difficult to convert a physical characteristic into a digital code.

Chair Anderson announced that they will take a 10-minute break, return to the public meeting, and then go into executive session.

The EC took a 10-minute break at 12:08 PM.

The EC returned to the public meeting at 12:18 PM.

EC Secretary conducted roll call. She said that Commissioner Kiguchi had to leave the meeting at 11:45 AM, Commissioner Takenaka was already waiting in the executive session meeting, and that all other Commissioners were present.

Commissioner Koller asked Commissioner Dean if it is true that the machines that verify signatures can be set to a level that accepts a straight line as a valid signature. She added that she wanted to know if this was true for the Verity machines that CEO Nago reported won the bid. Commissioner Dean explained that because signatures are variable, the "hash function" needs to translate the signature its measuring into a multi-digit number, so the result will either be many false positives or false negatives. He said that he would be reluctant to approve a machine for signature verification, rather than human eyes.

Commissioner Koller asked CEO Nago if machines will be used to conduct the signature verification. CEO Nago replied that three of the four counties use machines to compare signatures. Commissioner Koller asked which counties, to which CEO Nago answered that Kauai is the only county who validates signatures manually. Commissioner Koller started to mention

Commissioner Dean's comment about the unreliability of the machines when Commissioner Dean stated that he wanted to make clear that he did not say that a particular technology is "unreliable," but that if they were having a policy discussion, he would lean more toward manual verification. Commissioner Koller said that if three of the four counties are using machines to verify signatures, it should be determined who is auditing the machines to ensure they are working properly. She asked the EC how they should act on this.

CEO Nago stated that if the signature verification machine rejects an envelope, a manual comparison is done. If there is still a discrepancy, the voter is notified, and they are given five days after election day to correct the issue. Commissioner Koller asked CEO Nago how the machine is set and whether it produces a lot of false positives or false negatives. CEO Nago answered that the counties are responsible for the signature verification and he does not know how they set the machines. Commissioner Koller asked CEO Nago if OE has anything to do with the contracting of these machines, to which CEO Nago said that falls under the jurisdiction of the counties.

With no further comments, Commissioner Curtis made a motion to go into executive session, which was seconded by Commissioner Seielstad, and approved unanimously by the Commissioners.

The Commission went into executive session at 12:27 p.m.

VII. Approval of Minutes for the Executive Session for the Meeting of July 23, 2020

Pursuant to HRS § 92-5(a)(8), the Commission anticipates going into an executive session to consider the approval of executive session minutes.

VIII. Performance Evaluation and Consideration of Salary Adjustment of the Chief Election Officer, Pursuant to HRS Sections 11-7.5(5) and 11-1.6(e), and Action, If Appropriate

Pursuant to HRS Section 92-5(a)(2), the Commission anticipates going into an executive session to conduct a performance evaluation of the chief election officer within two months after the date a general election is certified.

The Commission reconvened into open meeting at 12:49 p.m.

IX. Adjournment

With no further business before the Commission, Commissioner Curtis made a motion to adjourn the meeting, which was seconded by Commissioner Seielstad, and approved unanimously by the Commissioners.

Elections Commission meeting was adjourned at 12:54 p.m.

Respectfully submitted,



Jaime Kataoka
Elections Commission Secretary