



**STATE OF HAWAII
ELECTIONS COMMISSION**

F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

MINUTES

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

FEBRUARY 8, 2021 @ 10:00 AM

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

Commissioners in Attendance:

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

Technical Support Staff in Attendance:

Lori Tanigawa, Department of the Attorney General (AG)
Scott Nago, Chief Election Officer (CEO)
Nedielyn Bueno, Office of Elections (OE)
Jaime Kataoka, Office of Elections
Holly Kiaaina, Office of Elections
Keenan Kinimaka, 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 Attendance¹:

Cori
Debbie
jhenricks
pnakamoto
Casey Harlow, Hawaii Public Radio
Kathy Kaohu
Brett Kulbis, Honolulu County Republican Party
Janet Mason, League of Women Voters of Hawaii
Laura Nakanelua, Hawaii Republican Party
Dan Nakaso
Annette Sojot-Shannon

PROCEEDINGS

I. Call to Order

Chair Anderson called the meeting to order at 10:03 a.m.

Elections Commission (EC) Secretary, Ms. Jaime Kataoka, stated that she wanted to make a few housekeeping announcements. She said that today's meeting is being recorded and that all participants except for the EC will be muted until public testimony. Ms. Kataoka reminded the attendees that all non-Commissioners should have their video turned off until they are called on during public testimony, and to identify themselves before speaking.

II. Roll Call and Determination of a Quorum

EC Secretary conducted roll call. Commissioners Dean and Seielstad were not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the Meetings of December 15, 2020 and January 21, 2021

Commissioner Koller pointed to p. 12-13 in the meeting minutes of December 15, 2020, during the testimony of Peggy Regentine and CEO Nago's explanation of the military ballots. She said on p. 12, it was referred to as "APO/FPO," and on p. 13, it was referred to as "AFO/FPO." Chair Anderson confirmed that the correct term is "APO."

¹ Members of the public who testified, or otherwise voluntarily identified themselves at the meeting are listed.

Commissioner Koller made reference to another spot in the meeting minutes of December 15, 2020, when CEO Nago discussed the contract being awarded to Hart InterCivic. She said that the word that was used was “rewarded,” though she believed the correct term to be “awarded.” CEO Nago confirmed that the correct term is “awarded.”

With no more comments regarding the December 15, 2020 minutes, and no comments regarding the January 21, 2021 minutes, Chair Anderson stated that they will be taking public comments. He reminded attendees that only items on the agenda will be addressed today, and that any non-agenda items may be discussed at the next EC meeting. Chair Anderson requested that testifiers limit their comments to three minutes, and first asked the EC if they had anything to say.

Commissioner Koller said that she wanted to follow up on some items in the minutes, and asked if now is the appropriate time. Chair Anderson confirmed that it is.

Commissioner Koller stated that the minutes in and of themselves are accurate, aside from the typos she mentioned earlier. She asked when the EC will discuss whether they should make any findings and recommendations as a supplemental report to the Legislature. Chair Anderson replied that they are having that discussion now, and that he wants to make sure they focus on issues that are the responsibility of OE, not the County Elections Divisions.

Commissioner Koller asked if there is anything in law that says the EC cannot provide recommendations to the Legislature regarding improvements for the County Elections Divisions. Chair Anderson stated that he thinks it is valid to mention some of these concerns, and though there may have been a couple of missteps, there was nothing of major proportion that he saw. He said there is a draft letter that the EC can offer comments on. Commissioner Koller stated that she thought the letter had been submitted with a paragraph indicating that the EC may provide a supplemental letter after they reviewed the minutes from the previous meetings. Chair Anderson told Commissioner Koller that she was correct.

Commissioner Koller said that the chart they were provided that lists the responsibilities of the State (OE) versus the County Elections Divisions was very helpful, and that the Counties have a lot of discretion with the way the law currently stands. She stated that they have discretion regarding the number and locations of voter service centers (VSCs), and whether to utilize observers or cameras for the chain of custody of voted ballots from the drop boxes to the County offices, which she said no County is currently doing. Commissioner Koller recalled that when she asked CEO Nago if he thought having observers or

cameras would improve the security and integrity of the transportation of voted ballots, he agreed but said it was a County matter. She suggested that the EC recommend to the Legislature that they consider shifting that delegation of responsibility from the Counties to OE, or that they pass a law that standardizes requirements for ballot transportation. Commissioner Koller stated that it is important for voters to feel confident in the election system, which is not just a local issue. She referenced the testimony of Laura Nakanelua, the RNC national committeewoman for the Hawaii Republican Party, in the December 15, 2020 meeting minutes, who said, "...there seems to be a glaring lack of chain of custody of the ballots via USPS mail and the drop boxes" and that the "Honolulu City Clerk's Office picks up the ballots from USPS unobserved." She also quoted Ms. Nakanelua saying, "...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." Commissioner Koller said this is an example of an area that the County Elections Divisions have jurisdiction over that the EC may want to recommend be changed.

Commissioner Curtis stated that one of the EC's duties is to investigate and hold hearings for receiving evidence of any violations and complaints. He said this sounds like a complaint and that he thinks it is within the EC's authority to hold a hearing and perhaps make recommendations to the Legislature, to be discussed at a future meeting. Commissioner Koller agreed that this topic could be discussed at another meeting. Chair Anderson said that it is possible this issue is already being discussed at the Legislature, and that CEO Nago should be having this conversation with the Legislature when he meets with them.

Commissioner Koller said that she reviewed the bills that OE shared with the EC, and she did not see anything about chain of custody. In referencing the minutes from the last two EC meetings, she stated that she had urged CEO Nago to add to his report and proposed recommendations to the Legislature that this issue be addressed, and CEO Nago had said this fell under the jurisdiction of the County Elections Divisions. Commissioner Koller said that if the power is given by the Legislature to the Counties to perform this function of ballot security and they are not doing it, the process needs to be prescribed by law or the responsibility shifted from the Counties to OE. Commissioner Curtis stated that the complaint has been acknowledged and that discussion should occur at another time.

Commissioner Takenaka said that she is unfamiliar with the process of the EC holding a hearing, but asked if they would be able to bring in the County Clerks, or the Honolulu City Clerk at a minimum. Commissioner Koller requested that the Maui County Clerk be included as well. Chair Anderson stated that he liked the idea of inviting all of the County Clerks to the next EC meeting. He added that if the EC decides to submit a supplemental letter to the Legislature, they can

mention that they want to examine more closely the functions of the County Elections Divisions, and perhaps suggest changes.

Commissioner Koller stated that the initial advertisements that OE had put out regarding the registration deadline were misleading, though the message was corrected in subsequent advertisements. She suggested clarifying this message in future advertisements by stating that the registration deadline is to receive a ballot by mail, but that voters can still register and vote at a VSC through election day. Chair Anderson said that CEO Nago addressed and corrected this issue. Commissioner Koller confirmed that he had, and said that to prevent it in the future is to not have to correct it.

Commissioner Koller recalled from the meeting minutes that CEO Nago stated that OE is working with USPS on tracking ballots through the mail stream. She said that CEO Nago mentioned that would require OE to print an identifier on the ballot return envelope, but he could not commit to having that function ready for the 2022 Elections. Commissioner Koller stated that because other more populous states are doing this, there is no reason why CEO Nago should not be able to make that commitment. She suggested that the EC recommend to the Legislature that they require OE to have ballot tracking through the mail stream by 2022.

Chair Anderson stated that CEO Nago is working on it, and that they would be telling USPS what to do. Commissioner Koller disagreed and said they would be telling CEO Nago what to do because it is OE's responsibility to print the identifier on the ballot return envelope. She added that this issue has nothing to do with USPS because it is being done in other states. Commissioner Koller said there would be no consequence if OE failed to implement ballot tracking by 2022, but it is a matter of having the Legislature prioritize the issue by passing a resolution or law.

Commissioner Vierra asked if the EC would need to go through the Legislature to handle this issue. Chair Anderson replied that the EC can ask CEO Nago these questions and have that discussion with him. Commissioner Vierra stated that since the EC evaluates CEO Nago's performance, it seems as though they could have that conversation with him internally, rather than going through the Legislature and turning the issue into a long, drawn out affair. Chair Anderson agreed and said the EC should have that discussion with CEO Nago first, so they can learn what the stumbling blocks are, then decide what to do going forward.

Commissioner Koller referenced the December 15, 2020 minutes in which Greg Lussier, Chair of the Maui County Republican Party, testified that CEO Nago allowed one official observer from the Republican Party for each shift at the Maui county counting station, although Chair Shirlene Ostrov had not

submitted a list of names in a timely manner. She said the point Mr. Lussier was trying to make was that one observer per shift was not adequate, since that observer had to be rotated between the four counting stations. Commissioner Koller recalled Commissioner Dean saying at the December 15, 2020 meeting that arbitrary deadlines should not restrict political party representation at the counting centers. She suggested that this issue be communicated to the Legislature.

Commissioner Dean entered the room at 10:41 AM.

Chair Anderson stated that the State Chair of the Republican Party, Shirlene Ostrov, was responsible for this issue, as she did not submit the paperwork, and that he did speak to her about it. Commissioner Koller said that is disputed, and that Commissioner Dean would agree with her that there should not be arbitrary deadlines that limit political party representation of observers.

Commissioner Curtis told Commissioner Koller that this issue is already on record and that she is being redundant. Commissioner Koller agreed that it is recorded in the minutes, but it is not being communicated to the Legislature. Chair Anderson asked Commissioner Koller why the EC should bring this to the attention of the Legislature when the fault lies with the then-Chair of the Republican Party, Shirlene Ostrov, who did not submit the list of names. Commissioner Koller stated that there is nothing in law that says the names have to be submitted by a certain date, and that if CEO Nago had the power to add one observer from the Republican Party per shift, he could have added four. Chair Anderson said that CEO Nago had given Ms. Ostrov extra time and she still did not submit the list of names. Commissioner Koller stated that she did not believe that was relevant because the deadline was arbitrary, and that she knew Ms. Ostrov collected names past the deadline because Commissioner Koller had signed up for every shift every day and was not called to work as an observer.

Commissioner Koller referenced the minutes in which Brett Kulbis, Chair of the Honolulu Republican Party, testified that the functions of election workers versus official observers need to be clarified in the law or by administrative rule. Commissioner Curtis asked if this is on today's agenda, to which Commissioner Koller replied that it is in the minutes. Commissioner Curtis asked if the minutes have been approved, and Commissioner Koller said that the EC can continue this discussion after the approval of the minutes. She added that Chair Anderson had said now is the time to discuss what the EC thinks should be included in the supplemental report to the Legislature.

Chair Anderson stated that the EC needs to approve the minutes from the meetings of December 15, 2020 and January 21, 2021, and decide if they will send a supplemental report to the Legislature.

Commissioner Curtis made a motion to approve the minutes from the meetings of December 15, 2020 and January 21, 2021 with the typo corrections. The motion was seconded by Commissioner Koller, and approved unanimously by the Commissioners.

Commissioner Koller referenced the December 15, 2020 minutes in which Brett Kulbis, Chair of the Honolulu Republican Party, testified that the functions of election workers versus official observers need to be clarified. She recalled CEO Nago stating that he thought the distinction between the two was clear, with one group wearing orange shirts. Commissioner Koller stated that despite this, the EC received testimony from Mr. Kulbis and Laura Nakanelua regarding some observers being asked to do election worker tasks that distracted them from their observer duties. She said she had also pointed out that CEO Nago had blurred the distinction between the volunteers and the paid workers in the report he provided. Commissioner Koller stated that she does not want to speak for Commissioner Dean now that he is present, but the minutes reflect that he had said there should be a clear distinction between the two roles. She said this might be a recommendation that the EC may want to make to the Legislature, in the form of a change to the law or administrative rules.

Commissioner Koller recalled that the other issue Mr. Kulbis raised was regarding cleaning up the voter rolls. She said she did not want to repeat the discussion about how our state law conflicts with the federal law, which is what is followed. Commissioner Koller stated that according to the chart they received, consistent with CEO Nago's testimony, this is a responsibility of the County Elections Divisions. She said the EC needs to know whether the counties are fulfilling this duty and if not, the EC may make a recommendation to the Legislature to shift this responsibility to OE. Commissioner Koller said that mail voting has caused a huge spike in voter registration which is a good thing, but voters who have died or moved out of the state need to be removed from the rolls to protect the integrity of the vote.

Chair Anderson agreed that this issue is important and should be examined, but he is not sure it is a recommendation the EC needs to make to the Legislature. Instead he offered to ask CEO Nago to talk to the County Elections Divisions about their process since it is their job.

Commissioner Koller agreed that is the Counties' job, and said that it is the EC's job to report to the Legislature when the Counties are not doing that job. She agreed that the EC should first ask the Counties to report what they are doing to clean up the voter rolls. Commissioner Kuwada agreed that the EC should ask the Counties to submit a report, and said that he would be shocked if they were not following the proper procedures. He stated that if Commissioner Koller believes there should be a law change with regard to how the voter rolls are

maintained, that is a completely different matter. Commissioner Koller said that the federal law is followed, to which Commissioner Kuwada confirmed to be true. He asked Commissioner Koller if she is maintaining that the Counties are not doing their job. Commissioner Koller recalled that in the testimony the EC received, based on the GOP data, there are 143,000 voters in Hawaii who have not voted in the past two elections. She said that she understands that is not sufficient to remove voters under the federal law. Commissioner Kuwada confirmed that is correct and asked Commissioner Koller what her point is. Commissioner Koller stated that she wanted to know how they ended up with the 143,000 and what the Counties are doing to maintain the voter rolls. She added that she is not recommending that they change the federal law.

Chair Anderson said that he is only interested in discussing things they may want to send in a supplemental report to the Legislature.

Commissioner Dean stated that the voter registration rolls are the fundamental, foundational layer of what the government is and how democracy functions. He said it makes sense to him for the EC to mention to the Legislature that this responsibility falls under the jurisdiction of the Counties, and that there needs to be some kind of process that reviews how the Counties are managing the voter rolls. Commissioner Dean stated that he does not think it would be too much of a burden to ask CEO Nago to put this into a report.

Commissioner Kuwada asked the EC to confirm that there is a concern that the Counties are not following the federal law in maintaining the voter rolls. Commissioner Dean said that if one looks closely at what is happening in each office, there is probably room for improvement, and that it is more of a transparency issue than an accusation of failure. Chair Anderson stated that this is why he would like to hear from the County Clerks first. Commissioner Dean said that because the Legislature oversees the state, the Counties should be talking to them directly rather than going through the EC.

Commissioner Koller agreed with Commissioner Dean, and apologized to Commissioner Kuwada, stating that she did not mean to suggest that the Counties are not doing their job properly. She clarified that there is no accountability because there is no report to the EC or to the Legislature regarding these procedures.

Chair Anderson reiterated that if the EC talks to the Counties directly rather than going through the Legislature, the issue can be handled more quickly. Commissioner Dean said that he does not have any strong views on this, and understood Chair Anderson's viewpoint better after he restated it.

Commissioner Curtis exited the room at 11:01 AM.

In reference to the December 15, 2020 minutes, Commissioner Koller pointed to Peggy Regentine's testimony, in which she explained that she was an election worker whose job was to verify the military APO/FPO ballots and report any discrepancies. Commissioner Koller stated that Ms. Regentine said that she handled more than half of the 1,500 ballots that were received, and claimed that she saw that 98% of the votes were for Biden and 2% were for Trump. Commissioner Koller said that Ms. Regentine thought this was odd since the statewide vote for Trump was 33%. Regarding the duplication process for the HTML alternate format ballots explained by CEO Nago in the minutes, Commissioner Koller recalled that the ballots are duplicated by human hands in the presence of official observers. She asked if this included observers from the Republican Party, as they know there was only one observer from the Republican Party per shift at the Maui County counting center. Commissioner Koller said that if not all of the political parties were represented, the EC should raise this issue with the Legislature and request an audit of the votes going forward.

Chair Anderson stated that he does not want to doubt Ms. Regentine's testimony, but her concern had not been reported by anyone else. He asked if Ms. Regentine was working on Maui or Oahu, to which Commissioner Koller replied that she thinks Ms. Regentine was working on Oahu. Chair Anderson said that he thinks Janet Mason from the League of Women Voters of Hawaii (LWV) was assigned to the same task and had not heard her mention this issue. Commissioner Koller suggested that they ask Ms. Mason about this when they get to public testimony.

Commissioner Koller referenced the December 15, 2020 minutes, where Ms. Sandy Ma, Common Cause Hawaii, had asked CEO Nago about the 2017 Memorandum of Agreement between the Department of Transportation (DOT) and OE, and whether OE was moving away from paper registration. She said that CEO Nago had told Ms. Ma that he would get back to her on the details, and Commissioner Koller wanted to follow up on that response. Regarding the EC's report to the Legislature, Commissioner Koller asked if they need to know OE's intention of possibly moving away from paper registration with DOT. Chair Anderson said that he would like to limit what they report to the Legislature, and asked if there are any other concerns.

Regarding the signature verification machines, Commissioner Koller stated that Commissioner Dean had said in the minutes that he would not recommend them, as the technology tends to produce a lot of false positives and false negatives. She said that CEO Nago had indicated that this is a responsibility of the County Elections Divisions, and that Kauai is the only county that uses human eyes to verify signatures. Commissioner Koller asked the EC if they should request that

the Legislature consider standardizing the signature verification process at the state level and reexamine the accuracy of the signature verification technology.

Chair Anderson explained that if the machine rejects a signature, it is then examined by human eyes. Commissioner Koller said that this process only accounts for the false positives, not the false negatives. Chair Anderson said that is true, and that he was surprised by how low the numbers were for ballots with mismatched signatures.

Commissioner Koller recalled that she had asked CEO Nago whether the signature verification machines were set so low that it would accept a straight line as a signature, and CEO Nago had said this was a responsibility of the County Elections Divisions.

Commissioner Dean stated that one has to either trust the companies that manufacture the machines and write the algorithms, or the people responsible for these tasks. He said that with cybersecurity, it is either impossible or very easy to hack most computers and software, and that he is reluctant to see a centralization of power amongst three companies with respect to counting ballots nationwide. Commissioner Dean disclosed that he does not have firsthand knowledge on this topic, but is reading about this in the news. He said that he is reluctant to shift from a people- and relationship-centric voting system to one that is software-based for these reasons.

Chair Anderson stated that there have not been any recent complaints about individuals voting for other people. Commissioner Dean said that the whole point is that they are never going to get those complaints. Chair Anderson disagreed, and recalled that there were reports of these issues occurring in senior living facilities in the past. He added that the ballot return envelopes are kept for 22 months, so they can be examined if there is a dispute. Commissioner Dean told Chair Anderson that he thinks they are talking about two different things, and that he was referring to the process of using algorithms and machines to count ballots. Chair Anderson said that they are currently discussing the signature verification machines.

Commissioner Koller asked if there is a reason the EC would not want to recommend to the Legislature to set up a study group or reexamine the signature verification process. Chair Anderson answered that it is the Counties' decision whether to use machines or human eyes for the signature verification, and that he thinks this should be discussed with the Counties first before bringing it to the attention of the Legislature.

In reference to the January 21, 2021 minutes, Commissioner Koller pointed to the testimony from Sandy Ma, Common Cause Hawaii, who stated that there

were very long lines at the VSCs on general election day, and that Common Cause is hoping for more VSCs and drop boxes in the future to accommodate voters' needs statewide. Commissioner Koller stated that the number and locations of the VSCs is the responsibility of the Counties, but that does not mean the EC does not have a role in acknowledging there was a problem. She said that there were lines of 100+ people past 10:00 PM at the VSCs, though the EC is not going to mention it in their report to the Legislature. Commissioner Koller suggested that the EC maybe recommend to the Legislature that they take away some responsibility and discretion from the Counties considering the issues that occurred during the 2020 Elections. She proposed that if they do submit a supplemental report to the Legislature, they should at least acknowledge that there were lines and that it is unreasonable to expect people to wait in line for six hours.

Commissioner Kuwada stated that this was the first election cycle that Hawaii transitioned to voting by mail statewide, and that he does not think the EC should report to the Legislature about the long lines at the VSCs when the issue could be handled internally. He said that the VSCs may be a County responsibility, but as a former election official at the Maui County Office, he does not think the same mistakes would be made again. Commissioner Kuwada added that if a mistake is repeated, then they may have a reason to alert the Legislature, but he does not think they are at that point yet.

Chair Anderson stated that the EC will now listen to public comments.

Janet Mason, League of Women Voters of Hawaii (LWV): Ms. Mason said that because there has been so much discussion about election security, she wanted to mention that the Legislature is not ignoring this issue. She explained that SB 1289 expands the scope of what election observers can witness to include processes like the signature verification, and permits more than one observer from each political party and the media. Ms. Mason stated that SB 1289 has not yet been scheduled for a hearing, but LWV did recommend via testimony for SB 548, relating to voting by mail, that it be amended to include the provisions of SB 1289.

Chair Anderson asked Ms. Mason if she was an observer for the military APO/FPO ballots. Ms. Mason confirmed that she was an observer of the duplication of the military ballots. Chair Anderson asked Ms. Mason if she saw anything unusual with the ballots. Ms. Mason stated that she did not see anything unusual at the counting center, which was very carefully monitored. She recalled that there were two observers preparing the duplicate ballot and checking the duplicate ballot to ensure it corresponded to the electronic ballot.

Brett Kulbis, Honolulu County Republican Party: Mr. Kulbis stated that he completely agrees with Ms. Mason's testimony. He said that there are over 60 pieces of legislation regarding voting and elections this year, and that he believes that the more information the Legislature is provided, the more empowered they will be to make an informed decision. Mr. Kulbis requested that the EC consider the items that Commissioner Koller is recommending to submit as a supplemental report to the Legislature. He stated that as previously mentioned, some of these bills have not yet been assigned a committee, but suggested that the EC's input may change that. Mr. Kulbis reminded the EC that in 2022, all 76 legislators will be up for election and there will also be a governor's race. He said he did not think the Legislature will want to discuss anything election related then, so now is the time. Regarding the signature verification process, Mr. Kulbis suggested that the EC ask the Counties for the numbers of rejected signatures from prior elections compared to this year's election to determine why the discrepancy was so low.

Laura Nakanelua, Hawaii Republican Party: Ms. Nakanelua asked when OE will be submitting a report to the Legislature, to which Chair Anderson replied that it was submitted in November. Ms. Nakanelua stated that at the December 15, 2020 meeting, she had raised her concern about the lack of verifiable chain of custody of ballots, and had asked CEO Nago if he could address this issue in his next report to the Legislature. She recalled that CEO Nago had said that the receipt and transportation of ballots is the responsibility of the County Elections Divisions, and he could make the recommendation, but he could not guarantee that they would be on board.

Ms. Nakanelua asked if this issue will be included in OE's next report to the Legislature, and when it will be submitted. Chair Anderson answered that the next report to the Legislature is due in November. Ms. Nakanelua stated that she was under the impression that their recommendations would be included in a report to be submitted during this legislative session. Chair Anderson explained that there is a difference between the EC's and OE's reports to the Legislature. Ms. Nakanelua said that she understands that, and that the previous conversation was specifically regarding OE's report. She asked if that was the understanding of anyone else on the call. Chair Anderson stated that they had only discussed the EC's report. Commissioner Koller disagreed, and said that the minutes reflect that they were also discussing recommendations for OE's report to the Legislature. She stated that she was under the impression that CEO Nago had not yet submitted his report. Ms. Nakanelua said that she could see that CEO Nago was on the call, and asked if he could answer whether another report would be submitted to the Legislature.

Chair Anderson recalled that there was a report that Ms. Nakanelua was unable to locate, to which Ms. Nakanelua said that she did not know what he was talking

about. Chair Anderson apologized, and stated that it was Commissioner Koller who could not locate the report. Commissioner Koller confirmed that is correct, and that she had clicked on the wrong button when looking for the November report, but said that is not what they are talking about. She said that attached to the December 15, 2020 minutes was a very short report from CEO Nago to the Legislature, and she had asked him to add things to his report, some of which he had agreed to. Commissioner Koller stated that they are not talking about the big annual report that OE sends to the Legislature in November, but a pre-legislative session report that the EC was referring to during the December 15, 2020 meeting. She added that it looked more like a letter than a report, and that many of the comments in the minutes reflect requests from herself and others for him to add things to his letter to the Legislature.

Chair Anderson asked Commissioner Koller if she is referring to CEO Nago's Status of Operations report. Commissioner Koller replied that it might have been that, and thinks it was called the "operations report." Chair Anderson confirmed that she is referring to CEO Nago's Status of Operations report.

Commissioner Takenaka asked the EC to confirm that they are talking about the November report that was required by the Legislature due to the shift to all mail elections.

In referencing her notes, Commissioner Koller stated that it is on the agenda as "Status of Operations Report," dated December 8, 2020, and addressed to the EC, not the Legislature. She said at the end of CEO Nago's report, he said that he was going to provide a packet of recommendations to the Legislature. Commissioner Koller recalled that she and others had asked CEO Nago to add their concerns to his packet, some of which he agreed on.

Ms. Nakanelua asked CEO Nago if he will be sending an additional report to the Legislature, or if he has done so since the December 15, 2020 meeting. CEO Nago stated that OE is required by state law to submit a report in November on the progress in implementing elections by mail. He said the last report submitted in November 2020 addressed the 2020 Elections, and the next report to be submitted in November 2021 will address plans for the 2022 Elections. CEO Nago apologized if he misspoke in saying recommendations would be included, as OE's report has already been submitted to the Legislature.

Ms. Nakanelua asked Chair Anderson if the EC could attach the minutes from the December 15, 2020 and January 21, 2021 meetings if they do decide to submit a supplemental report to the Legislature. Chair Anderson replied that he does not see an issue with this, but will need to ask Deputy AG Tanigawa if it is appropriate. Ms. Nakanelua reiterated that her primary concern is the verifiable

chain of custody, along with a request that the Legislature pass a law that creates uniformity of the process across the country.

Janet Mason, League of Women Voters of Hawaii (LWV): Ms. Mason stated that she wanted to mention what she observed regarding the signature verification process. She said that the County Elections Divisions typically had many samples of the voter's signature on hand (from applications for voter registration, driver's license, address change, etc.) for the machine and human eye to compare, which speaks to the issue of a person's signature changing over time.

Chair Anderson asked for a motion for the EC to go into executive session to approve the executive session minutes. Commissioner Koller suggested that prior to going into executive session, the EC finish the discussion regarding whether they will submit a supplemental report to the Legislature.

Chair Anderson said that one important concern they heard today was regarding tracking the ballot, and asked Commissioner Koller if she had written up her own paragraph. Commissioner Koller replied that she had not written up anything, but she had provided her comments. She suggested that the EC should maybe wait for the minutes of this meeting to come up with the wording for the supplemental report to the Legislature, as there were other important issues that she thought should be mentioned as well.

Commissioner Takenaka asked if the EC is going to have a discussion with the County Elections Divisions. Chair Anderson answered that at their next meeting, he would like to talk to them about how they are handling the voter rolls, since it is their responsibility. He said he wanted to give them an opportunity to speak for themselves, as there may be factors involved that the EC does not know about. Chair Anderson stated that he knows the Counties seriously considered the circumstances of the drop boxes, including the numbers and locations, and that it is not the EC's job to tell the Counties what to do. He said that he would like to know what the Counties are doing and what kind of problems they maybe encountering. Chair Anderson reiterated that tracking the ballot is an important issue. He said that though he does not necessarily think that anything bad has happened, he does not want to leave room for that possibility. Chair Anderson stated that if the EC decides to submit a supplemental report to the Legislature, they cannot delay too much since the first lateral is next Friday. He asked the EC if they had any thoughts on the matter.

Commissioner Kiguchi stated that he would support Chair Anderson's recommendation, and thinks it would be a worthwhile exercise to invite the County Elections Divisions to the next EC meeting. Regarding legislation, he said it looks like some of the issues they have been discussing have been flagged by the relevant committees, so they will be addressed on some level.

Commissioner Kiguchi added that he knows that CEO Nago has also been monitoring legislation and weighing in on appropriate issues as he sees fit.

Commissioner Koller recalled that Janet Mason, LWV, had testified today about the LWV's recommendation to amend SB 548 to include the provisions of SB 1289, which has not yet been assigned a committee. She said that SB 1289 seems to address many issues that she had, and suggested that the EC make a similar recommendation to the Legislature. Commissioner Koller proposed that the EC could also attach the minutes from the December 15, 2020 and January 21, 2021 meetings to their supplemental report to the Legislature, so they may speak for themselves.

Chair Anderson stated that he does not know how many EC members have read SB 1289 or SB 548, and that he does not like putting his signature on something he has not read. He said that he assumes these bills are pointing in the right direction, however they could contain one thing that they do not agree with. Commissioner Koller agreed, and suggested that the EC pull up SB 1289 now and read it, and add this recommendation to their supplemental report if they can all agree on its contents.

Chair Anderson said that there is nothing preventing the EC members from submitting testimony as individual private citizens, whereas testimony submitted from the EC as a body must be voted on. Commissioner Koller stated that her interest is in the recommendation of the EC as a body to the Legislature.

Commissioner Takenaka stated that she is looking at SB 548 now, and that it is up for decision making on Wednesday by the Senate Judiciary Committee. She said that the bill will probably cross over to the House since it is the Chair's bill. Commissioner Takenaka stated that the EC will have to meet again to approve today's minutes and talk to the County Elections Divisions, so they do have steps in front of them that they can accomplish relatively quickly. She suggested that their report to the Legislature include a link to the minutes rather than attaching the entire packets, since the minutes are easily accessible.

Commissioner Koller clarified that SB 548 does not contain the provisions about additional observers from each political party and the media, or expanding the scope of observers to include the signature verification process. She stated that these provisions are included in SB 1289, and LWV had recommended that SB 548 be amended to include them. Commissioner Koller said that they will find out after the hearing on Wednesday whether these changes have been made. She stated that the EC can have their meeting with the County Elections Divisions, and have some of their concerns appeased by the Counties' answers, then form their supplemental report with only their remaining concerns.

Chair Anderson asked Commissioner Koller when she is suggesting they do that. Commissioner Koller stated that she thought Chair Anderson had indicated that the County Elections Divisions would be invited to the next EC meeting. Chair Anderson said that he is not sure when the next meeting will be. Commissioner Koller stated that the Counties may also not attend, as there is nothing that requires them to.

Chair Anderson asked Commissioner Koller if she had wanted the EC to submit only the minutes for the meetings of December 15, 2020 and January 21, 2021 to the Legislature as their supplemental report. Commissioner Koller disagreed and said she thinks that is the weakest thing they could do. She suggested that they mention the lack of chain of custody of ballots, and ballot tracking through the USPS mail stream. Chair Anderson asked the EC what other concerns they want to include. Commissioner Koller stated that there were a number of things, such as the provisions of SB 1289, as mentioned by Janet Mason, LWV. Chair Anderson said that many of the EC members have not read SB 1289. Commissioner Koller suggested that the EC read it now, or at the next meeting. Chair Anderson stated that the next EC meeting may be a while from now. Commissioner Koller asked Chair Anderson if it is the EC's priority to minimize the time they spend together. Chair Anderson explained that the EC is not a legislative body; it is the EC's job to oversee OE and ensure that elections are handled in accordance with federal and state laws. He said that other than the few concerns raised by Commissioner Koller and testifiers at the last meetings, there have not been many complaints. Commissioner Koller said that is why she asked at the beginning of the meeting if there is anything in law that says the EC cannot make findings and recommendations to the Legislature about the County Elections Divisions. She stated that if they are not prohibited from doing so and much of the testimony they received relates to the Counties' jurisdiction, the EC should address it. Commissioner Koller said that if the EC is not allowed to address these issues, they should maybe suggest that some County responsibilities be shifted to OE to standardize some of the processes, in order to improve the public's confidence in our voting system.

Commissioner Dean proposed that the EC receive feedback from the public and other sources about how elections are being handled, filter this information, then channel the results to the Legislature. He asked if this would be accurate or fair, to which Chair Anderson agreed.

Commissioner Takenaka stated that they will have the minutes for today's meeting, in which Commissioner Koller and Ms. Nakanelua outlined their concerns. She said that the EC had good minutes from the last meeting, so she is sure they will have good minutes for today's meeting, which they will have time to look over. Commissioner Takenaka suggested that the EC ask the County

Elections Divisions when they would be available to meet, and request that they review the minutes so they can discuss the concerns that were raised.

Chair Anderson said that is fine if that is what the EC wants to do. He stated that he thinks they addressed the most important concerns, and the rest can be discussed with the County Elections Divisions. Chair Anderson said that he does not want to accuse the Counties of anything, or address their problems without talking to them first. He asked EC Secretary, Ms. Kataoka, when the minutes from today's meeting will be finished. Ms. Kataoka replied that by law, they must be posted within 40 days of the meeting. Chair Anderson stated that the EC cannot wait 40 days if they plan to submit a supplemental report to the Legislature.

Commissioner Koller stated that the EC should agree on language for a supplemental letter. She suggested that they indicate that the EC has reviewed the minutes for the meetings of December 15, 2020 and January 21, 2021, and that their initial concerns include ballot tracking through the USPS mail stream by 2022, and the chain of custody of ballots. Commissioner Koller said that she thinks it would also be very important to suggest an audit and a discussion regarding the signature verification and ballot tabulation machines, and the outsourcing of that technology, as she finds the false positives troubling. She added that they should also recommend that there be one observer from the political parties per station, not per shift.

Chair Anderson stated that there needs to be an understanding that the political parties are responsible for submitting their lists of names in a timely manner. Commissioner Koller said that there is nothing in the law that points to a specific deadline, and by creating one, confidence in the system is diminished. Chair Anderson told Commissioner Koller that he does not disagree, but that then-Republican Party Chair, Shirlene Ostrov, had not responded to OE's request for observers for months. Commissioner Koller stated that she understands that Ms. Ostrov made a mistake and has since resigned, but if CEO Nago was able to accommodate one observer from the Republican Party per shift, he could have allowed four (i.e., one per counting station). She said that based on the testimony today from Janet Mason, LWV, this concern may be addressed in SB 1289, though she was not sure as she had not read the bill. Commissioner Koller suggested that the EC send the supplemental report to the Legislature with what they have agreed upon so far, and that they could always send another letter after they have a discussion with the County Elections Divisions.

Chair Anderson agreed, and said that he would like to know more about the signature verification machine before he makes any statements about it. He stated that they could also mention the concern about the drop boxes, however

that is a County responsibility, and he is trying to make a distinction between the responsibilities of OE versus the Counties. Chair Anderson asked Commissioner Koller to confirm that she wanted to attach the minutes for the meetings of December 15, 2020 and January 21, 2021 to the supplemental report to the Legislature. Commissioner Koller said that she thinks it makes more sense to provide a link to the minutes, as suggested by Commissioner Takenaka.

Chair Anderson stated that the EC's supplemental report to the Legislature will include a link to the meeting minutes of December 15, 2020 and January 21, 2021, and indicate that they have concerns regarding the chain of custody of ballots, and want to make sure that ballot tracking through the USPS mail stream will be available for the 2022 Elections. He asked the EC for their thoughts, to which Commissioner Koller said that sounded good. Commissioner Kuwada asked if this will be handled in the form of a motion, to which Chair Anderson confirmed that it would.

Regarding the USPS ballot tracking, Commissioner Kuwada said that OE can try their best to have this in place for the 2022 Elections, but the other party to this agreement is USPS. Chair Anderson confirmed that is correct, and that there is no guarantee that USPS will be agreeable, but he would like to indicate that this is what they are striving for. Commissioner Kuwada stated that he thinks USPS ballot tracking is a great idea, but wanted to know what specific language they will use, as he did not want OE to be penalized if the other party ends up incapable of following through. Commissioner Koller agreed with Commissioner Kuwada, and suggested that they say they "recommend that it be prioritized."

Commissioner Kuwada asked CEO Nago what steps have been taken thus far with USPS, and where they are in the process toward this objective. CEO Nago answered that OE met with USPS, and they also have meetings set up with vendors who provide the tracking service. He stated that it is a priority for OE to have ballot tracking through the USPS mail stream by the 2022 Elections. Commissioner Kuwada asked CEO Nago what services the vendors provide. CEO Nago replied that it is his understanding that the tracking is not done by USPS, but by a third-party vendor that OE would have to contract with. Commissioner Kuwada asked CEO Nago if there are costs involved, to which CEO Nago confirmed that there are, but said they are not at the point of discussing costs yet.

Commissioner Vierra asked CEO Nago to explain his rationale for allowing one observer per shift from the Republican Party, as mentioned by Commissioner Koller. CEO Nago stated that OE had sent a letter requesting names for official observers from the political parties, and they had not received any from Maui County. He said that although there is no deadline in law, there is

a deadline with regard to training and testing, so they had to move forward with the process. CEO Nago explained that the Republican Party did submit a list of names when OE was halfway through the process, after the training and testing had taken place, so they were able to accommodate at least one observer per shift from the Republican Party. He added that they were unable to allow more due to COVID restrictions. Commissioner Vierra asked CEO Nago to confirm that the issue was more logistical than anything else, to which CEO Nago agreed. Commissioner Koller said that is disputed by Greg Lussier's testimony, which can be found in the minutes.

Chair Anderson asked the EC if there were other items they wanted to include in their supplemental report to the Legislature. Commissioner Koller suggested they recommend clarifying the duties of election workers versus observers, and requiring more than one observer per shift from each political party. She said this is something the EC can do after they meet with the County Elections Divisions. Chair Anderson agreed, and reiterated that they will mention the chain of custody of ballots and USPS ballot tracking, and include a link to the minutes for the two previous meetings.

Deputy AG Tanigawa said that for purposes of ensuring an accurate record, she is going to restate what she understands the motion to be, then they can confirm who made the motion and if there is a second. She stated that she understands that the motion is to submit a supplemental report to the Legislature which reflects that the EC recommends that the Legislature prioritize the following items: 1) verifiable chain of custody of ballots at every stage of transportation and handling; and 2) ensure ballot tracking is in place for the 2022 Elections in coordination with USPS; along with a link to the minutes for the meetings of December 15, 2020 and January 21, 2021. Deputy AG Tanigawa said that if that motion is accurate, the Commissioners may make and second the motion.

The motion was made by Commissioner Vierra and seconded by Commissioner Takenaka. The votes were as follows: 7 Ayes: Commissioners Anderson, Dean, Kiguchi, Koller, Kuwada, Takenaka, Vierra.

Chair Anderson asked for a motion to enter Executive Session. The motion was made by Commissioner Vierra, seconded by Commissioner Koller, and approved unanimously by the Commissioners.

The Commission went into executive session at 12:31 p.m.

IV. Approval of Minutes for the Executive Sessions for the Meetings of December 15, 2020 and January 21, 2021

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

V. Supplemental Biennial Evaluation of the Operations of Elections and Report to the Legislature, Pursuant to HRS Section 11-8.5 and Action as Necessary

Pursuant to HRS Section 92-5(4), the Commission anticipates going into an executive session to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.


The Commission reconvened into open meeting at 12:47 p.m.

VI. Adjournment

With no further business before the Commission, Chair Anderson asked for a motion to adjourn the meeting. The motion was made by Commissioner Vierra, seconded by Commissioner Kiguchi, and approved unanimously by the Commissioners.

Elections Commission meeting was adjourned at 12:48 p.m.

Respectfully submitted,



Jaime Kataoka
Elections Commission Secretary