STATE OF HAWAII
OFFICE OF ELECTIONS
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

March 29, 2022

To: Elections Commission

From: Scott T. Nago
            Chief Election Officer

Re: Status of Operations

As a follow up to questions at the meeting on March 18, 2022:

We have reached out to the County Elections Divisions regarding the establishment of voter service centers. Voter service centers are established pursuant to Act 136, Session Laws of Hawaii 2019, and Act 213, Session Laws of Hawaii (SLH) 2021. A voter service center provides accessible voting and registration services. The locations, dates, and hours will be announced by the County Elections Divisions as part of a joint election proclamation with our office. The target date for the proclamation is May 15, 2022.

The Office of Elections has not applied for nor received any Center for Tech and Civic Life (CTCL) funding. That was a grant the County of Hawaii, County of Maui, and City and County of Honolulu applied for, received, and managed.

An update was provided to Common Cause Hawaii about automatic voter registration. We continue to note that automatic voter registration is in effect for voters. However, we face logistical issues connecting the statewide voter registration system with the driver license/ state ID database.

We followed up with the Gant Group regarding their project with the Office of Homeland Security. The Gant Group is coordinating with the Office of Homeland

Security and the Department of the Attorney General regarding the public release of the report.

We also want to note that our office does not have oversight over other government agencies such as the Department of Transportation or the County Elections Divisions. However, we work cooperatively with other agencies and divisions in the interest of conducting secure, accessible, and convenient election services to all citizens statewide. Our office is responsible for voter education and printing and counting ballots in the overall conduct of the elections.

With that, we want to discuss our operations and the conduct of the audits for the 2020 Elections. Election audits confirm the results; they are not a recount. It is just one of the processes we follow to ensure the integrity of the elections.

Preparations

Immediately after the passage of Act 136 SLH 2019, the Office of Elections began its preparations and planning to conduct Hawaii's first statewide elections by mail. As an overview, in an election by mail system, ballots are received by the County Elections Divisions. This occurs by mail or at the various places of deposit and voter service centers. The signatures contained in the affirmation section on the back of the ballot return envelopes are verified against a signature on file at the County Election Division, and the ballots are checked in to the statewide voter registration system which tracks the receipt of the ballot from each voter. If the voter has already voted in person at a voter service center, the voter registration system will alert the user and not allow the mail ballot to be accepted. Conversely, if a voter has already submitted a valid mail ballot but attempts to vote in person, the voter registration system will alert the user and not allow the voter to proceed through the in-person voting process. Verified mail ballots are securely transferred to the state-operated counting center in each County.

Our preparations for elections by mail included amending the procedures of counting center operations. Counting Center Operations is a section of the office responsible for processing, tabulating, and disseminating election results in an

accurate and timely manner statewide. Its focus is on testing the voting equipment, counting ballots, and releasing and auditing the results.

At the onset, the office knew that it would follow the practice of auditing the first voted ballot containers scanned for an indication that the voting equipment was counting ballots accurately from the start. We further had to identify a way to sort the ballots to audit at least 10% of precincts in a timely manner since verified ballots would be transferred to the counting center in flow. As with past practice, we expected that mail ballots would be collected from USPS and drop boxes and processed by the County Elections Divisions as received. Additionally, Act 136 SLH 2019 enacted automatic recounts, which could also be more efficient if the voted ballots were sorted in some manner. Three options were considered:

1. Sort using the County scanner/sorter

The County Elections Divisions procured ballot scanners to use during the signature verification process. Our office considered procuring an attachment for these devices that could expand the capabilities to sort by district/precinct. However, this option would require multiple passes of the return envelopes through the machine, and it would not be feasible to add the number of pockets required to sort to district/precinct. As reference, for the 2020 Elections the number of precincts by County were:

	D/P	Rep. Districts
Hawaii	43	7
Maui	35	6
Kauai	16	3
Oahu	156	35

We would also note that the model of ballot scanner used by the County of Kauai does not have pockets to do multiple sorts.

Since the Counties review and validate the return envelopes, we asked if there were any other options or if they would be able to include sorting the ballots by either representative district or district/precinct as part of their procedures before

securing and transferring to the counting center. As return envelopes were forwarded to the counting center, the County of Hawaii and County of Maui sorted their return envelopes by district/precinct; and the County of Kauai provided the return envelopes separated by representative district. There were no clear options for the City and County of Honolulu due to volume and time required for processing as multiple passes through the single ballot scanner/ sorter would delay time for opening and counting. We had to move on to other options for the Oahu counting center.

2. Sort at an outside facility

For Oahu, another option we considered was to take the valid return envelopes from the Honolulu Elections Division to our mailing house vendor to use their industrial sorter. However, this was ruled out due to security and time. Related to security, we were concerned about handling the return envelopes in a third location. Specifically, we would have taken the cages processed, handled, and secured at the Honolulu Elections Division facility to the mailing house. At the mailing house, the cages would have been opened, the return envelopes sorted, and then repacked and secured. While this sorting process would have been in the presence of Official Observers, we were not comfortable with accounting for return envelopes at the mailing house thinking that an envelope could accidently get lost.

Of note, once the office takes custody of the return envelopes, Official Observers are required to be present. Official Observers are defined in HRS §16-45 specifically for counting center operations. Official Observers are interested individuals, representatives of the political parties, and members of the media who form a semi-autonomous group for the purpose of monitoring the transfer, handling, and security of voted ballots at the counting center.

Ultimately, this would also not have worked out during the COVID-19 pandemic due to limited space at a location that we did not operate or control the schedule.

3. Manually sort at the counting center

For Oahu, we decided that we would manually sort the return envelopes at the counting center. We similarly determined that a multi-step sort, going from representative district to district/precinct, would add too much time required for processing. We decided to sort by the 35 Representative Districts, 17 to 51. The opened ballots would be kept together by Representative District in voted ballot containers for transport and secure storage. This sorting also determined how we would be able to audit the election results.

Conduct

With that as background, we also planned for the audit. Under HRS §16-42, the audit is conducted on at least 10% of precincts. We also use the following conditions:

- At least 1 from a small district/precinct
- At least 1 from a medium district/precinct
- At least 1 from a large district/precinct
- At least 1 from an urban district (Congressional District I)
- At least 1 from a rural district (Congressional District II)
- At least half of the audit precincts are randomly selected

The audit is prepared on the first day of processing voted ballots. The first voted ballot containers to each of the scanners is designated for an audit. The audit voted ballot containers are securely stored until Election Day. Audits cannot be reconciled until the results reports are available after voting closes. The following number of audit voted ballot containers were designated for each County:

Hawaii	2
Maui	2
Kauai	2
Honolulu	5

As mentioned, the ballots were sorted before scanning. For the Oahu counting center specifically, they were sorted by Representative District (i.e., all precinct ballots associated with a district are segregated into designated voted ballot containers and marked).

At all counting centers, the voted ballots are scanned in batches. For each batch, a uniquely identified report is printed which indicates that each ballot was accepted. The report is rubber-banded to the batch to include in the voted ballot container. Depending on the number of ballots in the container, more than one batch report may be included in a container. A batch is about 200 ballots and each voted ballot container holds approximately 800 ballots. The number of ballots per batch and the sorting (e.g., Representative District) is also recorded on each voted ballot container. Additionally, there are voted ballot containers in which ballots were not pre-sorted including the duplicated defective ballots and ballots that were mis-sorted during opening.

On Election Day, the audit voted ballots containers were tallied and reconciled at each counting center. The tally of expected results was matched to the results report, and the audit was certified.

Hawaii	November 3, 2020, 9:15 pm
Maui	November 3, 2020, 9:37 pm
Kauai	November 3, 2020, no time recorded
Oahu	November 3, 2020, no time recorded

The post-election audit of at least 10% of precincts was conducted following the deadline to cure deficient ballots (5th business day after Election Day).

Hawaii	November 17, 2020, 9:28 am
Maui	November 13, 2020, 10:56 am
Kauai	November 19, 2020, 9:56 am
Oahu	November 12, 2020, 12:35 pm

Office of Elections staff traveled to Hawaii island, Maui, and Kauai to conduct the post-election audit. Staff and volunteers conducted the audit in the presence of Official Observers. To begin, the district/precincts were randomly selected by lot. The Representative District and corresponding district/precincts were typed on cards, shuffled, and spread out faced down, then selected by Official Observers. We proceeded to identify the voted ballot containers using the Representative District or district/precinct recorded on the box. The Counting Center Section Head consulted with Official Observers to select the contest to audit.

To keep the voted ballot containers together, preserving how the containers were counted, staff and volunteers worked with one container at a time. The voted ballots were sorted into piles based on the candidates for the contest, blank votes, and over votes. Then, the total number of ballots for each mark is counted and recorded. We also audited the voter verifiable paper audit trails from the voter service center equipment. The audit constituted a hand-count of voted ballots to confirm the election results and participants signed the certification of the audit.

For the 2020 Elections, there were no irregularities identified during the audit. We learned from the audit that a manual sort was impossible to maintain. Envelopes or ballots would be accidentally placed in the wrong containers, and there were containers that were multiple districts to close out the counting for the day. This is in no way an indication that the ballots were not counted, instead that the voted ballot containers were imperfect as we processed the 368,238 mail ballots through the Oahu counting center for the 2020 General Election. We must note the volume related to the number of representative districts and the number of people it takes to process. We could not process and count all those ballots without the hard work, dedication, and patience of the volunteers, including Official Observers. Additionally, in the transition to elections by mail, all operations had to change and be adapted. As with other significant changes to law, we expect the processes and laws to be amended and refined.

Certifying the 2020 Elections

The election audit is one part of certifying the election. Official Observers also conduct tests of the voting equipment 1) before the voter service center equipment is deployed; 2) using the counting center voting equipment approximately two weeks before Election Day; 3) immediately before scanning ballots for the election; and 4) on Election Day after all ballots have been counted. The Official Observers mark test ballots and create a manual tally of expected results which is compared to the test results printed from the voting system.

We also reconcile the result report totals (number of ballots counted) with the statewide voter registration system (number of ballots received). Additionally, following each election, the documents and ballots are secured for 22 months.

Further, an automatic recount is triggered if the difference between two candidates who would qualify to appear on the General Election ballot or would be elected is equal to or less than 100 votes or 0.25% of the total number of votes cast for the contest, whichever is greater. Automatic recounts are also a safeguard to ensure the integrity of the election. As reference, in the 2020 Primary Election, an automatic recount was triggered for State Representative, District 13 (D), State Representative, District 30 (R), and County of Kauai Councilmember. There were no automatic recounts triggered in the 2020 General Election.

Auditing

There are 1,190 voted ballot containers from the 2020 General Election.

Hawaii	305
Maui	109
Kauai	59
Oahu	717

Specifically, for the Oahu counting center voted ballot containers, we have noted that the ballots are not sorted by district/precinct and that the sort by Representative District is only as reliable as the humans sorting them. We would also note that the results are reported by district/precinct or cumulatively as summary reports by County or statewide. There is not a result report for each voted ballot container. For an additional audit of the 2020 Elections, after selecting its audit criteria, it would be required to un-secure every voted ballot container, identify the audit ballots, and review the audit ballots to create a tally of expected results. In order to also audit the in-person voting results, it would need un-secure and review the voter verifiable paper audit trails.

2022 Elections

We learned a lot from our first statewide elections by mail. We are also contracting a new voting system, which we have incorporated into our plans and procedures. The new voting system, Verity, allows us to use the equipment workstation to electronically view the ballot and see how it was counted. This is how we will be able to select district/precincts rather than pre-sorting. If a ballot image is questionable, we can always go directly to that physical ballot in its voted ballot container for further examination. We have also improved the forms that will be used to document the tally of expected results. Because a hand-count was used, only the totals have been recorded.

We will continue to look for ways to improve and refine election processes as we learn more, specifically as we move forward in an elections by mail system.

FOR ELECTION COMMISSION

Aloha Chair Anderson and Commissioners,

I watched the video from your March 18, 2022 meeting.

I find it troubling that Mr. Nago admitted to violating the law, specifically HRS §16-42 (Electronic Voting Requirements), subparagraph (3) The chief election officer <u>conducts</u> a post-election, pre-certification audit of a random sample of not less than <u>ten per cent of the precincts employing the electronic voting system</u>, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts; and…

I understand that voters didn't go to precincts to vote in 2020, however, the law is the law. If Mr. Nago was unable to conduct the post-election audit per the law, who granted him permission to deviate from it, and how was the voting results able to reflect the votes of residents down to the precinct level but Mr. Nago couldn't conduct the audit per the law. I would presume that if the election results can be taken to the precinct level, then Mr. Nago could conduct an audit to the same level.

I would like to applaud Commissioner Curtis for his motion to "Initiate an Investigation into the 2020 Hawaii Election operations of each County's Office of Elections," and in light of Mr. Nago's admitted violation of the law, I encourage the commission vote to approve the motion.

Additionally, I've attached my petition to both the State Office of Elections and City and County of Honolulu Elections Office and their responses, that recommended amendments to the Hawaii Administrative Rules which is in the control of Mr. Nago. You had discussions on some of the recommendations I proposed.

Mahalo for your consideration, and I look forward to possibly discussing this at your April 1st meeting.

v/r
Brett Kulbis
Honolulu County Chairman
(808) 352-1698

"You and I have a rendezvous with destiny. We'll preserve for our children this, the last best hope of man on earth, or we'll sentence them to take the last step into a thousand years of darkness." ~ **Ronald Reagan**

January 20, 2022

Mr. Glen I. Takahashi
City Clerk, Honolulu City Council
Honolulu Hale
530 S. King St. 100
Honolulu, HI 96813

Mr. Takahashi,

As an Ewa Beach resident and Chairman of the Honolulu County Republican Party representing tens of thousands of voting members, we are deeply concerned about the integrity of our elections. While there were no blatant issues with our 2020 elections, across the nation there were definitely legitimate concerns raised, especially when it comes to the security of the process which we feel need to be addressed in our future elections to ensure the same issues don't happen here.

Elections are the cornerstone of our Constitutional Republic. If the integrity of our elections are compromised, it undermines the legitimacy of our entire system of representative government.

Election integrity encompasses accuracy and security in each step of the voting and vote counting process, voter registration and voter roll maintenance, casting ballots in person and by mail, accurate counting of all legal votes, and the ability to audit the results.

Properly administered elections ensure that all legally eligible voters, and only legally eligible voters, are able to vote; and that all legal votes, and only legal votes, are counted.

We've submitted a petition to amend Hawai'i Administrative Rules, HAR §3-177 (attached), to the State Office of Elections. However, some of our concerns are under the purview of your office.

As you know, in 2019, Act 136 SLH 2019 enacted elections by mail uniformly statewide beginning with the 2020 Primary Election. Underlying the implementation of the Act 136 was the promulgation of administrative rules, HAR §3-177, to address the transition to elections by mail.

Last year, July 6, 2021, the Governor signed into law Act 213 (SB-548) that, in our opinion, did very little to ensure overall election integrity. However, the law now clearly defines that County Clerks are responsible for updating the voter rolls and issuing election proclamations regarding voter service centers and places of deposit. Specifically:

> **§11-17 Removal of names from register, when; reregistration.** *(a) The <u>clerk</u>, after every general election, shall remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles…*

§11-92.1 Election proclamation; establishment of a new precinct; voter service centers and places of deposit; changes to precinct boundaries. (a) The <u>clerk</u> shall issue a proclamation listing all voter service centers and places of deposit, including the days each voter service center and place of deposit is open and the hours of operations and location of each voter service center and place of deposit, as may have been determined by the clerk as of the proclamation date and whenever a new precinct is established in any representative district. The clerk shall make arrangements for the rental or erection of suitable shelter for the establishment of a voter service center whenever public buildings are not available and shall cause these voter service centers to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. This proclamation may be issued jointly with the proclamation required in section 11-91.

When we inquired about separate administrative rules or procedures used by the County, we were told you follow the administrative rules provided by the State Office of Elections. We have petitioned the State Office of Elections to amend Hawai'i Administrative Rule §3-177.

We further recommend the County Office of Elections consider incorporating the following in your 2022 Election Proclamation in accordance with HRS §11-92.1:

VOTER ROLLS

Neither the Honolulu County Clerk nor the Office of Elections agree on who is responsible for voter roll maintenance. In an email exchange with both offices regarding voter roll maintenance, the responses received specifically regarding the removal of voters with bad addresses, moved or passed away, was to refer to the other office as being responsible. In a PBS Hawaii Insights show on Election 2020 – Hawai'i's Mail-In Elections aired August 14, 2020, Director Nago admitted that Statewide voter rolls were inflated with a little less than 100,000 out of 800,00 (13%) registered voters that have either bad addresses, moved or died. Hawaii Revised Statute §16-17 specifically identifies the county clerks with the responsibility of maintaining the voting rolls and the responsibility to remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles.

Recommendations:

1. County Clerks and the Office of Elections shall ensure educational materials advise voters to return ballots if the addressed voter no longer resides at the address or is deceased.

2. County Clerks shall ensure all mail ballot package envelopes contain disclaimer that if addressed voter no longer resides at the address received, the envelop shall be returned to the County Clerk.

Return to County Clerk if addressed voter no longer resides at this address.

ELECTRONIC SIGNATURE VERIFICATION

When voters cast ballots by mail, election officials need a method to verify their identity to ensure the integrity of the election.

Signature verification, the process of confirming each voter's identity by comparing the signature on the mail-in ballot certificate envelope, greatly enhances the security and integrity of the ballot process. When conducted consistently, efficiently and with transparency, signature verification improves public trust in the election by confirming that mail-in ballots returned are legitimate. However, people do not sign their signature the same way every time. Signatures change over time and in different settings. Because variances are expected, significant points of agreement can be enough to confirm a match and accept the ballot.

Automated signature verification (ASV) technology speeds up the signature verification process. The number of signatures accepted as matches will vary depending on the quantity and quality of the reference signatures from the voter registration database, and sensitivity of the AVS system.

Recommendation:

1. Tiered System of Signature Review – A tiered system of review ensures that a voter's signature is not rejected on a single pass. By incorporating multiple layers of review, you create a system that promotes transparency and integrity of the process.

   AVS/Tier 1 Review – Using signature verification software can be considered the first tier in the review process. Essentially, the software is looking for the image from the envelope and the image from the voter registration system to be a near-perfect match. Most ASV software can be set at different tolerances, meaning you can vary how precise you want the images to match. Best practice is to not allow much variance between the envelope signature and the voter registration signature during this first tier of review.

   Tier 2 Review – This second tier of review, on ballots that did not match in the Tier 1 review, is always performed by human inspection. This time, reviewers are taking a closer look at the source image and the reference image and using the techniques they were given in training to make a decision about whether or not to accept or reject the signature. While more time consuming than the first-tier review, Tier 2 review should not require more than 30 seconds per signature.

   Note: Benchmarks of deployed signature verification software remain hard to come by, but a 2020 study published by Stanford University's Law and Policy Lab Automated found that signature matching systems in California increased the rejection rate by 1.7 points (74%) in counties that lacked human review.

   Tier 3 Review – This final tier of review, for ballots that did not match in either Tier 1 or Tier 2, requires much closer inspection and often includes looking deeper into the voter record for older signatures or other sources of evidence. Ideally, that includes signatures on file from previous registration updates or mail ballot request forms. Because the signature will be in a final rejection status after this tier of review (unless the voter meets the criteria for curing the discrepancy) it is important to have a bipartisan team make the decision together.

<u>Audits</u> – Audits can play an important role in the signature verification process. Looking at a random sample of signatures that has already been reviewed can tell you how well the system is working. This is especially important if you are using an ASV system. One way to strengthen trust in the process, is to check samples throughout the election to ensure the human eye would reach the same conclusion as the ASV system.

Performing the same type of audit on signatures that were reviewed by human eyes can help you identify workers that may need additional oversight or training. ASV software can help you track the data from the human review to look for outliers: reviewers who are accepting or rejecting outside of the normal distribution. Without ASV software, consider having a "supervisor team" of verifiers examine batches throughout each day to look for these outliers.

PLACES OF DEPOSIT (BALLOT DROP BOXES)

Places of deposit (i.e., drop boxes) locations while convenient for voters were placed in areas with little to no security, which is contrary to HAR §3-177-506. Large Drop Box Sites were Waianae District Park, Kapolei Hale, Mililani Park and Ride, Neal Blaisdell Park, Kahuku District/Community Park, Kaneohe District Park, Hawaii Kai Park and Ride, Honolulu Hale, Bell Balfour Jr. Waipahu District Park, Kalihi Valley District Park, Kailua District Park, and Kanewai Community Park. None of these locations had sufficient security to ensure there was no nefarious actions.

Additionally, no watchers (aka Official Observers) were present when the drop boxes were emptied and ballots delivered to the signature verification center near the airport.

Recommendations:

1. Drop-off locations shall be determined by the county clerk per Act 213 Section 47. Additionally, the clerk shall consider the ability of the drop boxes to be monitored by a video security surveillance system. A video security surveillance system can include existing systems on county, city, or private buildings.

2. All drop boxes shall be secured by a lock or tamper-evident seal. Only an elections official shall have access to the keys and/or combination if a lock is used.

3. Ballots shall be removed from a ballot drop box by at least two election officials, with a record kept of the date and time ballots were removed, and the names of election officials doing the pick-up. Two Official Observers may be present at all drop box pick-ups. Ballots from drop boxes shall be returned to the signature verification center in secured transport containers. A copy of the record pick-up shall be placed in the container, and one copy shall be transported with the ballots to the signature verification center, where the seal number shall be verified by the county clerk or a designated representative to be untampered with. All ballot drop boxes shall be secured and picked up at 7:00 p.m. on the day of the primary, special election, or general election.

   Note: We recommend looking at Hawaii and Maui Counties and where they established drop box locations, which were mostly at Police and Fire stations.

OFFICIAL OBSERVERS

Neither Hawaii Revised Statute Title 2 Chapter 11 nor Hawaii Administrative Rules Title 3 Chapter 177 define Official Observers. Hawaii Revised Statute §16-45 gives the Chief Election Officer or the County Clerk authority to designate Official Observers.

Recommendations:

1. Define Official Observer to mean a person, political party representative pursuant to HRS §11-61 through 11-65, or an organization accredited by the Office of Elections or County Clerk to observe an election.

2. To the maximum extent possible, ensure sufficient watchers Official Observers are assigned to ensure two-person, not of the same political party, observation at each drop box pick-up and delivery to signature verification location.

I look forward to your response.

Brett Kulbis
91-1010 Kaipalaoa St. 5603
Ewa Beach, HI 96706

January 12, 2022

Director Scott Nago
Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Director Nago,

Pursuant to Hawai'i Administrative Rules (HAR) Chapter §3-177-2, I submit for consideration amendments to HAR §3-177.

As an Oahu resident and Chairman of the Honolulu County Republican Party representing tens of thousands of voting members, we are deeply concerned about the integrity of our elections. While there were no blatant issues with our 2020 elections, across the nation there were definitely legitimate concerns raised, especially when it comes to the security of the process which we feel need to be addressed in our future elections to ensure the same issues don't happen here.

Elections are the cornerstone of our Constitutional Republic. If the integrity of our elections are compromised, it undermines the legitimacy of our entire system of representative government.

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In 2019, Act 136 SLH 2019 enacted elections by mail uniformly statewide beginning with the 2020 Primary Election. Underlying the implementation of the Act 136 was the promulgation of administrative rules, HAR §3-177, to address the transition to elections by mail.

On July 6, 2021, the Governor signed into law Act 213 (SB-548) that, in our opinion, did very little to ensure overall election integrity. However, the law now clearly defines that County Clerks are responsible for updating the voter rolls and issuing election proclamations regarding voter service centers and places of deposit. Specifically:

> **§11-17 Removal of names from register, when; reregistration.** *(a) The <u>clerk</u>, after every general election, shall remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles…*

> **§11-92.1 Election proclamation; establishment of a new precinct; voter service centers and places of deposit; changes to precinct boundaries.** *(a) The <u>clerk</u> shall issue a proclamation listing all voter service centers and places of deposit, including the days each voter service center and place of deposit is open and the hours of operations and location*

of each voter service center and place of deposit, as may have been determined by the clerk as of the proclamation date and whenever a new precinct is established in any representative district. The clerk shall make arrangements for the rental or erection of suitable shelter for the establishment of a voter service center whenever public buildings are not available and shall cause these voter service centers to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. This proclamation may be issued jointly with the proclamation required in section 11-91.

Pursuant to Hawai'i Administrative Rule Title 3, Section 3-177-2, we recommend the following amendments:

VOTER ROLLS

Neither the Honolulu County Clerk nor the Office of Elections agree on who is responsible for voter roll maintenance. In an email exchange with both offices regarding voter roll maintenance, the responses received specifically regarding the removal of voters with bad addresses, moved or passed away, was to refer to the other office as being responsible. In a PBS Hawaii Insights show on Election 2020 – Hawai'i's Mail-In Elections aired August 14, 2020, you admitted that our State wide voter rolls were inflated with a little less than 100,000 out of 800,00 (13%) registered voters that have either bad addresses, moved or died. Hawaii Revised Statute §16-17 specifically identifies the county clerks with the responsibility of maintaining the voting rolls and the responsibility to remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-100 - County Clerks and the Office of Elections shall ensure educational materials advise voters to return ballots if the addressed voter no longer resides at the address or is deceased.

2. HAR §3-177-158 - County Clerks shall report to the Office of Elections the results of their vote roll maintenance after every general election and provide a list of voters identified for removal based on criteria of, or removed pursuant to, HRS §11-17.

3. HAR §3-177-601 - County Clerks shall ensure all mail ballot package envelopes contain disclaimer that if addressed voter no longer resides at the address received, the envelop shall be returned to the County Clerk.

> **Return to County Clerk if addressed voter no longer resides at this address.**

ELECTRONIC VOTING AND TABULATING

HRS §16-42 directs how electronic voting requirements shall be conducted. Due to the inherent vulnerabilities of electronic voting systems and tabulators to cyber-attacks. Experts agree that air gapping the systems represents nearly the maximum protection one network can have from another (save turning the device off) from hacking.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-706 - No electronic voting system or tabulator shall be used if tabulators, voter assistance terminals (VAT), memory cards, and flash drives cannot be securely stored, or the VAT and tabulator cannot be air gapped from the internet, wifi and bluetooth access.

BALLOT COUNTING

HRS §16-25 orders the method of counting ballots, however, Official Observers were not present to witness all of the ballot counting being performed at the several counting stations during the 2020 elections in the counting center.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-757 - Two Official Observers, not of the same political party, shall be present at all times to observe the handling of ballots, vote data storage media, voter verifiable paper audit trails, and the counting of paper ballots at all counting stations.

PLACES OF DEPOSIT (BALLOT DROP BOXES)

Places of deposit (i.e. drop boxes) locations while convenient for voters were placed in areas with little to no security, which is contrary to HAR §3-177-506. Additionally, no watchers (aka Official Observers) were present when the drop boxes were emptied and ballots delivered to the signature verification center near the airport.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-506 - Drop-off locations shall be determined by the county clerk per Act 213 Section 47. Additionally, the clerk shall consider the ability of the drop boxes to be monitored by a video security surveillance system. A video security surveillance system can include existing systems on county, city, or private buildings.

2. HAR §3-177-506 - All drop boxes shall be secured by a lock or tamper-evident seal. Only an elections official shall have access to the keys and/or combination if a lock is used.

3. HAR §3-177-650 - Ballots shall be removed from a ballot drop box by at least two election officials, with a record kept of the date and time ballots were removed, and the names of election officials doing the pick-up. Two Official Observers may be present at all drop box pick-ups. Ballots from drop boxes shall be returned to the signature verification center in secured transport containers. A copy of the record pick-up shall be placed in the container, and one copy shall be transported with the ballots to the signature verification center, where the seal number shall be verified by the county clerk or a designated representative to be untampered with. All ballot drop boxes shall be secured and picked up at 7:00 p.m. on the day of the primary, special election, or general election.

OFFICIAL OBSERVERS

Neither Hawaii Revised Statute Title 2 Chapter 11 nor Hawaii Administrative Rules Title 3 Chapter 177 define Official Observers. Hawaii Revised Statute §16-45 gives the Chief Election Officer or the County Clerk authority to designate Official Observers, as well as the latitude to determine how many can be present in the counting center, no less than one. During the 2020 Election political party Official Observers were inappropriately used as election workers at the counting center, defeating the independent observation process and potentially compromising the integrity of the counting process. Director Nago admitted to the Election Commission that he, "blurred the line between official observer and paid election worker," and used designated Official Observers as election workers.
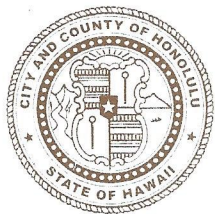
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1. HAR §3-177-757 - Define Official Observer to mean a person, political party representative pursuant to HRS §11-61 through 11-65, or an organization accredited by the Office of Elections or County Clerk to observe an election.

2. HAR §3-177-758 - To the maximum extent possible, ensure sufficient watchers Official Observers are assigned to ensure two-person, not of the same political party, observation at each counting station within the counting center.

I look forward to your response.

Brett Kulbis
91-1010 Kaipalaoa St. 5603
Ewa Beach, HI 96706

GLEN I. TAKAHASHI
CITY CLERK

February 4, 2022

Mr. Brett Kulbis
Honolulu County Republican Party
91-1010 Kaipalaoa St. 5603
Ewa Beach, HI 96706

Dear Mr. Kulbis:

Thank you for your letter of January 20, 2022 which proposed a number of recommendations to improve the administration of elections in Hawaii.

Like election officials across the nation, we have kept abreast of discussions over security, administration, as well as accessibility of elections. When the State Legislature passed the vote-by-mail bill in 2019 (with just a little over a year until implementation), my staff in the Honolulu Elections Division immediately embarked on formulating a plan that would ensure a successful inaugural implementation. That planning capitalized on our existing experience/expertise and was supplemented by knowledge gleaned directly from our counterparts in the states of Colorado, Washington, and Oregon.

Looking in our rear-view mirror, we are encouraged to see that Hawaii voters embraced voting by mail in 2020, reversing the trend of the declining voter participation that stretched back to the 1990s. That said, we understand that an endeavor as multi-faceted as elections requires continual examination and improvement. Your recommendations are part of that shared desire to improve.

The following are our thoughts, taken in the order presented in your letter:

<u>Voter Rolls</u>

My office has over three decades of experience in maintaining the statewide voter registration system (prior to State administration in 2017) through evolving election policy, technology, postal requirements, and database list maintenance products. Federal and State law is clear on the various roles and responsibilities of both the State Office of Elections and the Offices of the County Clerks in this area.

We agree with both recommendations in your letter. We note that in 2020, the counties and State Office of Elections embarked on an unprecedented effort to emphasize the message of retuning election mail if received for a voter that no longer resides at the address (or if the individual is deceased). We will continue to drive this message in 2022 and in future elections.

The recommendation to imprint messaging *"Return to County Clerk if addressed voter no longer resides at this address,"* (or a substantively similar message) has been included on other election mailings and is one that can be utilized on vote-by-mail election envelopes if postal regulations and envelope design constraints permit.

Electronic Signature Verification

As mentioned previously, the Honolulu Elections Division capitalized on its preexisting experience and expertise with validating high volumes of returned ballot mail. As early as 2014 – which was coincidentally the year that early voting exceeded election day voting – my office implemented high speed scanning technology to aid in this processing. This advancement also sparked the future implementation of the technology across other counties and the development of procedures that well-positioned Honolulu for the transition to universal voting by mail.

To your point, the Honolulu Elections Division already utilizes a multi-tiered system of signature reviews, which hews closely to the recommendations outlined in your letter. Signature matching software is first utilized to validate the most obvious matches (Tier 1), leaving the remaining balance for staff review (Tier 2). Tier 3 review involves multiple supervisory staff that exhaust available reference image sources before making a match/no match determination.

No one individual makes the determination to reject a voter signature and voters are notified and allowed to "cure" any deficiencies in accordance with law. Reviews (audits) and monitoring are also conducted of the signature validation process and software.

Places of Deposit (Ballot Drop Boxes)

The places of deposit program did not exist prior to enactment of vote-by-mail in Hawaii, and is the program area where we leaned mostly heavily on the experience of our colleagues in other vote-by-mail jurisdictions.

Drop boxes utilized on Oahu are purpose-built for election use and are of hefty construction and securable. The security features and specifications of the outdoor drop boxes exceed those of other collection box applications and the type of receptacle has been deployed securely and successfully across the nation.

As a matter of practice/procedure, keys are issued only to individuals employed by the Honolulu Elections Division and volunteers are not enlisted for this work. Ballot envelopes are removed daily by a team of two (or more) election officials and retrieval teams are monitored using global positioning system tracking. Each team is required to document and verify its compliance with established retrieval procedures. Ballot envelopes are transported in numbered, sealed containers which are verified by election officials at the point of receipt. All boxes are closed simultaneously at 7:00 p.m. on the final day of voting.

The drop boxes were distributed island wide to provide regional geographic accessibility and convenience. Locating involved many factors, including but not limited to: visibility, traffic patterns, safety, and pedestrian and vehicular queuing/circulation. The latter criteria disqualified box placement at police and fire stations as peak usage activity had the potential of interfering with first responder operations. However, we are aware that other counties have found it appropriate to utilize these types of locations in their respective implementations.

Video security to enhance the physical security of the drop boxes has been considered and certain boxes are continuously monitored. That said, there are considerable logistical, technological, and fiscal factors associated with video surveillance. Outdoor ballot collection boxes are used in numerous election jurisdictions both with and without the presence of video monitoring.

The United States Postal Service also utilizes approximately three hundred (300) collection receptacles across Oahu, many of which are not monitored by video surveillance. Utilization of the U.S. postal system for returning a ballot envelope currently outpaces the places of deposit program by a margin of roughly two to one.

While we agree that video surveillance of ballot drop boxes would be ideal, it will not be the limiting factor in determining whether a ballot drop box will be established. As with all election activities, this is an area that we will continue to explore and enhance going forward with opportunities and resources permitting.

January 12, 2022

Director Scott Nago
Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Director Nago,

Pursuant to Hawai'i Administrative Rules (HAR) Chapter §3-177-2, I submit for consideration amendments to HAR §3-177.

As an Oahu resident and Chairman of the Honolulu County Republican Party representing tens of thousands of voting members, we are deeply concerned about the integrity of our elections. While there were no blatant issues with our 2020 elections, across the nation there were definitely legitimate concerns raised, especially when it comes to the security of the process which we feel need to be addressed in our future elections to ensure the same issues don't happen here.

Elections are the cornerstone of our Constitutional Republic. If the integrity of our elections are compromised, it undermines the legitimacy of our entire system of representative government.

Election integrity encompasses accuracy and security in each step of the voting and vote counting process, voter registration and voter roll maintenance, casting ballots in person and by mail, accurate counting of all legal votes, and the ability to audit the results.

Properly administered elections ensure that all legally eligible voters, and only legally eligible voters, are able to vote; and that all legal votes, and only legal votes, are counted.

In 2019, Act 136 SLH 2019 enacted elections by mail uniformly statewide beginning with the 2020 Primary Election. Underlying the implementation of the Act 136 was the promulgation of administrative rules, HAR §3-177, to address the transition to elections by mail.

On July 6, 2021, the Governor signed into law Act 213 (SB-548) that, in our opinion, did very little to ensure overall election integrity. However, the law now clearly defines that County Clerks are responsible for updating the voter rolls and issuing election proclamations regarding voter service centers and places of deposit. Specifically:

> **§11-17 Removal of names from register, when; reregistration.** *(a) The <u>clerk</u>, after every general election, shall remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles…*

> **§11-92.1 Election proclamation; establishment of a new precinct; voter service centers and places of deposit; changes to precinct boundaries.** *(a) The <u>clerk</u> shall issue a proclamation listing all voter service centers and places of deposit, including the days each voter service center and place of deposit is open and the hours of operations and location*

of each voter service center and place of deposit, as may have been determined by the clerk as of the proclamation date and whenever a new precinct is established in any representative district. The clerk shall make arrangements for the rental or erection of suitable shelter for the establishment of a voter service center whenever public buildings are not available and shall cause these voter service centers to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. This proclamation may be issued jointly with the proclamation required in section 11-91.

Pursuant to Hawai'i Administrative Rule Title 3, Section 3-177-2, we recommend the following amendments:

VOTER ROLLS

Neither the Honolulu County Clerk nor the Office of Elections agree on who is responsible for voter roll maintenance. In an email exchange with both offices regarding voter roll maintenance, the responses received specifically regarding the removal of voters with bad addresses, moved or passed away, was to refer to the other office as being responsible. In a PBS Hawaii Insights show on Election 2020 – Hawai'i's Mail-In Elections aired August 14, 2020, you admitted that our State wide voter rolls were inflated with a little less than 100,000 out of 800,00 (13%) registered voters that have either bad addresses, moved or died. Hawaii Revised Statute §16-17 specifically identifies the county clerks with the responsibility of maintaining the voting rolls and the responsibility to remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-100 - County Clerks and the Office of Elections shall ensure educational materials advise voters to return ballots if the addressed voter no longer resides at the address or is deceased.

2. HAR §3-177-158 - County Clerks shall report to the Office of Elections the results of their vote roll maintenance after every general election and provide a list of voters identified for removal based on criteria of, or removed pursuant to, HRS §11-17.

3. HAR §3-177-601 - County Clerks shall ensure all mail ballot package envelopes contain disclaimer that if addressed voter no longer resides at the address received, the envelop shall be returned to the County Clerk.

> **Return to County Clerk if addressed voter no longer resides at this address.**

ELECTRONIC VOTING AND TABULATING

HRS §16-42 directs how electronic voting requirements shall be conducted. Due to the inherent vulnerabilities of electronic voting systems and tabulators to cyber-attacks. Experts agree that air gapping the systems represents nearly the maximum protection one network can have from another (save turning the device off) from hacking.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-706 - No electronic voting system or tabulator shall be used if tabulators, voter assistance terminals (VAT), memory cards, and flash drives cannot be securely stored, or the VAT and tabulator cannot be air gapped from the internet, wifi and bluetooth access.

BALLOT COUNTING

HRS §16-25 orders the method of counting ballots, however, Official Observers were not present to witness all of the ballot counting being performed at the several counting stations during the 2020 elections in the counting center.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-757 - Two Official Observers, not of the same political party, shall be present at all times to observe the handling of ballots, vote data storage media, voter verifiable paper audit trails, and the counting of paper ballots at all counting stations.

PLACES OF DEPOSIT (BALLOT DROP BOXES)

Places of deposit (i.e. drop boxes) locations while convenient for voters were placed in areas with little to no security, which is contrary to HAR §3-177-506. Additionally, no watchers (aka Official Observers) were present when the drop boxes were emptied and ballots delivered to the signature verification center near the airport.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-506 - Drop-off locations shall be determined by the county clerk per Act 213 Section 47. Additionally, the clerk shall consider the ability of the drop boxes to be monitored by a video security surveillance system. A video security surveillance system can include existing systems on county, city, or private buildings.

2. HAR §3-177-506 - All drop boxes shall be secured by a lock or tamper-evident seal. Only an elections official shall have access to the keys and/or combination if a lock is used.

3. HAR §3-177-650 - Ballots shall be removed from a ballot drop box by at least two election officials, with a record kept of the date and time ballots were removed, and the names of election officials doing the pick-up. Two Official Observers may be present at all drop box pick-ups. Ballots from drop boxes shall be returned to the signature verification center in secured transport containers. A copy of the record pick-up shall be placed in the container, and one copy shall be transported with the ballots to the signature verification center, where the seal number shall be verified by the county clerk or a designated representative to be untampered with. All ballot drop boxes shall be secured and picked up at 7:00 p.m. on the day of the primary, special election, or general election.

OFFICIAL OBSERVERS

Neither Hawaii Revised Statute Title 2 Chapter 11 nor Hawaii Administrative Rules Title 3 Chapter 177 define Official Observers. Hawaii Revised Statute §16-45 gives the Chief Election Officer or the County Clerk authority to designate Official Observers, as well as the latitude to determine how many can be present in the counting center, no less than one. During the 2020 Election political party Official Observers were inappropriately used as election workers at the counting center, defeating the independent observation process and potentially compromising the integrity of the counting process. Director Nago admitted to the Election Commission that he, "blurred the line between official observer and paid election worker," and used designated Official Observers as election workers.

Recommendations for amending the Administrative Rules.

1. HAR §3-177-757 - Define Official Observer to mean a person, political party representative pursuant to HRS §11-61 through 11-65, or an organization accredited by the Office of Elections or County Clerk to observe an election.

2. HAR §3-177-758 - To the maximum extent possible, ensure sufficient watchers Official Observers are assigned to ensure two-person, not of the same political party, observation at each counting station within the counting center.

I look forward to your response.

Brett Kulbis
91-1010 Kaipalaoa St. 5603
Ewa Beach, HI 96706

STATE OF HAWAII
OFFICE OF ELECTIONS
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

February 10, 2022

VIA EMAIL
Mr. Brett Kulbis, Chairman
Honolulu County Republican Party
91-1010 Kaipalaoa Street, #5603
Ewa Beach, Hawaii 96706

Re: Petition for Amendments to Chapter 3-177,
        Hawaii Administrative Rule

Dear Mr. Kulbis:

        This letter is written in response to your petition, dated January 12, 2022, that
was received by our office on January 13, 2022, by hand delivery. The petition cites
Hawaii Administrative Rules (HAR) § 3-177-2 and requests consideration of various
proposed amendments to Chapter 3-177, HAR. The proposed amendments center
around the following topics: (1) voter rolls; (2) electronic voting and tabulating; (3) ballot
counting; (4) places of deposit (ballot drop boxes); and (5) official observers.

        Please find enclosed our review of the petition. We have determined that the
proposed actions are ones that are not necessarily precluded by the current
administrative rules, except for the one that seeks to expand the duties of the official
observers beyond their statutory authority. The petition has not satisfactorily identified
the shortcomings in the present administrative rules or demonstrated a need for the
requested changes and is therefore denied.

        We appreciate your suggestions presented in the petition and will consider if any
operational changes can be made to further ensure the security and integrity of our
elections.

                                        Very truly yours,

                                        SCOTT T. NAGO
                                        Chief Election Officer

STN:AS:jk
OE-22-019

Enclosures

c: County Clerks

STATE OF HAWAII
OFFICE OF ELECTIONS
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

RELATING TO THE HONOLULU COUNTY REPUBLICAN PARTY'S PETITION FOR AMENDMENTS TO CHAPTER 3-177, HAWAII ADMINISTRATIVE RULES

February 10, 2022

The following document elaborates on the denial by the Office of Elections of Honolulu County Republican Party's petition for various proposed amendments to Chapter 3-177, Hawaii Administrative Rules (HAR).

In terms of background, the Hawaii State Constitution provides that "[t]he legislature shall provide for a chief election officer of the State, whose responsibilities shall be as provided by law and shall include the supervision of state elections." Article IV, Section 3.

In effectuating this, the Legislature has passed a variety of laws outlining how elections are to be conducted and the roles and responsibilities of the Chief Election Officer (Office of Elections) and County Clerks (County Elections Divisions).

The Office of Elections is responsible for voter education, and the printing and counting ballots, while the County Elections Divisions are responsible for voter registration, the mailing and receipt of ballots, and voter service centers. Specifically, Hawaii Revised Statutes (HRS) § 11-110 outlines election expenses and responsibilities between the State and County Elections Divisions, and voter registration is identified as a separate duty. This is further supported by HRS § 11-11 which provides that "[t]he county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and precinct lists within the county."

Having said that, it is important to note that under the Help America Vote Act (HAVA), the Office of Elections houses and maintains the statewide voter registration system. However, the actual contents of the voter registration data are the duty and responsibility of the County Elections Divisions, consistent with the previously noted state statutes. Similarly, there are other federal laws that have the chief election officer of each state act as the point person for certain matters, such as voter registration and military and overseas voting that, within the state, are matters under the jurisdiction of the county clerk.

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Finally, there are practical and logistical matters that result in significant coordination between the Office of Elections and the County Elections Divisions. For example, given that the Office of Elections is based on Oahu, it relies on support from the neighbor island County Elections Divisions in regard to candidate filing for federal and state offices, along with the administration of the state counting centers in each county. Likewise, given economies of scale, there are times when the Office of Elections and the County Elections Divisions will work together in relation to specific election mailings.

Voter Rolls

The county clerks (County Elections Divisions) are responsible for voter roll maintenance. HRS §§ 11-11 and 11-17. Additionally, the County Elections Divisions must conduct its list maintenance within the parameters of both federal and state law and when there is a conflict, federal law must prevail.

As a starting point, the County Elections Divisions can strike the names of disqualified voters when they receive relevant information from an informing agency. HRS § 11-23. For example, the Department of Health, within six weeks after the end of each month, delivers to each County Election Division "a list of the names of all citizens of voting age or over whose deaths have been recorded in the department during each month." HRS § 338-4. Additionally, the County Election Divisions have the ability to transfer or update a voter's registration based on the receipt of reliable and pertinent information that their name or address has changed. HRS § 11-20. Further, voters who requested to be removed would be removed. HRS § 11-17.

The County Elections Divisions must have direct evidence to conclude the voter registration rolls should be updated as the information in rolls is not current. However, the prior version of HRS § 11-17 additionally provided that a voter not voting for a set period of time or simply a returned mailing with a postal notation that it was not deliverable was sufficient to remove a voter. In other words, less direct evidence was acceptable to remove a voter under the prior version of HRS § 11-17.

Similarly, the National Voter Registration Act of 1993 (NVRA) generally provides that removal of a voter comes down to a determination that a voter is no longer eligible to be a registered voter, death of the voter, or the voter chooses to cancel their registration. However, the NVRA makes it clear that it does not permit an otherwise qualified voter to be removed due to solely not exercising their right to vote. 52 USC § 20507(b)(2).

Essentially, all voters have the right to choose to vote or not vote in a particular election without being concerned that they will be penalized with

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removal from the voter registration rolls if they do not vote. As such, the prior version of HRS § 11-17 concerning removal solely due to not voting conflicted with NVRA and could not serve as a basis to remove a voter.

Additionally, unlike state law that allowed a voter to be removed due solely to a returned election mailing, the NVRA sets out a detailed process to obtain sufficient evidence that a voter is no longer in the jurisdiction and as such is not eligible to vote and can be removed. 52 USC § 20507.

Specifically, election officials flag voters in the statewide voter registration system, voters whose election mail has been returned by the United States Postal Service (USPS) or who USPS through its National Change of Address service has indicated moved or otherwise has an issue with their mailing address. These individuals are then mailed a notice by forwardable mail. The notice indicates that the voter needs to contact election officials to resolve the situation. If the voter does not contact election officials or attempts to vote within two general election cycles of the mailing, then they will be removed. 52 USC § 20507(c).

During this time period of two general elections, they are placed on inactive status and cannot vote unless they update their voter registration to resolve the matter. Additionally, state law provides that no voter will be mailed a ballot if they are "identified as having an outdated or non-deliverable mailing address." HRS § 11-102(b). The end result of this is that only voters whose voter registration record is in proper order will be able to vote in an election.

The above was factored into the promulgation of HAR § 3-177-157 that tracks the requirements of 52 USC § 20507. With this background, we can proceed to address each of your recommendations for amending the rules in this area.

The petition's three recommendations are as follows:

1.   HAR §3-177-100 - County Clerks and the Office of Elections shall ensure educational materials advise voters to return ballots if the addressed voter no longer resides at the address or is deceased.

2.   HAR §3-177-158 - County Clerks shall report to the Office of Elections the results of their vote roll maintenance after every general election and provide a list of voters identified for removal based on criteria of, or removed pursuant to, HRS § 11-17.

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3.   HAR §3-177-601 - County Clerks shall ensure all mail ballot package envelopes contain disclaimer that if addressed voter no longer resides at the address received, the envelop [sic] shall be returned to the County Clerk.

The first administrative rule the petition cites, HAR § 3-177-100, essentially provides that the Chief Election Officer may establish a voter education program and then elaborates on the scope of the program. As such, for the 2020 Elections, the Office of Elections coordinated a series of election mailings to help with voter education. The purpose of the mailings was to inform voters that Hawaii was shifting to elections by mail and for list maintenance. These mailings included language informing the public that if they received these postcards for someone who no longer resides at that address, then they should write on the card that the person no longer resides at the address and place it back in the mail. This was also one of our talking points in addressing the media about these mailings. As this messaging helps to ensure the accuracy and integrity of the voter registration rolls, we will continue to include it and work with the County Elections Divisions when these mailings are sent to voters.

While we cannot speak for the County Election Divisions, we would note that ballots are already sent by non-forwardable mail, as required by HRS § 11-102 and "Return Service Requested" is printed on each envelope so as to permit people to indicate to election officials that the voter no longer resides at that address. Additionally, election officials must consider postal regulations regarding the design of the envelope, the need to provide sufficient room for other relevant information that is required to appear on the envelope, such as the availability of translated materials and the deadline for the returning the ballot, and the need to ensure that the ballot at this final stage of the election process does not unintentionally contain language that could be misunderstood or misconstrued.

The second administrative rule cited by the petition, HAR § 3-177-158, authorizes the County Elections Divisions to transfer or change the registration of voters based on their use of reliable and pertinent information. In contrast, as previously noted, HAR § 3-177-157, is focused on the removal of voters and implements various laws, including HRS § 11-17 and the National Voter Registration Act of 1993. The petition's suggested language regarding the availability of list maintenance information is already addressed by federal law. Specifically, inquiries may currently be made at any time with the County Elections Division for such records. 52 USC § 20507.

The third administrative rule cited by the petition, HAR § 3-177-601, is focused on the timing of the transmittal of ballots. However, the petition proposes language on ballot envelopes indicating that if a voter does not reside at the

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address, then the envelope should be returned to election officials. We believe the previous discussion regarding HAR § 3-177-100 addresses this proposal.

Electronic Voting and Tabulating

As it relates to the petition's section on electronic voting and tabulating, it seeks to amend HAR § 3-177-706 as follows:

HAR §3-177-706 - No electronic voting system or tabulator shall be used if tabulators, voter assistance terminals (VAT), memory cards, and flash drives cannot be securely stored, or the VAT and tabulator cannot be air gapped from the internet, wifi and bluetooth access.

However, the main rule regarding voting system requirements is HAR § 3-177-700, which is a detailed rule that requires that any voting system comply with federal voting system guidelines. These federal guidelines were required to be promulgated by the Help America Vote Act of 2002 and are updated with changes in technology.

Please note that the administrative rules do not prohibit air-gapping. Instead, the rules establish a federally supported foundation for our voting systems that does not prevent us from taking additional steps that are appropriate in this dynamic environment. As such, we do not see any flaw or deficiency existing with the present rule and the ability to apply air-gapping and other changes that may be appropriate. With this in mind, we would note that the Hart Verity System for the 2022 Elections is air-gapped as follows:

- Verity workstations and devices are air-gapped (physically separated) from external networks to reduce network-based risks.

- Verity workstations are air-gapped from Verity devices.

- Verity workstations are configured as a private network. Verity workstations will not operate as part of a wider internal or external network.

- Verity devices do not contain networking hardware and cannot be connected to any network.

- Verity components cannot be remotely accessed for troubleshooting or for any other purpose (by Hart or anyone else).

- Voting devices are never connected to a Verity workstation.

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<u>Ballot Counting and Official Observers</u>

The petition's sections entitled "Ballot Counting" and "Official Observers" have been combined for the purposes of this document as they overlap in regard to their proposed rules relating to official observers.

The "Ballot Counting" section proposes the following rule:[1]

HAR §3-177-757 - Two Official Observers, not of the same political party, shall be present at all times to observe the handling of ballots, vote data storage media, voter verifiable paper audit trails, and the counting of paper ballots at all counting stations.

The petition's section "Official Observers" refers to HRS § 16-45 in relation to its proposed amendments to HAR § 3-177-757 and HAR § 3-177-758.

1. HAR §3-177-757 - Define Official Observer to mean a person, political party representative pursuant to HRS §11-61through11-65, or an organization accredited by the Office of Elections or County Clerk to observe an election.

2. HAR §3-177-758 -To the maximum extent possible, ensure sufficient ~~watchers~~ Official Observers are assigned to ensure two-person, not of the same political party, observation at each counting station within the counting center.

Both administrative rules that these sections propose to amend, HAR § 3-177-757, entitled "Electronic voting system; counting center procedures," and HAR § 3-177-758, entitled "Electronic voting system centralized counting; receipt

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[1] The petition's section "Ballot Counting" refers to HRS § 16-25 in relation to its proposed amendments to HAR § 3-177-757 concerning the role of official observers in the ballot counting process. However, a review of HRS § 16-25 indicates that it relates to the counting of ballots in the context of the "paper ballot voting system," a system that does not provide for official observers.   This system predates the current "electronic voting system." Specifically, the "paper ballot system" refers to the "the method of recording votes which are counted manually." HRS § 16-21. In contrast, the "electronic voting system" refers to "the method of recording votes which are counted by automatic tabulating equipment." HRS § 16-41. Official observers are statutorily associated with the "electronic voting system." HRS 16-45. As such, we will consider the proposed rule, HAR § 3-177-757, in the context of HRS § 16-45.

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at counting center," implement a variety of statutes, including HRS § 16-45 regarding official observers.[2] This statute provides as follows:

> **§16-45 Official observers.** Official observers shall be designated by the chief election officer or the clerk in county elections to be present at the counting centers and selected in the following manner:
> (1)   No less than one official observer designated by each political party;
> (2)   No less than one official observer from the news media;
> (3)   Additional official observers as space and facilities permit designated by the chief election officer in state elections and the clerk in county elections.
> The chief election officer or clerk shall give all official observers reasonable notice of the time and place where the ballots shall be counted. No person shall be permitted in the counting center without the written authorization of the chief election officer or clerk.

In implementing the statute, HAR § 3-177-757 provides, in part, the following:

> (a) The handling of ballots, vote data storage media, and voter verifiable paper audit trails shall occur only in the presence of representatives who are not of the same political party or official observers, except in cases where technical knowledge and skill is required when authorized by the chief election officer, clerk, or designated representative.

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[2] The petition indicates that official observers were incorrectly referred to at times as election workers. As a point of clarification, official observers are designated and selected by the Chief Election Officer in state elections and by the county clerk in county elections, after being designated by a political party, new media, or recruited by election officials. HRS § 16-45. While these official observers are semi-autonomous, they ultimately have duties and responsibilities that are performed on behalf of the State.

This results in them being provided a stipend and being considered an employee for state tort liability act purposes if they were acting for a government agency in their capacity as a volunteer in relation to matters covered by that law. As such, for stipends and liability purposes, official observers are sometimes referred to as employees or workers. Having said that, official observers have distinct duties and responsibilities that are separate from traditional stipended volunteers or workers. Given this, we attempt to keep this distinction by trying to only refer to traditional stipended volunteers as election employees or workers and not official observers.

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(b) The official observers shall observe the processes within the counting center and shall report any changes or deviations from the rules or procedures to the chief election officer, clerk in county elections, or designated representative. The observers shall also participate in all certifications that may be required by the chief election officer, clerk, or designated representative.

As for HAR § 3-177-758, it provides as follows:

Counting center officials shall receive and sign for the containers from the voter service centers and the valid return envelopes for processing. The containers shall be unsealed and opened in accordance with established procedures and in the presence of not less than two representatives who are not of the same political party or official observers.

Our review indicates that the current versions of HAR §§ 3-177-757 and 3-177-758 are consistent with HRS § 16-45 and that your proposed amendments may unintentionally result in official observers not associated with a political party being treated differently than their political party counterparts.

In terms of background, for the 2020 Elections, we made an official observer position available every day of counting for a representative of each political party and a representative of the media. Additionally, we solicited observers from various organizations and interested individuals to participate. As indicated, in HRS § 16-45 there was a recognition of the number of official observers being impacted by practical matters such as what space and facilities permitted.

For example, the counting center in each county was understood to be performing different activities throughout the various days that each would be open. These activities and the scope of these activities impacted how many election volunteers would be required, how many election staff will be needed, and correspondingly the number of official observers that would be necessary (i.e., some days as low as six official observers to a high of twenty official observers). Also, in light of COVID-19, we needed to be cognizant of social distancing requirements. Additionally, in regard to planning, we factored in the responsibilities of the official observers prior to the period for the actual counting of the ballots for each election in the form of their initial orientation session and their subsequent attendance for the certifying and securing of the voting equipment.

In terms of recruitment, a letter, dated February 26, 2020, was sent to each political party giving them until May 9, 2020 to provide their proposed

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official observers.[3] Additionally, the Office of Elections also reached out to all individuals who had previously served as official observers. This process took place during the same general time period that we were reaching out to the political parties. It consisted of individual letters to prior official observers, telephone calls, and referrals by prior official observers to new individuals willing to serve. In regard to a political party missing the deadline to submit names, accommodations were made to the extent possible to allow for any belated submissions, factoring in the requirements of HRS § 16-45, other official observers having already signed up for certain slots, and the availability of space in each counting center.

In the end, there were 132 individuals who signed up and were scheduled by the Office of Elections to serve as official observers during the 2020 Elections. It was critical that we had the support and dedication of these members of the community to serve as the "eyes and ears" of the public.

Of these official observers, the Democratic Party of Hawaii designated three official observers, the Aloha Aina Party designated six official observers, and the Hawaii Republican Party was able to designate 35 official observers. In total, the political parties provided 44 official observers, while there were 88 non-political party official observers. This breakdown of official observers reflects that the proposed rule would have faced significant challenges in being implemented.

While we understand the interest of some to have a greater presence and distribution of political party official observers, we have no ability to mandate political party participation. Likewise, delaying the recruitment process for political parties to provide official observers must be weighed against the need to recruit non-political party official observers in a timely manner to ensure that we have the necessary number of official observers in place to perform their critical duties for each election.

Places of Deposit (Ballot Drop Boxes)

As it relates to the petition's section on places of deposit (ballot drop boxes), it seeks the following changes to the existing administrative rules:

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[3] The deadline of May 9, 2020 was the 90th day prior to the Primary Election and corresponds to the statutory deadline for political parties to file "a list of names and addresses of officers of the central committee and of the respective county committees." HRS § 11-64. This deadline was established to account for the scheduled orientation session and testing of the voting equipment. The letter included sign-up sheets for various days for the Primary Election and General Election relating to the processing of voted ballots, election day, recounts, and manual audits.

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1. HAR §3-177-506 - Drop-off locations shall be determined by the county clerk per Act 213 Section 47. Additionally, the clerk shall consider the ability of the drop boxes to be monitored by a video security surveillance system. A video security surveillance system can include existing systems on county, city, or private buildings.

2. HAR §3-177-506 - All drop boxes shall be secured by a lock or tamper-evident seal. Only an elections official shall have access to the keys and/or combination if a lock is used.

3. HAR §3-177-650 - Ballots shall be removed from a ballot drop box by at least two election officials, with a record kept of the date and time ballots were removed, and the names of election officials doing the pick-up. Two Official Observers may be present at all drop box pick-ups. Ballots from drop boxes shall be returned to the signature verification center in secured transport containers. A copy of the record pick-up shall be placed in the container, and one copy shall be transported with the ballots to the signature verification center, where the seal number shall be verified by the county clerk or a designated representative to be untampered with. All ballot drop boxes shall be secured and picked up at 7:00 p.m. on the day of the primary, special election, or general election.

A variety of factors must be weighed by the County Elections Divisions in their establishment of places of deposit and the appropriate security measures under the circumstances. The present petition does not establish that the County Elections Divisions have been unreasonable in their establishment and securing of places of deposit or their handling of the transfer of ballots. As such, there is no present basis for changes to those administrative rules.

It should be noted that the petition seems to propose a new role for official observers. Specifically, the petition seeks to provide that official observers are to be present for ballot pick-ups at places of deposit. However, the scope of the statutory duties and responsibilities of the official observers does not encompass matters outside of the counting center. HRS § 16-45. As such, this office has no authority to promulgate or amend a rule in a way that has no statutory support. Having said that, our office takes no position on whether the County Elections Divisions may wish to accommodate, in a manner that does not unduly interfere with

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their operations or put their employees at risk, any requests that official observers, political parties, or members of the media may have to observe the collection process.

Hello,

I am writing in support of both agenda items for the upcoming 4/1 meeting. Election integrity is a very important issue and this is another step w can take to keep everything clean and beyond reproach. Thank you.

Sincerely,

Marian
<u>Butler & Badou Portraits</u>
Families | Boudoir | Headshots & Branding
Creating timeless & elegant portraits for 10+years & 1000+ families

To: Hawaii Elections Commission;

I ask the Hawaii Elections Commission that is to meet on Friday, Apr 1, 2022 to approve the investigations on election integrity issues in the 2020 election as noted below.
It is paramount that your commission investigate and insure that the 2020 election and all future elections be legal and follow the laws.
Our state and country depend on free and fair elections.

> IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

> V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

If you have further questions or need to reach out to me here is my contact information.

Deborah Hauguel
101 Luluka Place
Kihei, Hi 96753
Cell 574-298-2366
Debbie.Hauguel@gmail.com

Mahalo
Debbie Hauguel
Sent from my iphone

To whom it may concern,

Hawaii needs to take the necessary measures to ensure safe and secure elections. I support the following agendas:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

Please do what's right and in the best interest of the people of Hawaii moving forward.

Thank you,

Michelle Stuebben

I Jeff Cochran support a thorough investigation of both agenda items on integrity and issues in last election pursuant to Adrian Lam allegations and findings .

Thanks Executive Board for reviewing all pertinent items to ensure everything was done right and approximate procedures and way forward is done to prevent issues of this nature from ever occurring again!

Mahalo ,

K Jeff Cochran
Kaneohe Hawaii

808.347. 4605
 kenneycochran@hotmail.com

Sent from my iPhone

Dear Hawaii Elections Commissioners:

I am concerned about the 2020 Election Integrity Issues brought to light by Adriel Lam and others. I respectfully request that the investigation into these issues be commenced at your earliest convenience. I would prefer a full forensic audit as I believe these items are just a small representation of a much bigger problem.
Thank you for your attention to this matter.
Kind Regards,
Vernelle Oku
A Concerned Citizen

Sent from my iPhone

As a local resident on Maui, I fully support the following:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

We must have election integrity and feel like our voices are being heard and represented by the supposed "elected" officials.

Sincerely,
Janelle Ragusa

Aloha,

I am very concerned with our Hawaii 2020 election from having worked at the Convention Center as well as issues recently coming to my attention. Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(4) should be thoroughly looked at. I have seen errors in our election rolls such as names without a middle initial and again with a middle initial (2 votes). In the convention center I saw many out of country ballots that showed only a vote for the presidential election and no other votes. I wrote an affidavit to ED Case and was dismissed by Scott Naga. We need someone to investigate the inconsistencies or I am afraid we will never have an honest voting platform in Hawaii.

Peggy Regentine

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Peggy Regentine

To the Commission:

I support both the following agenda items.

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

I have listened to the meetings and read the testimonies. I support investigation and consideration of any claim that has been expressed.

It is necessary that the public believe in the election process.

Mahalo,
Marina Poling
Haleiwa, Hawaii

Sent with ProtonMail secure email.

Sirs/Madams;

i support the agenda items listed below when you meet on April first./

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam,
V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections"

it is imperative our elections be unbiased and held to the highest standards of impartiality.
as a tax paying citizen i demand it and as public servants it is your oath bound duty to enforce
thank you
Doug Henderson

Support

Sent from Yahoo Mail on Android

I am in support of an investigation of the 2020 Hawaii General Election.

Rita Wong

Everyone knows the elections are rigged. Hawaii is very corrupt. The only way that we can get the proper checks and balances back into the system is to have fair and open elections. We must audit the 2020 elections and put in safe guards to make sure that they stay fair and open.

From:	Hart B
To:	OE.Elections
Subject:	[EXTERNAL] ACTION: Motion to investigate 2020 General Election
Date:	Tuesday, March 29, 2022 4:13:08 PM

I am in support of and strongly encourage the investigation of the 2020 election as there appears to have been significant fraudulent activity.

Mahalo

Good Afternoon Hawaii Elections Commission Team,

I am in favor of and strongly support both of the following agendas:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

Thank You,
Jennifer

Good Afternoon Hawaii Elections Commission Team,

I am in favor of and strongly support both of the following agendas:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

Thank You,
Jen Nars

Sent with ProtonMail secure email.

Dear Election Commission members and Chief Election Officer, Scott Nago,

I have been following your meetings and public testimony from the last several months. I am encouraged to see that you will be investigating some of the issues that Adriel Lam has presented to you. I will be interested to hear how this investigation will be carried out.

I was surprised to hear that the audit of the 2020 election hadn't been carried out by precinct but by district. Mr. Nago said that this would not be an issue with the new voting machines.

I appreciate your efforts in putting these things right. I would like to bring up something that hasn't been discussed nationwide.

The attached declaration is a comprehensive and clear executive summary of the 25,000 word report by Dr. J. Alex Halderman*, the **Halderman Report**. It is a part of Tore Maras' (Terpsichore Maras) defamation lawsuit against Dominion Voting Systems and others. Tore had been a witness to 2020 election fraud.

This report recently became available when it was subpoenaed in the lawsuit. It had previously been sealed by a judge in the Northern District of Georgia.

It is important as it exposes the flaws present in our voting machines.

From my reading of the report, there are several main points that come to mind in my reading:

1. Most in person voters don't look at their ballot to make sure that it is what they chose
2. If we go to predominantly mail in voting, then the voter has to make a special effort to verify his/her ballot selections online
3. Point #4, page 4: " I find that Georgia's BMD's contains multiple severe security flaws. Attackers could exploit these flaws to install malicious software, either with temporary physical access (such as that of voters in the polling place" or remotely from election management systems. I explain in detail how such malware, once installed, could alter voters' votes while subverting all the procedural protection practed by the State, including acceptance testing, hash validation, logic and accuracy testing, estermal firmware validation, and risk-limiting audits (RLAs). Finally, I describe working proof-of-concept malware that I am prepared to demonstrate in court."
4. Point 24, page 17: "What my report shows is that vote-stealing malware of the type I have constructed would not be detected by any of the defenses that State Defendants purport to practice. I describe in detail how such malware would defeat QR code authentication, logic and accuracy testing, on-screen hash validation, and external APK validation (as was used by Pro V & V after the November election)."

Truth speaks for itself.

Our votes are our voices.

That is why I implore you as Chief Election Officer and Election Commission members to read and discuss this. Ask yourself if our current use of voting machines can guarantee that our votes are properly counted.

Others and myself all over the country will be sharing the Halderman Report.

Mahalo,

Marina Poling

*Prof. J. **Alex Halderman** testifies in front of senate intelligence committee on secure **elections** June 26, 2017 His remarks focused on vulnerabilities in the US voting system and a policy agenda for securing the system against the threat of hacking.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL., **Plaintiffs,** v. **BRAD RAFFENSPERGER, ET AL.,** **Defendants.**	**DECLARATION OF** **J. ALEX HALDERMAN** Civil Action No. 1:17-CV-2989-AT

Pursuant to 28 U.S.C. § 1746, J. ALEX HALDERMAN declares under penalty of perjury that the following is true and correct:

1. I hereby incorporate my previous declarations as if fully stated herein. I have personal knowledge of the facts in this declaration and, if called to testify as a witness, I would testify under oath to these facts.

2. I have reviewed the expert disclosures prepared by Dr. Juan Gilbert and Dr. Benjamin Adida for State Defendants. Neither Dr. Gilbert not Dr. Adida offers any rebuttal to the numerous, critical vulnerabilities in Georgia's BMDs that I described in my July 1, 2021 expert report. Dr. Adida did not respond to my report at all; State Defendants reissued prior declarations from him previously provided in this litigation. Neither of them disputes the presence of any of the serious

vulnerabilities I detail in my report or the steps I describe for exploiting those vulnerabilities to alter individual votes and election outcomes in Georgia. Nor does either of them claim to have examined any of the voting equipment used in Georgia to evaluate whether the vulnerabilities I identified—or others—have been exploited in any past election. Although each of them presumably could do this with the permission of State Defendants, who I understand engaged them as experts in this case, there is no indication either has undertaken any such inquiry or asked to do so. As a result, neither Dr. Gilbert nor Dr. Adida has anything to say about the reliability of the voting equipment used in Georgia elections. This is surprising, given that they have had at least the last year to examine Georgia's voting equipment.

3.   State Defendants urgently need to engage with the findings in my report and address the vulnerabilities it describes before attackers exploit them. Nothing in Dr. Gilbert's or Dr. Adida's responses indicates that State Defendants understand the seriousness of these problems or have taken any measures to address them and their implications for the Plaintiffs' individual votes in future elections. Established practice in the security field would require State Defendants to promptly subject Georgia's voting system to rigorous testing in response to my report, to assess the extent and significance of each of the vulnerabilities I described, and to identify and *promptly implement* specific measures (where possible) to eliminate or mitigate each

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of those vulnerabilities. Neither Dr. Gilbert nor Dr. Adida indicates any such efforts on their own part or on the part of State Defendants or anyone else. Again, Dr. Adida did not respond to my report.

4.   In my report—a 25,000-word document that is the product of twelve weeks of intensive testing of the Dominion equipment provided by Fulton County— I find that Georgia's BMDs contains multiple severe security flaws. Attackers could exploit these flaws to install malicious software, either with temporary physical access (such as that of voters in the polling place) or remotely from election management systems. I explain in detail how such malware, once installed, could alter voters' votes while subverting all the procedural protections practiced by the State, including acceptance testing, hash validation, logic and accuracy testing, external firmware validation, and risk-limiting audits (RLAs). Finally, I describe working proof-of-concept malware that I am prepared to demonstrate in court.

5.   My report concludes, *inter alia*, that Georgia's BMDs are not sufficiently secured against technical compromise to withstand vote-altering attacks by bad actors who are likely to target future elections in the state; that the BMDs' vulnerabilities compromise the auditability of Georgia's paper ballots; that the BMDs can be compromised to the same extent as or more easily than the DREs they replaced; and that using these vulnerable BMDs for all in-person voters, as Georgia

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does, greatly magnifies the level of security risk compared to using hand-marked paper ballots and providing BMDs to voters who need or request them.

Reply to Declaration of Dr. Juan Gilbert

6.   Rather than engage with the facts in my report, Dr. Gilbert responds largely with vague generalities. He gives no indication that he has ever used an ICX BMD, let alone tested its security. He begins by conceding that "any computer can be hacked," but he contends that "this general statement is largely irrelevant," because hand-marked paper ballot systems use computers too (to scan the ballots) (¶ 6). His position is inconsistent with accepted standards for election security and with the facts of the particular voting system used in Georgia.

7.   My testing has shown that the BMDs used in Georgia suffer from specific, highly exploitable vulnerabilities that allow attackers to change votes despite the State's purported defenses. There is no evidence that Georgia's ballot scanners suffer from the same extraordinary degree of exploitability, nor does Dr. Gilbert contend they do. He ignores the relative ease with which Georgia's BMDs can be hacked, including by a voter in a voting booth in mere minutes. That extreme difference in security as compared to other voting technologies, particularly hand-marked paper ballots, is far from "irrelevant" as Dr. Gilbert implies.

8.   Furthermore, even if the scanners were just as insecure as the BMDs, Georgia's practice of requiring essentially all in-person voters to use highly vulnerable BMDs would needlessly give attackers *double* the opportunity to change the personal votes of individual Georgia voters, since malware could strike either the BMDs or the scanners. Accepted standards in election security compel reducing points of attack for bad actors, not unnecessarily expanding them—a point Dr. Gilbert ignores.

9.   Lastly, Dr. Gilbert also ignores that accepted election security protocols include an effective measure to protect against hacks of ballot scanners when the ballots are hand-marked rather than generated by BMDs—namely, reliable risk-limiting audits (RLAs), which would have a high probability of detecting any outcome-changing attack on the scanners. Not only do Georgia's BMDs defeat the efficacy of RLAs, but Dr. Gilbert continues to ignore the fact that Georgia requires an RLA of just one statewide contest every two years (and, to my knowledge, has not adopted specific, adequate procedures to ensure a reliable RLA for that one audit every other year).

10.   Dr. Gilbert goes on to discuss issues related to voter verification of BMD ballots (which I respond to below). Yet he fails to address the potential for attackers to cheat by changing only the QR codes printed by Georgia's BMDs.

Voters cannot read the QR codes, but they are the only part of the ballots that the scanners count. My report details several routes by which malicious hardware or software can manipulate the QR codes and cause the recorded votes to differ from voters' selections. In principle, a rigorous risk-limiting audit would be likely to detect such an attack if the attacker changed enough votes to alter the outcome of the contest being audited, but again Georgia rules require such an audit in only a single statewide contest once every two years. As my report explains, this leaves the vast majority of elections and contests in Georgia vulnerable to QR code (and others) attacks, yet Dr. Gilbert says nothing about this threat.

11. Instead, Dr. Gilbert focuses exclusively on a different threat: attacks that change *both* the QR codes and the ballot text. In addition to the barcode-only attacks I just discussed, my report demonstrates that Georgia's BMDs can be manipulated so that both the barcodes and the printed text indicate the same fraudulent selections. No audit or recount can catch such fraud, because all records of the voter's intent would be wrong. The only reliable way to detect it would be if enough voters carefully reviewed their ballots, noticed that one or more selections differed from their intent, and reported the problems to election officials, *and* if Georgia officials then discerned from the pattern of voter reports that the BMDs were systematically misbehaving. Thus, Dr. Gilbert is mistaken when he contends that the distinction

between "voter-verifiable" and "voter-verified" paper ballots "only matters in principle" (¶ 7). All BMD ballots are potentially voter-verifiable, but unless enough BMD ballots are actually voter-*verified*, BMD-based attacks could alter election outcomes even in the rare instances where the State conducts a risk-limiting audit. And unless *every* BMD ballot is actually voter-*verified*, BMD-based attacks could alter individual voters' selections without detection..

12.   A large body of recent scientific evidence has established that few voters are likely to catch errors caused by malicious BMDs. I have reviewed this evidence in previous declarations.[1] It comes from both field observations (which report how long real voters review their ballots during real elections) and laboratory tests (which report the fraction of errors that subjects detect when voting on hacked BMDs in simulated elections). These methodologies are complementary, and results to-date from all studies of both kinds point to a low rate of voter-verification.

13.   Dr. Gilbert criticizes field observations because "[t]ime spent reviewing a ballot has little to do with whether it was actually verified" (¶ 9). This claim is inconsistent with accepted election security principles. Of course, they are not exactly the same question, but obviously the time spent reviewing a ballot can

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[1] *Halderman decl.* (Dec. 16, 2019), Dkt. 682 at 23-33; *Halderman decl.* (Sept. 1, 2020) Dkt. 855-1 at 6-8, 55.

provide important insight into whether it was likely verified. For example, we can conclude that a voter who spends only a second or two reviewing a lengthy, complicated ballot is unlikely to have reliably verified each of their selections on the ballot. And of course, the same is true for a voter who spends no time at all reviewing their ballot. Review time is both practical to measure and clearly correlated with the error detection success, making it a valuable and relevant metric, as multiple studies confirm.

14.　Dr. Gilbert seems to contend, without evidence, that a casual glance is sufficient to review Georgia-style ballots because selections are printed together with party affiliations (¶ 9). He cites no research (and I am unaware of any) that supports this conclusion, particularly when, as in Georgia, the party affiliations are printed in small type and in a different horizontal position for each contest. A real BMD ballot is reproduced on page 15 of my expert report. This is just one example of such a ballot; they can be longer and more confusing. Dr. Gilbert provides no basis for believing that voters would likely catch deliberate errors caused by compromised BMDs when voting such a ballot.

15.　Dr. Gilbert references my award-winning peer-reviewed study about voter verification behavior, which found very poor rates of error detection and

reporting in a mock election using BMDs that my team hacked (¶ 10).[2] He contends that my study "ignores the reaction to such manipulation in an actual election, particularly one as heated in the public domain as the 2020 Election." (¶ 11). He does not explain how or why such circumstances would be expected to materially increase voter verification of their respective BMD ballots, nor does he cite any support for his claim to believe they would. And, just last week, the Atlanta Journal-Constitution obtained a study (under the Georgia Open Records Act) commissioned by the Secretary of State's Office in which researchers from the University of Georgia observed Georgia voters during the November 2020 election and reported how long they spent reviewing their BMD ballots.[3] Although it appears the Secretary of State had this study at the time of Dr. Gilbert's response to my report, he does not address or acknowledge it. The new study suggests that voters in the real world review their ballots *even less carefully* than voters in recent laboratory studies—despite the reminders election workers are supposed to give them to carefully review

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[2] Matthew Bernhard, Allison McDonald, Henry Meng, Jensen Hwa, Nakul Bajaj, Kevin Chang, and J. Alex Halderman, "Can Voters Detect Malicious Manipulation of Ballot Marking Devices?" In *41st IEEE Symposium on Security and Privacy* (May 2020). Available at https://ieeexplore.ieee.org/document/9152705.

[3] Mark Niesse, "Under half of Georgia voters checked their paper ballots, study shows," *Atlanta Journal-Constitution* (July 27, 2021). Available at https://www.ajc.com/politics/under-half-of-georgia-voters-checked-their-paper-ballots-study-shows/6HSVHHFOBRBDPODRZXLIBTUS64/.

their ballots at the polling sites, which Dr. Gilbert emphasizes as a remedy for poor

voter verification of BMD ballots.[4]

16.   The University of Georgia researchers report that 20% of voters they

observed did not check their ballots at all.[5] Only about 49% examined their ballots

for at least one second, and only 19% did so for more than five seconds. This is

significantly worse performance than observed in my study, which found that when

voters were verbally prompted to review their ballots before casting them, as should

occur in Georgia, 63% of voters reviewed their ballots for only *two* seconds or more,

compared to 19-49% in the new study.

17.   This suggests that laboratory studies like mine tend to *overestimate* the

rate at which real Georgia voters would detect errors on their BMD ballots. Since

real Georgia voters were observed to review their ballots even less carefully than the

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[4] Secretary Raffensperger appears to disagree with Dr. Gilbert about the value of
measuring voter review time for assessing voter verification performance. He told
the Atlanta Journal-Constitution that the new study "shows voters do indeed
review their ballots for accuracy before casting them" and offers "proof the votes
that were counted were for the candidates the voters intended." (*Id.*). I agree that
the new study provides valuable insights about voter behavior, but, contrary to the
Secretary's pronouncements, the results indicate that real Georgia voters are even
less likely to detect errors caused by compromised BMDs than previous studies
have suggested.
[5] Audrey A. Haynes and M.V. Hood III, "Georgia Voter Verification Study"
(January 22, 2021). Available at https://s3.documentcloud.org/documents/
21017815/gvvs-report-11.pdf.

participants in my study, it is reasonable to infer that real voters would catch an even smaller fraction of errors. The participants in my study who were similarly prompted to review their ballots caught 14% of errors. Therefore, real voters in Georgia are likely to catch substantially less than 14% of errors.

18. How often would voters have to detect errors on their BMD ballots to effectively safeguard against attacks? The answer depends on the margin of victory, since an outcome-changing attack would need to change fewer votes in a close contest. The model from my study shows that, given the margin of victory from the 2020 Presidential contest in Georgia, voters would need to have detected 46% of errors for there to be even one error report per 1000 voters, under a hypothetical scenario where the election outcome had been changed by hacked BMDs.[6] The University of Georgia observations show that barely 49% of voters looked at their ballots for even a second, let alone studied them carefully enough to reliably spot errors.

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[6] To reiterate, the November presidential race was the only state-wide contest subjected to a risk-limiting audit. In other contests, attackers could change the outcome by tampering with only the ballot QR codes, and voters would have no practical way to detect this manipulation regardless of how diligently they reviewed their ballots.

19. Dr. Gilbert performs a similar calculation using the baseline error detection rate measured in my study. He finds that an outcome changing attack on Georgia's Presidential contest would have resulted in only 832 voters noticing that their BMD ballots showed the wrong selection. Dr. Gilbert suggests that there have not been such complaints from any voters, and says he finds it implausible that so many voters would have "simply not said anything or otherwise simply corrected their ballot and thought nothing of it then or since" (¶ 12).

20. This is an oddly constructed hypothetical, since Curling Plaintiffs do not claim here that the Presidential outcome was altered by hacking the BMDs. And Dr. Gilbert does not indicate any effort to determine the total number of spoiled ballots in Georgia's Presidential contest, which he presumably could have explored with State Defendants. Neither does he provide any basis to believe there were only 832 or fewer spoiled ballots. But suppose for the sake of argument that the Presidential election outcome in Georgia had been altered by hacking the BMDs, and there *were* complaints from the 832 voters that Dr. Gilbert has calculated. What then? It seems all but certain that these complaints would have been dismissed or drowned out in the cacophonous aftermath of the election or simply disregarded by election workers at the polling sites as voter errors. Yet the official count, the risk-limiting audit, and the recount would all have found the wrong winner, and there would be no

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way to recover any altered vote or correct the election outcome short of rerunning the election. With a mere 832 complaints among 5 million participating voters (amidst a sea of other complaints, real and imagined), it is unlikely that poll workers or election officials, including State Defendants, would realize or even suspected there was a systemic problem with the BMDs, and it is completely implausible that they would take the drastic but necessary step of asking Georgians to vote again. Georgia's election system is susceptible to this extraordinary risk as long as it remains vulnerable to the attacks I described in my report (and potentially others).

21. To get to the point of making a decision to rerun an election, State Defendants (among others, perhaps) would first need to know how many voters discovered a problem when verifying their ballots. As Dr. Gilbert points out, the number of spoiled BMD ballots provides an upper bound on the number of voters who discovered and corrected an error (¶ 12). He does not say how many spoiled ballots there actually were in November 2020. If State Defendants knew the number was less than 832, they likely would have shared this fact with Dr. Gilbert, and he would have stated it in his report. It is reasonable to infer that either there were more than 832 spoiled ballots (and the attack is plausible) or State Defendants *do not know* how many BMD ballots were spoiled during the election, eight months later, despite

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what Dr. Gilbert acknowledges those ballots would suggest about the reliability of the election.

22.   That State Defendants may not know this information is consistent with gaps in other important election data that Georgia counties report to the Secretary of State. State Defendants recently produced electronic data (election projects) that I understand were required to be returned to them by counties after the November 2020 and January 2021 elections. In both elections, a large fraction of counties failed to return any data, returned the wrong data, or omitted data necessary for assessing the security and integrity of the result, such as election databases or ballot images. More than six months after these elections, the Secretary of State has not been able to assemble these electronic records and has not indicated any effort or willingness to do so. Yet the only way that State Defendants could use the number of spoiled ballots as a defense against BMD-based cheating would be if the poll workers accurately tracked it, counties accurately aggregated it, and the Secretary's Office received such data from across the state before the election result was determined. Even then, it is unlikely that the Secretary would be prepared to react by *rerunning the election* if the number of spoiled ballots exceeded the number predicted in an outcome-changing attack.

23. Given the ineffectiveness of such defenses and the critical security problems in Georgia's BMDs, I (like Dr. Appel) recommend that BMDs be reserved for voters who need or request them, as is the case in most states. Dr. Gilbert responds by claiming, without evidence, that "[d]isabled voters are even less likely to identify an error on their printed ballot" (¶ 14). I am unaware of any study that supports this sweeping indictment of voters with disabilities, which encompasses a vast array of disabilities that would not impact the ability of the voter to identify an error on their printed ballot in any way. He also contends that blind voters cannot detect errors on their ballot at all, but this is not true. Many blind voters use assistive technology to read printed text and likely could do so to verify their ballots. Moreover, only some voters who need BMDs are blind. For instance, those with motor impairments that prevent them from marking a ballot by hand would not necessarily have any greater difficulty verifying the printed text than any other voter. In any case, if BMDs are used primarily by voters with disabilities (as in most jurisdictions that use BMDs), they will represent a *much* smaller target,[7] and an

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[7] Although Dr. Gilbert cites a figure that would imply that 10% of Georgians who voted in 2020 were disabled, data from Maryland, where BMDs are available upon request, suggests that only about 1.8% of voters would request to use BMDs if they were offered a hand-marked ballot first. (*Halderman decl.*, Aug. 19, 2020, Dkt. 785-2 at 49.) Dr. Gilbert's citation to the number of all Georgia voters with disabilities is highly misleading since, again, very few of those voters would be

outcome-changing attack on any given election will be detectable with a much lower rate of voter error detection than when all in-person voters use BMDs as they do in Georgia today. This in turn creates a strong disincentive for bad actors to attempt hacking an election (the risk likely is not worth the reward when the outcome is highly unlikely to be changed), which means individual votes would be less likely to be altered by hacking.

24. In his only direct response to my expert report, Dr. Gilbert states that he is not aware that I have "provided equipment marred by 'undetectable' hacks to any other independent researcher" (¶ 15).[8] This is a curious and ironic criticism coming from Dr. Gilbert, since he evidently chose not to evaluate my findings through an examination of the voting equipment himself, which he does not explain. Moreover, Dr. Gilbert misreads my report. It does not claim that malicious software infecting a BMD would be undiscoverable by any possible means. If an individual BMD is

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unable to vote on a hand-marked paper ballot, consistent with the number reported in Maryland.

[8] Dr. Gilbert ignores that, as I understand it, State Defendants have objected to my report and the underlying work being shared with third parties (except Dominion), including other independent researchers, with whom I am eager to share my work for review. I am confident in my findings and believe they should be shared promptly with appropriate election security researchers and officials in an effort to mitigate the critical vulnerabilities in Georgia's voting equipment that I describe. I invite Dr. Gilbert to join me in seeking State Defendants' consent to do that.

known to contain malware, there will likely be some level of detailed forensic scrutiny that can detect where the malware is, perhaps requiring months of expert analysis per machine at extraordinary expense. It would be completely infeasible to perform this level of analysis on every machine before every election, much less between an election and the deadline for certification of its results. (And after manipulating ballots, malware could remove all traces of its presence from a machine, defeating any possible post-election examination of the device.) What my report shows is that vote-stealing malware of the type I have constructed would not be detected by any of the defenses that State Defendants purport to practice. I describe in detail how such malware would defeat QR code authentication, logic and accuracy testing, on-screen hash validation, and external APK validation (as was used by Pro V&V after the November election). Dr. Gilbert offers no rebuttal to these findings. He does not dispute them or even address them.

25. Moreover, there is already an example of an "undetectable" attack entered into testimony: exploitation of the Drupal vulnerability discovered by Logan Lamb in the Center for Election Systems server. As Lamb attested, the developers of the primary tool for detecting this vulnerability stated that "[n]either [the defensive tool] nor an expert can guarantee a website has *not* been compromised. They can only

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confirm with certainty a website *has* been compromised."[9] Furthermore, the Drupal developers state that any server running the vulnerable software after the initial disclosure of the vulnerability should be assumed to have been compromised unless it was patched within *hours* of disclosure. According to the timeline presented in Lamb's declaration, he found the KSU server to be in a vulnerable state on August 28, 2016, nearly two years after the initial announcement of the critical vulnerability (October 15, 2014).[10] The KSU server image also contains evidence that a second vulnerability, the so-called Shellshock flaw, was exploited on December 2, 2014.[11] This vulnerability was publicly disclosed more than two months earlier and widely publicized in the media as a critical vulnerability, yet the KSU server remained unpatched.

26.   An attacker who compromised the KSU server could therefore have maintained undetected access to the compromised server. Since the server remained in a vulnerable state undetected for almost two years, it is highly likely that it was successfully attacked at some point in time. An attacker who did so would have been able to move laterally to other systems within the CES network and to other

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[9] *Lamb decl.*, Dkt. 258-1 at 19.
[10] See "Drupal Core - Highly Critical - Public Service announcement" (Oct. 29, 2014), available at https://www.drupal.org/PSA-2014-003.
[11] *Halderman decl.* (Sept. 1, 2020) Dkt. 855-1 at 23.

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components of Georgia's voting system. As I have previously pointed out, many election system components that could have been compromised in this way are still in use in Georgia today, where they provide a means by which attackers could spread vote-stealing malware to the BMDs.

27.   Rather than address the many threats to Georgia's voting system, Dr. Gilbert persists in drawing illogical comparisons between BMDs and hand-marked paper ballots. For instance, he questions why Plaintiffs have presented no research "regarding voters' proclivity to review [hand-marked paper ballots] to ensure their ballots are marked and will count as intended" (¶ 8). Much like Dr. Gilbert's earlier testimony that "[i]n essence, a BMD is nothing more than an ink pen,"[12] one does not need expertise in election security to find fault with this reasoning. Preventing voters from making accidental mistakes is a completely different problem from preventing their selections from being deliberately and systematically changed by an attacker who has compromised the BMDs. There is abundant evidence that voters do sometimes make errors whether filling out a ballot by hand or by machine. Bad ballot design exacerbates this problem with both voting modalities, but following ballot design best practices can greatly reduce it. Both

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[12] *Gilbert decl.*, Dkt. No. 658-3 at 60.

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BMDs and scanners that count hand-marked ballots can also be configured to reject overvotes and to warn voters about undervotes, the most common kinds of voter errors. Moreover, unlike older technologies for counting hand-marked ballots, the scanners used in Georgia (when properly configured) can detect improperly or incompletely marked bubbles and present them to human operators to adjudicate whether the marks should count as votes. Election officials can use all of these options to help protect voters from their own mistakes, but none of them offers protection against a BMD that deliberately changes the selections printed on a voter's ballot (or those encoded in the ballot barcode). The central problem with Georgia's highly vulnerable BMD system—that attackers can change all records of the voter's intent without being detected by election officials—has no parallel in a hand-marked paper ballot system.

28. Dr. Gilbert concludes as he started, with vague and sweeping generalities. "Simply put, BMD elections systems are no more insecure than [hand-marked] systems" (¶ 16). It is unclear whether he is claiming that *all* BMD systems are at least as secure as all hand-marked systems or merely that some specific BMD system (such as the one he recently developed himself to address some of the reliability problems that exist with Georgia's BMDs) is at least as secure as some hand-marked system, but this is of little consequence. The only BMD system that is

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relevant here is the Dominion ICX as used in Georgia. As my expert report details, Georgia's BMD system suffers from numerous, severe vulnerabilities. These vulnerabilities would have little potential to change election outcomes if use of BMDs were limited to voters who need or request them, as Curling Plaintiffs desire, and they would be far less likely to affect the personal votes of individual Georgia voters.

Reply to Declarations of Dr. Benjamin Adida

29. The declarations by Dr. Adida that State Defendants have submitted predate my expert report, so Dr. Adida's opinions are not informed by the critical vulnerabilities in Georgia's BMD equipment that my analysis has revealed or by anything else in my lengthy, detailed report. Nor are they informed by any events that occurred in the year since he first provided these declarations, such as any aspect of the November 2020 election in Georgia or the Secretary of State's study indicating that few voters verified their respective ballots in that election.

30. Nevertheless, Dr. Adida's first declaration is correct that "Running a risk-limiting audit is one of the most important advances states can take in improving election integrity—without an RLA, we are effectively trusting computerized scanners to count our paper ballots" (Dkt. 834-2 at ¶ 5). This is true, but, as my expert report shows, without a risk-limiting audit Georgia is also trusting its critically

vulnerable BMDs to generate ballots with QR codes that correctly reflect voters'

selections. Obviously compromised BMDs and compromised scanners could change

individual votes and election outcomes. But again, nothing suggests that Georgia's

scanners suffer from such easily exploitable critical vulnerabilities as the BMDs do.

31.   Dr. Adida and I also agree that RLAs are important for discovering

whether compromised BMDs have manipulated enough ballot QR codes to change

the outcome of an election (¶ 12). Although RLAs are, as Dr. Adida says, "of the

utmost importance" (¶ 6), Georgia does not require an RLA in the vast majority of

elections and the vast majority of contests, leaving both election outcomes and

individual voters' votes susceptible to manipulation via BMD malware. Additionally,

it is insufficient for states to merely (in Dr. Adida's words) "take meaningful steps to

implement RLAs"; rather, states have to *actually conduct* reliable RLAs, which

Georgia does not intend to do for the vast majority of its elections (or perhaps any of

its elections, depending on the reliability of the audit procedures it implements).

32.   In his second declaration, Dr. Adida refers to a "dispute amongst

academics regarding whether voters verify their ballots using ballot-marking

devices" (Dkt. 912-1 at ¶ 11). This statement reflects a misunderstanding of the state

of research today. I am not aware of any scientific research that supports the

proposition that Georgia voters would likely detect more than a small fraction of
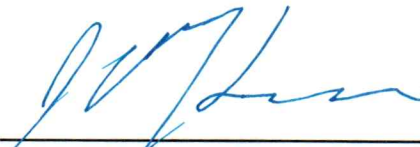
errors caused by BMD malware. In contrast, the past two years have seen a wave of laboratory studies and multiple field observation studies addressing this question, all of which strongly indicate the opposite, that few voters carefully review their ballots and so the vast majority of errors caused by BMD malware would likely to go undiscovered and uncorrected. Although there once was uncertainty about whether most voters carefully verify their BMD ballots, there is no longer any serious scientific dispute that they do not. It is the hallmark of good science (and of good public policy) that it evolves based on new evidence, such as the University of Georgia study commissioned by the Secretary of State that I discussed above— which Dr. Adida has not addressed.

33. Georgia's election system needs to evolve as well. Due to the critical vulnerabilities in Georgia's BMDs that are described in my expert report, Georgia voters face an extreme risk that BMD-based attacks could manipulate their individual votes and alter election outcomes. Even in the rare contests for which the State requires a risk-limiting audit, the scientific evidence about voter verification shows that attackers who compromise the BMDs could likely change individual votes and even the winner of a close race without detection. Georgia can eliminate or greatly mitigate these risks by adopting the same approach to voting that is practiced in most of the country: using hand-marked paper ballots and reserving

BMDs for voters who need or request them. Absent security improvements such as this, it is my opinion that Georgia's voting system does not satisfy accepted security standards. Neither Dr. Gilbert nor Dr. Adida offers a contrary opinion in their respective declarations, instead ignoring the critical issue of whether the *voting system used in Georgia*—which neither claims to have examined—reliably protects the right to vote for individual Georgia voters.

I declare under penalty of the perjury laws of the State of Georgia and the United States that the foregoing is true and correct and that this declaration was executed this 2nd day of August, 2021 in Rushland, Pennsylvania.

J. ALEX HALDERMAN

Aloha,

I am very interested in the following to items especially the Investigation into the 2020 Hawaii Election since I've heard evidence that there are many serious counts of fraudulent voting, from dead people voting, to same phone number with multiple names, people with symbols for last names and people that don't even live here any more.

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

Please, I'd like to see a forensic audit on the 2020 election.

Kindly,

:Cynthia-Jo: Van Kleef:

"People do not shape their futures, they form their habits and their habits shape their future." F.M. Alexander

. . . Exhale . . .

Aloha,

I am very interested in the following two items especially the Investigation into the 2020 Hawaii Election since I've heard evidence that there are many serious counts of fraudulent voting, from dead people voting, to same phone number with multiple names, people with symbols for last names and people that don't even live here any more.

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Please, I'd like to see a forensic audit on the 2020 election.

"Stephen-Timothy: Van Kleef

It is my understanding that the commission on April 1st has two issues to consider regarding the integrity of the elections held in Hawaii. I believe they are agenda item numbers IV and V. I am submitting this email as a request that the committee approve such investigations. The integrity of the election process is critical to the liberty of the residents of our state. Please respond to this request as an integrous representative of the citizens of Hawaii.

Mahalo
Michelle Hernandez resident of Hawaii, Maui County

Aloha,

My name is kaitlin banks and i would like to submit the following testimony in support of the 2020 election investigation. Our state had less than 1% of the vote counted and already called for a Democrat win. We had only two locations on the island of Oahu where we could vote in person. Those lines were 4 hours long!
Out of respect for the citizens of hawaii we deserve and answer to why our votes were not counted before the election was called.

Mahalo
Kaitlin Banks

Sent from my iPhone

To Office of Elections:

I support these 2 agendas:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

Discrepancies exist and corrections need to be made for fair elections. We must strive for integrity in our voting processes. We must strive for voting confidence. We must protect our voting rights. We must protect our future. We must protect our children.

Thank you,
Susan Hullerman
808-294-9711

Aloha,

I am emailing you in strong support of an investigation of the 2020 Hawaii General Election.

Thank you,

Natasha Inaba

I am in agreement to audit the election of 2020 for the state of Hawaii. I believe that should be mandatory given all the attention brought to my awareness of potential voter fraud that may have been going on, I personally believe it has, we can keep my personal opinion out of the matter though, I appreciate you guys taking the time, to consider this issue and pray that your honor may stand for the citizens of Hawaii, law abiding citizens freedom and dignity.

Mahalo nui loa,
Keith Ulloa
98-1286 Hoohiki St. aptB
Pearl City Hawaii, 96782

Submit written testimony BY TOMORROW in support of an investigation of the 2020 Hawaii General Election

Specify WRITTEN AND ORAL testimony if you would like to read your testimony aloud

Email elections@hawaii.gov

Oral testimony may be given during the 4/1 meeting

Sent from my iPhone

I am writing in support of the following motions to investigate topics listed below:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

These investigations are important to promote public confidence in our Hawaii election process. The current process is broken and needs to be fixed before the next election. The public has identified specific problem areas and I am sure these investigations will reveal significant findings of concern for the State office of elections.
Thank you for your efforts in this matter,
Jennifer Cabjuan
D37-1

I'd like to express my support for agenda item HRS §§ 3-170-6 through -9 Regarding Written Complaints Submitted by Adriel Lam.

Statutes have been put in place to serve and protect the interest of the citizens of our state.

It is my right as an American and a citizen of the state of Hawaii to call upon what is right. It is your duty to be complicit to we the people of Hawaii. I request a full forensic audit by an independent entity.

Sincerely,
Jonathan Kamai

March 28, 2022
Elections Commission Written Testimony for April 1 2022 Elections Commission Meeting
Corinne Solomon

Aloha Members of the Elections Commission,

Thank you for allowing me this opportunity to submit public testimony. My testimony pertains to the following agenda items:

IV. "Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary"

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections"

I have three items of testimony:
1. Voter Registration Data
2. Uniform Information Practices Act (UIPA) open records requests
3. Status of the DoD After-Action Report from the Gant Group

Voter Registration Data:
In Adriel Lam's prior testimony of the Honolulu County voter record comparison between the 4/30/2020 and 9/22/2021 voter files he raised the issue of what appears to be retroactive or backdated registrations and transactions. A written response dated 3/16/2022 from the Office of Elections attributes the discrepancies to under age 18 pre-registered voters who are added to the file when they turn 18, and/or previously cancelled registrations that were reactivated.

Mr. Lam's analysis of the Honolulu County Registration data would benefit from access to additional historical registration data files, as well as registrants' dates of birth or age at the time of the 2020 General Election. This age or birthdate information is made available in most states.

I believe the following files should be made available to Mr. Lam, with the $750 fee waived in the interest of the public:
1. The 11/3/2020 Honolulu County voter registration file
2. The Honolulu County voter registration file fully updated with all the votes used to report the official results of the 2020 General Election (this would be shortly after the election, or however long it takes to update the database with the cast votes)
3. The Honolulu County voter registration file dated 2 months after the post-election fully updated file (#2 above).

Uniform Information Practices Act (UIPA) open records requests:
Past public testimony submitted to this committee since the 2020 Primary election has prompted me to learn more about how our elections are run; from which equipment is used, to wondering who has administrative access to our voter rolls, as well as which IP addresses have connected to

our online voter registration system, as well as many other questions that have arisen. I have submitted several public records (UIPA) requests to the State Office of Elections as well as the County clerks trying to understand how our Elections system works. I appreciate everyone's expertise in this area, as well as your timely replies to my open records requests.

However, I am concerned with what appears to be a lack of transparency regarding information that is provided to the public upon request.

I would like to bring a few of my requests to your attention:

UIPA #593: Digital Ballot Images from the 2020 General Election
On December 3, 2021 I submitted a public records request to the State Office of Elections for a digital copy of the ballot images for the 2020 General Election. The response from the Office of Elections was, "Agency does not maintain the records".

Ballot images are subject to State and Federal record retention laws, as such they are to be preserved for 22 months after the election.
I would like to know which agency maintains the ballot image records. As ballot images do not contain any personally identifying information they should exist as a public record, and have been made available to the public in several other states which requested them.

UIPA #690: IP Addresses that Accessed the OLVR 1/1/2018-6/1/2021
On February 22, 2022, I submitted a UIPA request for a list of IP addresses that accessed the online voter registration system. This request was denied with the explanation, "Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))".
Members of the public in other states have successfully obtained this data via public records requests. In the interest of transparency, I request that this information be provided to the public.

UIPA #627: Hart Verity Central Cast Vote Record (CVR)
On January 5, 2022 I submitted a public records request to the State Office of Elections for the Hart Verity Central CVR. The response was, "Agency does not maintain the records. Hart Verity Central was not used for the 2020 General Election".

To help me understand which equipment is used I sent the following request to the State Office of Elections on January 14, 2022:
UIPA #640: List of all Voting Equipment used in the 2020 General Election. Include make and model when applicable.
The request was denied, with the explanation, "Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable (HRS § 92F-11(c)). Please note that the Hart Voting System (HVS) was used for the 2020 General Election".

An email was sent to Verified Voting on March 27, 2022 inquiring on the equipment used in Hawaii for the 2020 General Election. Here is their response:
> "Hawaii used Hart InterCivic eScan and eSlate from 2008 to 2020. This information was available in various places, notably in the state's responses to the EAC Election

Administration Survey…In 2021, the state purchased a new system from Hart as announced on the Office of Elections website…

Of course most Hawaiians vote by mail and those ballots are tabulated using Hart's Verity Central system. We have always found the staff at the Office of Elections staff to be helpful when we've reached out to them for clarification".

I find it concerning that my request to the State Office of Elections was denied if the information is indeed found in various places, as suggested by the email reply from Verified Voting. I am still not clear as to whether Hart Verity Central was used in the 2020 General Election, as the Verified Voting response conflicts with the Office of Election's response to UIPA #627.

UIPA #676: Cast Vote Record (CVR) Public Records Request

On February 1, 2022, I submitted a public records request to the State Office of Elections for a digital copy of the Cast Vote Record (CVR) from the 2020 General Election. The response from the Office of Elections was, "denied in its entirety", with HRS § 92F-13 and/or § 92F-22 cited as the reason for the denial; specifically, HRS § 92F-13(4); "Government records, which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure".

Members of the public in other states have successfully obtained this data via public records requests.

Status of the DoD After-Action Report from the Gant Group:

During the EC meeting on March 18, 2022, I mentioned that a contract was awarded in 2020 by the Department of Defense to the Gant Group to provide an assessment of the 2020 Elections in Hawaii (see attached document titled B1-Award-Letter.pdf).

The Statement of Work includes the following (see attached document titled CA-202009-SOW 2020 Elections Assessment Statewide.pdf):

"The selected consultant will evaluate/assess the entire Elections 2020 processes by identifying procedures, gaps, public messaging to include communications, web page, reporting, legislation to provide recommendations on improving the elections experiences in preparation for Elections 2022. The assessment should also identify areas of concern and weaknesses that could result in ballots not counted, results discrepancies, etc. The selected consultant will be requested to consult with the Office of Elections, each county and County Clerk, state departments, media, candidates, US Postal Services, etc., to identify recommendations for future elections. The assessment should also include elections preparations such as planning, training, and exercises. Training will be for the Elections community but will also be based on the recommendations of the After-Action Report.

The selected consultant will also coordinate with the Enterprise Technology Services (ETS) to analyze the Elections Systems Operations technology infrastructure. The consultant will provide recommendations such as completing a Risk Mitigation Plan for Elections 2022 to assist in increasing the security and resilience of the elections technology infrastructure.

The selected consultant will advise the Office of Elections and ETS if additional support from DHS CISA, Hawaii National Guard, or other technical support is warranted to protect the elections infrastructure for the state of Hawaii.

It is suggested the selected consultant consider a survey of citizens to obtain their feedback on the mail-in balloting election format.

The selected consultant will also provide information to assist the Office of Elections with their annual report to the Legislature.

The assessment results will be presented to the Office of Elections in the form of an After-Action Report.

The assessment will include the Primary Elections scheduled for August 8, 2020; the General Election scheduled November 3, 2020. The selected consultant will provide the Office of Elections an overview of the Primary elections on what actions need to be reviewed, actions taken in preparations for the General Election. The selected consultant will work with the Office on Elections for a project timetable to meet the requirements identified above. All work on the project is anticipated to be completed by November 30, 2021."

In the interest of promoting transparency I am requesting that a copy of the After-Action report be shared with the public.

I appreciate you taking the time to listen to my testimony. Our right to vote is sacred, and we must have faith that the voting system we have is free, fair, and transparent.

Sincerely,

Corinne Solomon

STATEMENT OF WORK

ASSESSMENT OF 2020 ELECTIONS, STATEWIDE, STATE OF HAWAII,
DEPARTMENT OF DEFENSE, OFFICE OF HOMELAND SECURITY,
Job No. CA-202009

The House of Representatives, Thirtieth Legislature 2019, State of Hawaii, passed HB 1248, A Bill for An Act, Relating to Elections. The Act requires ALL elections to be conducted by mail beginning with the 2020 primary elections; establish a limited number of voter service centers that are open ten (10) business days before the election to receive personal delivery of mail-in-ballots, accommodate voters with special needs, offer same day registration and voting, and provide other election services.

As said the Elections 2020 is experiencing a new procedure for elections with mail-in balloting. The State Department of Defense, with the Office of Elections, is requesting assistance to evaluate the election experience and provide recommendations for Elections 2022.

The selected consultant will evaluate/assess the entire Elections 2020 processes by identifying procedures, gaps, public messaging to include communications, web page, reporting, legislation to provide recommendations on improving the elections experiences in preparation for Elections 2022. The assessment should also identify areas of concern and weaknesses that could result in ballots not counted, results discrepancies, etc. The selected consultant will be requested to consult with the Office of Elections, each county and County Clerk, state departments, media, candidates, US Postal Services, etc., to identify recommendations for future elections. The assessment should also include elections preparations such as planning, training, and exercises. Training will be for the Elections community but will also be based on the recommendations of the After-Action Report.

The selected consultant will also coordinate with the Enterprise Technology Services (ETS) to analyze the Elections Systems Operations technology infrastructure. The consultant will provide recommendations such as completing a Risk Mitigation Plan for Elections 2022 to assist in increasing the security and resilience of the elections technology infrastructure.

The selected consultant will advise the Office of Elections and ETS if additional support from DHS CISA, Hawaii National Guard, or other technical support is warranted to protect the elections infrastructure for the state of Hawaii.

The bottom line is how do we improve the elections experiences for Election 2022 for the Office of Elections, all the agencies/activities involved in the elections, and the citizens of Hawaii so we have a safe, secure, confident election.

It is suggested the selected consultant consider a survey of citizens to obtain their feedback on the mail-in balloting election format.

The selected consultant will also provide information to assist the Office of Elections with their annual report to the Legislature.

The assessment results will be presented to the Office of Elections in the form of an After-Action Report.

The assessment will include the Primary Elections scheduled for August 8, 2020; the General Election scheduled November 3, 2020. The selected consultant will provide the Office of Elections an overview of the Primary elections on what actions need to be reviewed, actions taken in preparations for the General Election. The selected consultant will work with the Office on Elections for a project timetable to meet the requirements identified above. All work on the project is anticipated to be completed by November 30, 2021.

DAVID Y. IGE
GOVERNOR

KENNETH S. HARA
MAJOR GENERAL
ADJUTANT GENERAL

STEPHEN F. LOGAN
COLONEL
DEPUTY ADJUTANT GENERAL

STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

June 2, 2020

Mr. Jason M. Gant, President
Gant Group, Inc.
47157 S Clubhouse Rd
Sioux Falls, SD 57108

Dear Mr. Gant:

Award of Contract
Assessment of 2020 Elections, Statewide, State of Hawaii,
Department of Defense, Office of Homeland Security, Job No. CA-202009

We are pleased to inform you that your company has been awarded the contract for the above project in the amount of $47,400.00 subject to the availability of funds.

Please be advised that this letter is not an official notice to proceed with the work. You will be contacted by the Project Manager to arrange for a pre-contract meeting.

Thank you for your cooperation.

Sincerely,

SHAOYU L. LEE
Captain
Hawaii National Guard
Chief Engineering Officer

R020-0314

Dear Sir,

  I notice there are two agenda items for the 1 April 2022 Hawaii Election Commission meeting that require you immediate attention and response. I support the efforts of Adriel Lam and have been alarmed by the the data he and his team have uncovered. Based on his findings, I question the validity of elections in Hawaii. The truth and vulnerabilities of our election process and execution must be exposed and corrected. Members of the electorate demand answers from the Office of Elections, County Clerks and any other body/agency responsible for Hawaii's elections. The agenda items of the upmost priority are:

   IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

   V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

Sincerely,

 Mary Smart
 94-210 Kakaili Pl
 Mililani, HI 96789

Aloha officials

I would like to express my concerns of the 2020 elections and I have written in before asking for an explanation as the numbers sent to me and published don't reconcile.

As I vote I would like a full investigation into the Hawaii 2020 elections as the news called it for the democrats and their where still people inline at the polls to vote. How is this even possible?

Concerned citizen

Blessings Sara

From:	Maya Gonzalez
To:	OE.Elections
Subject:	[EXTERNAL] Investigation into 2020 Elections
Date:	Wednesday, March 30, 2022 9:13:06 AM

I support the investigation into the 2020 Elections

Sent from my iPhone

Please vote to investigate Election Integrity for Hawaii & Nation's 2020 Election.

US Citizen Voter Identification requirement.

Please clean up Hawaii's data base after the 100, 000 ballots found invalid from Adriel Lam.

http://www.hawaiifreepress.com/Articles-Main/ID/29928/Commission-Hears-Complaints-on-Election-Integrity

Thank you,

Patti Yasuhara
Honolulu, HI 96825

Common Cause
Hawaii
Holding Power Accountable

TO: Hawaii State Elections Commission
FROM: Sandy Ma, Executive Director
Common Cause Hawaii
DATE: March 30, 2022
RE: Testimony To The Hawaii State Elections Commission For The April 1, 2022 Meeting

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to strengthening our representative democracy through voting and elections modernization efforts. Common Cause Hawaii works to ensure that all citizens who are able to vote may be able to vote safely and securely for the betterment of our democracy.

Common Cause Hawaii notes that at items IV and V of the Agenda for the April 1, 2022 meeting, it states that "[p]ursuant to HRS § 92-5(a)(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 Hawaii Supreme Court has stated that "boards and commissions [ ] should understand that an attorney is not a talisman, and consultations in executive sessions must be purposeful and unclouded by pretext." *Civil Beat Law Center for the Public Interest, Inc. v. City & County of Honolulu*, 144 Hawai`i 466, 445 P.3d 47, 70 (2019). Common Cause Hawaii understands that the Elections Commission may meet with counsel to obtain "assistance to explain the legal ramifications of various courses of conduct available to the board." OIP Op. No. 03-17, at 4. However, the description in the Agenda for Items IV and V merely states "consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities" in accordance with HRS § 92-5(a)(4).

Explanations must be provided to the public as to how consulting with counsel as to Mr. Lam's complaints <u>and</u> consideration of investigation of the 2020 Hawaii Elections impacts / affects the courses of conduct available to the board or what courses of conduct are even being contemplated by the Elections Commission and under what circumstances.

Explanations must be provided to the public as to how consulting with counsel as to Mr. Lam's complaints <u>and</u> consideration of investigation of the 2020 Hawaii Elections are necessary for conducting the Elections Commission's activities and what those activities may be.

Common Cause Hawaii respectfully reminds the Elections Commission that its "authority to meet in executive session to consult with its attorney pursuant to HRS § 92-5(a)(4) is narrower in scope than the attorney-client privilege . . . ." *Civil Beat Law Center*, 445 P.3d at 69. HRS § 92-5(a)(4) is not a shield from sunshine and public oversight.

As for Item V, "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections", Common Cause Hawaii reminds the Elections Commission that facts show that no money, time, or resources should be wasted on conducting a sham 2020 election review when your Office Elections has already timely conducted a legitimate review immediately following the 2020 elections. Further, the facts show that:

- The Cybersecurity and Infrastructure Security Agency[i] has stated that the 2020 elections were the most secure in the nation's history. In Hawaii, the state had the highest turnout since 1994[ii] even in the midst of a pandemic and in the inaugural vote-by-mail year.
- The monetary costs of conducting another election review – an unnecessary one – will be borne by us, the taxpayers. In Arizona[iii], the election review costs started at $150,000, ended at $4 million+. In Wisconsin[iv], the election review costs started at $680,000 and there is still no limit to how much higher the costs will grow. In Pennsylvania[v], the election review costs started at $270,250 and have increased by another $187,865 and the review has not really even gotten started yet. In Texas[vi], its Attorney General Ken Paxton's "election integrity" unit worked more than 20,000 hours between October 2020 and September 2021 and had a $2.2 million budget and only closed three cases.
- The intent and the actual result behind such bogus elections reviews appear to chill voters from exercising their fundamental right to vote. These unfounded election reviews have a disproportionate impact on marginalized communities[vii]. Hawaii has large groups of minority voters, being the most diverse state in the nation with a diversity index of 76.0%[viii] and with 15% of its eligible voters being immigrants[ix]. Implying that Hawaii's diverse population has wrongfully or unlawfully participated in our democracy is anathema to the history of this state and the sacrifices made by its people.

With the 2022 election right around the corner, efforts should be focused on preparing for the primary election – ensuring that we have adequate numbers of voter service centers and drop boxes, people are educated about the vote-by-mail process, people are informed about candidates and their positions, and people are informed about ballot initiatives and constitutional questions, if any.

Thank you for this opportunity to provide comments, questions, and concerns.

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[i] https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election (retrieved March 30, 2022).

[ii] https://www.civilbeat.org/2020/11/hawaii-casts-record-number-of-ballots-as-election-day-gets-underway/ (retrieved March 30, 2022).

[iii] https://www.azcentral.com/story/news/politics/arizona/2022/02/23/arizona-audit-cost-to-taxpayers-for-2020-election-review-tops-4-million/6829459001/ (retrieved March 30, 2022).

[iv] https://www.fox6now.com/news/vos-wisconsin-election-investigation-to-go-longer-cost-more (retrieved March 30, 2022).

[v] https://www.wesa.fm/politics-government/2022-02-04/pennsylvania-gops-election-inquiry-courts-conspiracies-and-more-costs (retrieved March 30, 2022).

[vi] https://twitter.com/weareoversight/status/1471865075837378571 (retrieved March 30, 2022).

[vii] https://www.usnews.com/news/politics/articles/2022-03-09/lawsuit-seeks-to-stop-groups-door-to-door-voter-fraud-hunt (retrieved March 30, 2022).

[viii] https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html (retrieved March 30, 2022).

[ix] https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2020/02/GMD_2020.02.26_Immigrant-Eligible-Voters.pdf (retrieved March 30, 2022).

I am concerned about our last election how there was a deadline and then the deadline kept getting extended to the last day of voting. That is not right or legal. Why did that happen? We must keep deadlines.

Also, before the polls were closed a decision went out on who was the president. That is not prudent and raises questions on the integrity of the election process.

I am also concerned about the authenticity of checking the people qualified to vote. I do not know if there were equal number of different parties poll watching. As much as possible, we need to maintain balance and fairness among parties in this process.

These questions and concerns need to be addressed in order for us to have elections with integrity going forward.

Aloha,
Roxanne Jim
826 Aipo St.
Honolulu, HI 96825

From:	Jess Penner
To:	OE.Elections
Subject:	[EXTERNAL] Investigate the 2020 election
Date:	Wednesday, March 30, 2022 10:07:34 AM
Attachments:	Election integrity 2.png
	Election Integrity.pdf
	Election Integrity 3.pdf

Hello,

   As a resident of Hawaii and a local constituent who voted in the 2020 election, I am concerned about the integrity of our voting systems and I support an investigation into the outcomes of the 2020 voting cycle. I have attached my formal requests for information (Mailed February 3, 2021) along with a copy of the certified return receipt establishing delivery. I never received a reply to this letter which specifically asked for copies of the most recent certification information for both the software and hardware as required by the HAVA act.

I look forward to your reply,

Jessica Penner

Criptext 🔒

Fw: Voting machines / tabulation information

3 Messages

Jesspenner <jesspenner@criptext.com>   Sat, 30 Jan 2021 at 9:37 AM
To: OE.Elections <elections@hawaii.gov>, Jesspenner <jesspenner@criptext.com>

Hello,

I am looking for information regarding the systems Hawaii uses to receive and tabulate votes. I was wondering if you could provide me with the voting system name, manufacturer, and testing standard used here in Hawaii.

Looking forward to your reply,

Jessica Penner
Kauai resident

OE.Elections <elections@hawaii.gov>   Tue, 9 Feb 2021 at 8:03
                                                          AM

To: OE.Elections <elections@hawaii.gov>, Jesspenner <jesspenner@criptext.com>, OE.Elections
<elections@hawaii.gov>

Aloha,

Thank you for your email. Hawaii utilizes Hart Voting System 6.2.1. For more information about Hart Intercivic's products, please contact them at 1-866-275-4278 or by visiting https://www.hartintercivic.com/.

The accuracy and logic tests for the election equipment are conducted at the Counting Centers in each of the four respective Counties: County of Hawaii, County of Maui, County of Kauai, and the City and County of Honolulu. Official Observers are present for the tests to ensure the integrity of the elections. Additionally, manual audits are conducted on Election Day and after the election to compare hand-counts to computer generated reports and identify any discrepancies.

Please let us know if you have any additional questions.

Thank you,

Jaime Kataoka
Voter Services
State of Hawaii, Office of Elections
(808) 453-VOTE (8683)

From: Jesspenner <jesspenner@criptext.com>
Sent: Saturday, January 30, 2021 9:38 AM
To: OE.Elections <elections@hawaii.gov>

Subject: [EXTERNAL] Voting machines / tabulation information

Jessica Penner
5856 Waipouli Rd
Kapaa, HI 96746

February 3, 2021

Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Mailed on 2/3

To whom it may concern:

As a citizen and resident of Hawaii trying to learn more about our voting processes and systems, I am formally requesting the following information from this office:

- The names of the voting system or systems (software systems included) used in the state
- The names of the manufacturer(s) of the voting machines / tabulators used in the state
- The name of the testing authorities used by Hawaii to certify the machines and software systems used in our most recent election
- Copies of the most recent certification certificates for the above mentioned equipment / software.

Thank you for your time, I look forward to your reply.
Aloha,

Jessica Penner

February 3, 2021

Mailed on 2/3

...aii trying to learn more about our voting processes
...esting the following information from this office:

...em or systems (software systems included) used in

...er(s) of the voting machines / tabulators used in the

...rities used by Hawaii to certify the machines and
...most recent election
...tification certificates for the above mentioned
equipment / software.

Thank you for your time, I look forward to your reply.
Aloha,

Jessica Penner

Board of Elections,

After extensive evaluation your board has some explaining to do:

There are too many absentee ballots! Way more than citizens who vote! Just that fact alone puts you in legal jeopardy !

Factually you are claiming that there were over 110% vote in 2020 based on the number of ballots you have counted!

Either make the move and audit the vote stating today in a real effort to explain how a completely unliked person sits in the governor's chair-

or wait just 1-2-3 more weeks and I will have the military
Shining a light up your operations so bright all lies will be revealed ands all cheats will go to Jail.

Step up and put the criminals who have been manipulating this process while (threatening you>?) in Jail and you'll be the hero"s.

Avoid your resonsibility to the voters and spend the next months wondering if you will be caught and go to jail?

Or Do th right thing -
Audit the 2020 Hawaii election results in Lew of all the phony counts in Other states - this state will be recounted by the military - will you be going to jail?

Being Blake Hughes
Waikoloa
 808-339-7917

To Office of Elections,

I would like to state my support for agenda item IV and V for your upcoming meeting on April 1st, 2022.

Mahalo for your consideration,

Tom Stanton

To whom it may concern / Scott Nago,

I am a concerned citizen, and am requesting an audit of the 2020 General Election.

One of my concerns is that, for the primary election, I found mail-in ballots being sent to sentenced inmates who are not authorized to vote. I called you office and reported this problem, and was told that someone would look into this.

Lo and behold, I found the same problem for the General Election. I was very disappointed that the problem had not been corrected and called your office again.

This may not be such a big deal to you but is for me as, I am looking for voter integrity and for an honest election.

If someone from your office tells me they will look into it for the primary, I would not expect the very same thing happening again for the General.

For these reasons, I am requesting an audit of the 2020 elections.

I appreciate you honoring the requests of a few people as we need to instill trust in government as well as trust in a well-run election.

May I also ask, who is responsible for seeing that the elections are run honestly and with integrity?

Who is responsible for being named in a law suit, should discrepancies be found? If everything is pono, there should be no issues in an audit.

Mahalo, for your time and looking forward to an honest election in 2022. Audits would really keep everyone in check!

Sincerely,

Terri Yoshinaga

Please vote to investigate Election Integrity for Hawai'i & Nation's 2020 Election.

Vote Yes for US Citizen Voter Identification requirements.

Please clean up Hawai'i's voter data base after the 100,000 ballots found invalid from Adriel Lam, January 15, 2022.

Thank you,

Winona Lee
Honolulu, HI. 96822

Sent from my iPhone

To Election Commission members:

I hereby voice my **full support** for agenda items listed below and any others addressing election fraud and/or "irregularities" concerning the 2020 elections:

IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary Pursuant to HRS § 92-5(a)(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.

V. "Consideration of Investigation into the 2020 Hawaii Election operations of each County's Office of Elections" Pursuant to HRS § 92-5(a)(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.

 We need a **full and exhaustive** investigation of the 2020 election. The Halderman Report (see attached file) exposes and outlines the vulnerabilities of voting machines and Captain Seth Keshel revealed multiple HI vote irregularities on his recent visit. HI voters can have *zero* confidence in the current voting apparatus in this state.

Thank you.

Cathrine Sinclaire
Resident and registered HI voter

Declaration of J. Alexander Halderman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL., Plaintiffs, v. BRAD RAFFENSPERGER, ET AL., Defendants.	DECLARATION OF J. ALEX HALDERMAN Civil Action No. 1:17-CV-2989-AT

Pursuant to 28 U.S.C. § 1746, J. ALEX HALDERMAN declares under penalty of perjury that the following is true and correct:

1. I hereby incorporate my previous declarations as if fully stated herein. I have personal knowledge of the facts in this declaration and, if called to testify as a witness, I would testify under oath to these facts.

2. I have reviewed the expert disclosures prepared by Dr. Juan Gilbert and Dr. Benjamin Adida for State Defendants. Neither Dr. Gilbert not Dr. Adida offers any rebuttal to the numerous, critical vulnerabilities in Georgia's BMDs that I described in my July 1, 2021 expert report. Dr. Adida did not respond to my report at all; State Defendants reissued prior declarations from him previously provided in this litigation. Neither of them disputes the presence of any of the serious

vulnerabilities I detail in my report or the steps I describe for exploiting those vulnerabilities to alter individual votes and election outcomes in Georgia. Nor does either of them claim to have examined any of the voting equipment used in Georgia to evaluate whether the vulnerabilities I identified—or others—have been exploited in any past election. Although each of them presumably could do this with the permission of State Defendants, who I understand engaged them as experts in this case, there is no indication either has undertaken any such inquiry or asked to do so. As a result, neither Dr. Gilbert nor Dr. Adida has anything to say about the reliability of the voting equipment used in Georgia elections. This is surprising, given that they have had at least the last year to examine Georgia's voting equipment.

3. State Defendants urgently need to engage with the findings in my report and address the vulnerabilities it describes before attackers exploit them. Nothing in Dr. Gilbert's or Dr. Adida's responses indicates that State Defendants understand the seriousness of these problems or have taken any measures to address them and their implications for the Plaintiffs' individual votes in future elections. Established practice in the security field would require State Defendants to promptly subject Georgia's voting system to rigorous testing in response to my report, to assess the extent and significance of each of the vulnerabilities I described, and to identify and *promptly implement* specific measures (where possible) to eliminate or mitigate each

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of those vulnerabilities. Neither Dr. Gilbert nor Dr. Adida indicates any such efforts on their own part or on the part of State Defendants or anyone else. Again, Dr. Adida did not respond to my report.

4. In my report—a 25,000-word document that is the product of twelve weeks of intensive testing of the Dominion equipment provided by Fulton County— I find that Georgia's BMDs contains multiple severe security flaws. Attackers could exploit these flaws to install malicious software, either with temporary physical access (such as that of voters in the polling place) or remotely from election management systems. I explain in detail how such malware, once installed, could alter voters' votes while subverting all the procedural protections practiced by the State, including acceptance testing, hash validation, logic and accuracy testing, external firmware validation, and risk-limiting audits (RLAs). Finally, I describe working proof-of-concept malware that I am prepared to demonstrate in court.

5. My report concludes, *inter alia*, that Georgia's BMDs are not sufficiently secured against technical compromise to withstand vote-altering attacks by bad actors who are likely to target future elections in the state; that the BMDs' vulnerabilities compromise the auditability of Georgia's paper ballots; that the BMDs can be compromised to the same extent as or more easily than the DREs they replaced; and that using these vulnerable BMDs for all in-person voters, as Georgia

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does, greatly magnifies the level of security risk compared to using hand-marked paper ballots and providing BMDs to voters who need or request them.

Reply to Declaration of Dr. Juan Gilbert

6.   Rather than engage with the facts in my report, Dr. Gilbert responds largely with vague generalities. He gives no indication that he has ever used an ICX BMD, let alone tested its security. He begins by conceding that "any computer can be hacked," but he contends that "this general statement is largely irrelevant," because hand-marked paper ballot systems use computers too (to scan the ballots) (¶ 6). His position is inconsistent with accepted standards for election security and with the facts of the particular voting system used in Georgia.

7.   My testing has shown that the BMDs used in Georgia suffer from specific, highly exploitable vulnerabilities that allow attackers to change votes despite the State's purported defenses. There is no evidence that Georgia's ballot scanners suffer from the same extraordinary degree of exploitability, nor does Dr. Gilbert contend they do. He ignores the relative ease with which Georgia's BMDs can be hacked, including by a voter in a voting booth in mere minutes. That extreme difference in security as compared to other voting technologies, particularly hand-marked paper ballots, is far from "irrelevant" as Dr. Gilbert implies.

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8.   Furthermore, even if the scanners were just as insecure as the BMDs, Georgia's practice of requiring essentially all in-person voters to use highly vulnerable BMDs would needlessly give attackers *double* the opportunity to change the personal votes of individual Georgia voters, since malware could strike either the BMDs or the scanners. Accepted standards in election security compel reducing points of attack for bad actors, not unnecessarily expanding them—a point Dr. Gilbert ignores.

9.   Lastly, Dr. Gilbert also ignores that accepted election security protocols include an effective measure to protect against hacks of ballot scanners when the ballots are hand-marked rather than generated by BMDs—namely, reliable risk-limiting audits (RLAs), which would have a high probability of detecting any outcome-changing attack on the scanners. Not only do Georgia's BMDs defeat the efficacy of RLAs, but Dr. Gilbert continues to ignore the fact that Georgia requires an RLA of just one statewide contest every two years (and, to my knowledge, has not adopted specific, adequate procedures to ensure a reliable RLA for that one audit every other year).

10.   Dr. Gilbert goes on to discuss issues related to voter verification of BMD ballots (which I respond to below). Yet he fails to address the potential for attackers to cheat by changing only the QR codes printed by Georgia's BMDs.

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Voters cannot read the QR codes, but they are the only part of the ballots that the scanners count. My report details several routes by which malicious hardware or software can manipulate the QR codes and cause the recorded votes to differ from voters' selections. In principle, a rigorous risk-limiting audit would be likely to detect such an attack if the attacker changed enough votes to alter the outcome of the contest being audited, but again Georgia rules require such an audit in only a single statewide contest once every two years. As my report explains, this leaves the vast majority of elections and contests in Georgia vulnerable to QR code (and others) attacks, yet Dr. Gilbert says nothing about this threat.

11.   Instead, Dr. Gilbert focuses exclusively on a different threat: attacks that change *both* the QR codes and the ballot text. In addition to the barcode-only attacks I just discussed, my report demonstrates that Georgia's BMDs can be manipulated so that both the barcodes and the printed text indicate the same fraudulent selections. No audit or recount can catch such fraud, because all records of the voter's intent would be wrong. The only reliable way to detect it would be if enough voters carefully reviewed their ballots, noticed that one or more selections differed from their intent, and reported the problems to election officials, *and* if Georgia officials then discerned from the pattern of voter reports that the BMDs were systematically misbehaving. Thus, Dr. Gilbert is mistaken when he contends that the distinction

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between "voter-verifiable" and "voter-verified" paper ballots "only matters in principle" (¶ 7). All BMD ballots are potentially voter-verifiable, but unless enough BMD ballots are actually voter-*verified*, BMD-based attacks could alter election outcomes even in the rare instances where the State conducts a risk-limiting audit. And unless *every* BMD ballot is actually voter-*verified*, BMD-based attacks could alter individual voters' selections without detection..

12.   A large body of recent scientific evidence has established that few voters are likely to catch errors caused by malicious BMDs. I have reviewed this evidence in previous declarations.[1] It comes from both field observations (which report how long real voters review their ballots during real elections) and laboratory tests (which report the fraction of errors that subjects detect when voting on hacked BMDs in simulated elections). These methodologies are complementary, and results to-date from all studies of both kinds point to a low rate of voter-verification.

13.   Dr. Gilbert criticizes field observations because "[t]ime spent reviewing a ballot has little to do with whether it was actually verified" (¶ 9). This claim is inconsistent with accepted election security principles. Of course, they are not exactly the same question, but obviously the time spent reviewing a ballot can

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[1] *Halderman decl.* (Dec. 16, 2019), Dkt. 682 at 23-33; *Halderman decl.* (Sept. 1, 2020) Dkt. 855-1 at 6-8, 55.

provide important insight into whether it was likely verified. For example, we can conclude that a voter who spends only a second or two reviewing a lengthy, complicated ballot is unlikely to have reliably verified each of their selections on the ballot. And of course, the same is true for a voter who spends no time at all reviewing their ballot. Review time is both practical to measure and clearly correlated with the error detection success, making it a valuable and relevant metric, as multiple studies confirm.

14. Dr. Gilbert seems to contend, without evidence, that a casual glance is sufficient to review Georgia-style ballots because selections are printed together with party affiliations (¶ 9). He cites no research (and I am unaware of any) that supports this conclusion, particularly when, as in Georgia, the party affiliations are printed in small type and in a different horizontal position for each contest. A real BMD ballot is reproduced on page 15 of my expert report. This is just one example of such a ballot; they can be longer and more confusing. Dr. Gilbert provides no basis for believing that voters would likely catch deliberate errors caused by compromised BMDs when voting such a ballot.

15. Dr. Gilbert references my award-winning peer-reviewed study about voter verification behavior, which found very poor rates of error detection and

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reporting in a mock election using BMDs that my team hacked (¶ 10).[2] He contends

that my study "ignores the reaction to such manipulation in an actual election,

particularly one as heated in the public domain as the 2020 Election." (¶ 11). He

does not explain how or why such circumstances would be expected to materially

increase voter verification of their respective BMD ballots, nor does he cite any

support for his claim to believe they would. And, just last week, the Atlanta Journal-

Constitution obtained a study (under the Georgia Open Records Act) commissioned

by the Secretary of State's Office in which researchers from the University of

Georgia observed Georgia voters during the November 2020 election and reported

how long they spent reviewing their BMD ballots.[3] Although it appears the Secretary

of State had this study at the time of Dr. Gilbert's response to my report, he does not

address or acknowledge it. The new study suggests that voters in the real world

review their ballots *even less carefully* than voters in recent laboratory studies—

despite the reminders election workers are supposed to give them to carefully review

_____

[2] Matthew Bernhard, Allison McDonald, Henry Meng, Jensen Hwa, Nakul Bajaj, Kevin Chang, and J. Alex Halderman, "Can Voters Detect Malicious Manipulation of Ballot Marking Devices?" In *41st IEEE Symposium on Security and Privacy* (May 2020). Available at https://ieeexplore.ieee.org/document/9152705.
[3] Mark Niesse, "Under half of Georgia voters checked their paper ballots, study shows," *Atlanta Journal-Constitution* (July 27, 2021). Available at https://www.ajc.com/politics/under-half-of-georgia-voters-checked-their-paper-ballots-study-shows/6HSVHHFOBRBDPODRZXLIBTUS64/.

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their ballots at the polling sites, which Dr. Gilbert emphasizes as a remedy for poor

voter verification of BMD ballots.[4]

16.   The University of Georgia researchers report that 20% of voters they

observed did not check their ballots at all.[5] Only about 49% examined their ballots

for at least one second, and only 19% did so for more than five seconds. This is

significantly worse performance than observed in my study, which found that when

voters were verbally prompted to review their ballots before casting them, as should

occur in Georgia, 63% of voters reviewed their ballots for only *two* seconds or more,

compared to 19-49% in the new study.

17.   This suggests that laboratory studies like mine tend to *overestimate* the

rate at which real Georgia voters would detect errors on their BMD ballots. Since

real Georgia voters were observed to review their ballots even less carefully than the

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[4] Secretary Raffensperger appears to disagree with Dr. Gilbert about the value of measuring voter review time for assessing voter verification performance. He told the Atlanta Journal-Constitution that the new study "shows voters do indeed review their ballots for accuracy before casting them" and offers "proof the votes that were counted were for the candidates the voters intended." (*Id.*). I agree that the new study provides valuable insights about voter behavior, but, contrary to the Secretary's pronouncements, the results indicate that real Georgia voters are even less likely to detect errors caused by compromised BMDs than previous studies have suggested.

[5] Audrey A. Haynes and M.V. Hood III, "Georgia Voter Verification Study" (January 22, 2021). Available at https://s3.documentcloud.org/documents/21017815/gvvs-report-11.pdf.

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participants in my study, it is reasonable to infer that real voters would catch an even smaller fraction of errors. The participants in my study who were similarly prompted to review their ballots caught 14% of errors. Therefore, real voters in Georgia are likely to catch substantially less than 14% of errors.

18. How often would voters have to detect errors on their BMD ballots to effectively safeguard against attacks? The answer depends on the margin of victory, since an outcome-changing attack would need to change fewer votes in a close contest. The model from my study shows that, given the margin of victory from the 2020 Presidential contest in Georgia, voters would need to have detected 46% of errors for there to be even one error report per 1000 voters, under a hypothetical scenario where the election outcome had been changed by hacked BMDs.[6] The University of Georgia observations show that barely 49% of voters looked at their ballots for even a second, let alone studied them carefully enough to reliably spot errors.

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[6] To reiterate, the November presidential race was the only state-wide contest subjected to a risk-limiting audit. In other contests, attackers could change the outcome by tampering with only the ballot QR codes, and voters would have no practical way to detect this manipulation regardless of how diligently they reviewed their ballots.

19. Dr. Gilbert performs a similar calculation using the baseline error detection rate measured in my study. He finds that an outcome changing attack on Georgia's Presidential contest would have resulted in only 832 voters noticing that their BMD ballots showed the wrong selection. Dr. Gilbert suggests that there have not been such complaints from any voters, and says he finds it implausible that so many voters would have "simply not said anything or otherwise simply corrected their ballot and thought nothing of it then or since" (¶ 12).

20. This is an oddly constructed hypothetical, since Curling Plaintiffs do not claim here that the Presidential outcome was altered by hacking the BMDs. And Dr. Gilbert does not indicate any effort to determine the total number of spoiled ballots in Georgia's Presidential contest, which he presumably could have explored with State Defendants. Neither does he provide any basis to believe there were only 832 or fewer spoiled ballots. But suppose for the sake of argument that the Presidential election outcome in Georgia had been altered by hacking the BMDs, and there *were* complaints from the 832 voters that Dr. Gilbert has calculated. What then? It seems all but certain that these complaints would have been dismissed or drowned out in the cacophonous aftermath of the election or simply disregarded by election workers at the polling sites as voter errors. Yet the official count, the risk-limiting audit, and the recount would all have found the wrong winner, and there would be no

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way to recover any altered vote or correct the election outcome short of rerunning the election. With a mere 832 complaints among 5 million participating voters (amidst a sea of other complaints, real and imagined), it is unlikely that poll workers or election officials, including State Defendants, would realize or even suspected there was a systemic problem with the BMDs, and it is completely implausible that they would take the drastic but necessary step of asking Georgians to vote again. Georgia's election system is susceptible to this extraordinary risk as long as it remains vulnerable to the attacks I described in my report (and potentially others).

21. To get to the point of making a decision to rerun an election, State Defendants (among others, perhaps) would first need to know how many voters discovered a problem when verifying their ballots. As Dr. Gilbert points out, the number of spoiled BMD ballots provides an upper bound on the number of voters who discovered and corrected an error (¶ 12). He does not say how many spoiled ballots there actually were in November 2020. If State Defendants knew the number was less than 832, they likely would have shared this fact with Dr. Gilbert, and he would have stated it in his report. It is reasonable to infer that either there were more than 832 spoiled ballots (and the attack is plausible) or State Defendants *do not know* how many BMD ballots were spoiled during the election, eight months later, despite

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what Dr. Gilbert acknowledges those ballots would suggest about the reliability of the election.

22. That State Defendants may not know this information is consistent with gaps in other important election data that Georgia counties report to the Secretary of State. State Defendants recently produced electronic data (election projects) that I understand were required to be returned to them by counties after the November 2020 and January 2021 elections. In both elections, a large fraction of counties failed to return any data, returned the wrong data, or omitted data necessary for assessing the security and integrity of the result, such as election databases or ballot images. More than six months after these elections, the Secretary of State has not been able to assemble these electronic records and has not indicated any effort or willingness to do so. Yet the only way that State Defendants could use the number of spoiled ballots as a defense against BMD-based cheating would be if the poll workers accurately tracked it, counties accurately aggregated it, and the Secretary's Office received such data from across the state before the election result was determined. Even then, it is unlikely that the Secretary would be prepared to react by *rerunning the election* if the number of spoiled ballots exceeded the number predicted in an outcome-changing attack.

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23. Given the ineffectiveness of such defenses and the critical security problems in Georgia's BMDs, I (like Dr. Appel) recommend that BMDs be reserved for voters who need or request them, as is the case in most states. Dr. Gilbert responds by claiming, without evidence, that "[d]isabled voters are even less likely to identify an error on their printed ballot" (¶ 14). I am unaware of any study that supports this sweeping indictment of voters with disabilities, which encompasses a vast array of disabilities that would not impact the ability of the voter to identify an error on their printed ballot in any way. He also contends that blind voters cannot detect errors on their ballot at all, but this is not true. Many blind voters use assistive technology to read printed text and likely could do so to verify their ballots. Moreover, only some voters who need BMDs are blind. For instance, those with motor impairments that prevent them from marking a ballot by hand would not necessarily have any greater difficulty verifying the printed text than any other voter. In any case, if BMDs are used primarily by voters with disabilities (as in most jurisdictions that use BMDs), they will represent a *much* smaller target,[7] and an

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[7] Although Dr. Gilbert cites a figure that would imply that 10% of Georgians who voted in 2020 were disabled, data from Maryland, where BMDs are available upon request, suggests that only about 1.8% of voters would request to use BMDs if they were offered a hand-marked ballot first. (*Halderman decl.*, Aug. 19, 2020, Dkt. 785-2 at 49.) Dr. Gilbert's citation to the number of all Georgia voters with disabilities is highly misleading since, again, very few of those voters would be

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outcome-changing attack on any given election will be detectable with a much lower rate of voter error detection than when all in-person voters use BMDs as they do in Georgia today. This in turn creates a strong disincentive for bad actors to attempt hacking an election (the risk likely is not worth the reward when the outcome is highly unlikely to be changed), which means individual votes would be less likely to be altered by hacking.

24.   In his only direct response to my expert report, Dr. Gilbert states that he is not aware that I have "provided equipment marred by 'undetectable' hacks to any other independent researcher" (¶ 15).[8] This is a curious and ironic criticism coming from Dr. Gilbert, since he evidently chose not to evaluate my findings through an examination of the voting equipment himself, which he does not explain. Moreover, Dr. Gilbert misreads my report. It does not claim that malicious software infecting a BMD would be undiscoverable by any possible means. If an individual BMD is

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unable to vote on a hand-marked paper ballot, consistent with the number reported in Maryland.

[8] Dr. Gilbert ignores that, as I understand it, State Defendants have objected to my report and the underlying work being shared with third parties (except Dominion), including other independent researchers, with whom I am eager to share my work for review. I am confident in my findings and believe they should be shared promptly with appropriate election security researchers and officials in an effort to mitigate the critical vulnerabilities in Georgia's voting equipment that I describe. I invite Dr. Gilbert to join me in seeking State Defendants' consent to do that.

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known to contain malware, there will likely be some level of detailed forensic scrutiny that can detect where the malware is, perhaps requiring months of expert analysis per machine at extraordinary expense. It would be completely infeasible to perform this level of analysis on every machine before every election, much less between an election and the deadline for certification of its results. (And after manipulating ballots, malware could remove all traces of its presence from a machine, defeating any possible post-election examination of the device.) What my report shows is that vote-stealing malware of the type I have constructed would not be detected by any of the defenses that State Defendants purport to practice. I describe in detail how such malware would defeat QR code authentication, logic and accuracy testing, on-screen hash validation, and external APK validation (as was used by Pro V&V after the November election). Dr. Gilbert offers no rebuttal to these findings. He does not dispute them or even address them.

25.   Moreover, there is already an example of an "undetectable" attack entered into testimony: exploitation of the Drupal vulnerability discovered by Logan Lamb in the Center for Election Systems server. As Lamb attested, the developers of the primary tool for detecting this vulnerability stated that "[n]either [the defensive tool] nor an expert can guarantee a website has *not* been compromised. They can only

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confirm with certainty a website *has* been compromised."[9] Furthermore, the Drupal developers state that any server running the vulnerable software after the initial disclosure of the vulnerability should be assumed to have been compromised unless it was patched within *hours* of disclosure. According to the timeline presented in Lamb's declaration, he found the KSU server to be in a vulnerable state on August 28, 2016, nearly two years after the initial announcement of the critical vulnerability (October 15, 2014).[10] The KSU server image also contains evidence that a second vulnerability, the so-called Shellshock flaw, was exploited on December 2, 2014.[11] This vulnerability was publicly disclosed more than two months earlier and widely publicized in the media as a critical vulnerability, yet the KSU server remained unpatched.

26.   An attacker who compromised the KSU server could therefore have maintained undetected access to the compromised server. Since the server remained in a vulnerable state undetected for almost two years, it is highly likely that it was successfully attacked at some point in time. An attacker who did so would have been able to move laterally to other systems within the CES network and to other

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[9] *Lamb decl.*, Dkt. 258-1 at 19.

[10] See "Drupal Core - Highly Critical - Public Service announcement" (Oct. 29, 2014), available at https://www.drupal.org/PSA-2014-003.

[11] *Halderman decl.* (Sept. 1, 2020) Dkt. 855-1 at 23.

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components of Georgia's voting system. As I have previously pointed out, many election system components that could have been compromised in this way are still in use in Georgia today, where they provide a means by which attackers could spread vote-stealing malware to the BMDs.

27. Rather than address the many threats to Georgia's voting system, Dr. Gilbert persists in drawing illogical comparisons between BMDs and hand-marked paper ballots. For instance, he questions why Plaintiffs have presented no research "regarding voters' proclivity to review [hand-marked paper ballots] to ensure their ballots are marked and will count as intended" (¶ 8). Much like Dr. Gilbert's earlier testimony that "[i]n essence, a BMD is nothing more than an ink pen,"[12] one does not need expertise in election security to find fault with this reasoning. Preventing voters from making accidental mistakes is a completely different problem from preventing their selections from being deliberately and systematically changed by an attacker who has compromised the BMDs. There is abundant evidence that voters do sometimes make errors whether filling out a ballot by hand or by machine. Bad ballot design exacerbates this problem with both voting modalities, but following ballot design best practices can greatly reduce it. Both

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[12] *Gilbert decl.*, Dkt. No. 658-3 at 60.

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BMDs and scanners that count hand-marked ballots can also be configured to reject overvotes and to warn voters about undervotes, the most common kinds of voter errors. Moreover, unlike older technologies for counting hand-marked ballots, the scanners used in Georgia (when properly configured) can detect improperly or incompletely marked bubbles and present them to human operators to adjudicate whether the marks should count as votes. Election officials can use all of these options to help protect voters from their own mistakes, but none of them offers protection against a BMD that deliberately changes the selections printed on a voter's ballot (or those encoded in the ballot barcode). The central problem with Georgia's highly vulnerable BMD system—that attackers can change all records of the voter's intent without being detected by election officials—has no parallel in a hand-marked paper ballot system.

28. Dr. Gilbert concludes as he started, with vague and sweeping generalities. "Simply put, BMD elections systems are no more insecure than [hand-marked] systems" (¶ 16). It is unclear whether he is claiming that *all* BMD systems are at least as secure as all hand-marked systems or merely that some specific BMD system (such as the one he recently developed himself to address some of the reliability problems that exist with Georgia's BMDs) is at least as secure as some hand-marked system, but this is of little consequence. The only BMD system that is

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relevant here is the Dominion ICX as used in Georgia. As my expert report details, Georgia's BMD system suffers from numerous, severe vulnerabilities. These vulnerabilities would have little potential to change election outcomes if use of BMDs were limited to voters who need or request them, as Curling Plaintiffs desire, and they would be far less likely to affect the personal votes of individual Georgia voters.

Reply to Declarations of Dr. Benjamin Adida

29. The declarations by Dr. Adida that State Defendants have submitted predate my expert report, so Dr. Adida's opinions are not informed by the critical vulnerabilities in Georgia's BMD equipment that my analysis has revealed or by anything else in my lengthy, detailed report. Nor are they informed by any events that occurred in the year since he first provided these declarations, such as any aspect of the November 2020 election in Georgia or the Secretary of State's study indicating that few voters verified their respective ballots in that election.

30. Nevertheless, Dr. Adida's first declaration is correct that "Running a risk-limiting audit is one of the most important advances states can take in improving election integrity—without an RLA, we are effectively trusting computerized scanners to count our paper ballots" (Dkt. 834-2 at ¶ 5). This is true, but, as my expert report shows, without a risk-limiting audit Georgia is also trusting its critically

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vulnerable BMDs to generate ballots with QR codes that correctly reflect voters' selections. Obviously compromised BMDs and compromised scanners could change individual votes and election outcomes. But again, nothing suggests that Georgia's scanners suffer from such easily exploitable critical vulnerabilities as the BMDs do.

31.   Dr. Adida and I also agree that RLAs are important for discovering whether compromised BMDs have manipulated enough ballot QR codes to change the outcome of an election (¶ 12). Although RLAs are, as Dr. Adida says, "of the utmost importance" (¶ 6), Georgia does not require an RLA in the vast majority of elections and the vast majority of contests, leaving both election outcomes and individual voters' votes susceptible to manipulation via BMD malware. Additionally, it is insufficient for states to merely (in Dr. Adida's words) "take meaningful steps to implement RLAs"; rather, states have to *actually conduct* reliable RLAs, which Georgia does not intend to do for the vast majority of its elections (or perhaps any of its elections, depending on the reliability of the audit procedures it implements).

32.   In his second declaration, Dr. Adida refers to a "dispute amongst academics regarding whether voters verify their ballots using ballot-marking devices" (Dkt. 912-1 at ¶ 11). This statement reflects a misunderstanding of the state of research today. I am not aware of any scientific research that supports the proposition that Georgia voters would likely detect more than a small fraction of

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errors caused by BMD malware. In contrast, the past two years have seen a wave of laboratory studies and multiple field observation studies addressing this question, all of which strongly indicate the opposite, that few voters carefully review their ballots and so the vast majority of errors caused by BMD malware would likely to go undiscovered and uncorrected. Although there once was uncertainty about whether most voters carefully verify their BMD ballots, there is no longer any serious scientific dispute that they do not. It is the hallmark of good science (and of good public policy) that it evolves based on new evidence, such as the University of Georgia study commissioned by the Secretary of State that I discussed above— which Dr. Adida has not addressed.

33.   Georgia's election system needs to evolve as well. Due to the critical vulnerabilities in Georgia's BMDs that are described in my expert report, Georgia voters face an extreme risk that BMD-based attacks could manipulate their individual votes and alter election outcomes. Even in the rare contests for which the State requires a risk-limiting audit, the scientific evidence about voter verification shows that attackers who compromise the BMDs could likely change individual votes and even the winner of a close race without detection. Georgia can eliminate or greatly mitigate these risks by adopting the same approach to voting that is practiced in most of the country: using hand-marked paper ballots and reserving

BMDs for voters who need or request them. Absent security improvements such as this, it is my opinion that Georgia's voting system does not satisfy accepted security standards. Neither Dr. Gilbert nor Dr. Adida offers a contrary opinion in their respective declarations, instead ignoring the critical issue of whether the *voting system used in Georgia*—which neither claims to have examined—reliably protects the right to vote for individual Georgia voters.

I declare under penalty of the perjury laws of the State of Georgia and the United States that the foregoing is true and correct and that this declaration was executed this 2nd day of August, 2021 in Rushland, Pennsylvania.

J. ALEX HALDERMAN

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Election Commission members:

https://kanekoa.substack.com/p/110-articles-affirm-americas-computerized?s=w

It's not as if there isn't overwhelming evidence of FRAUD!

Cathrine Sinclaire
Resident and registered HI voter

I strongly SUPPORT in an investigation of the 2020 Hawaii General Election.

This is my written testimony, please share this in your hearing.

Mahalo,
Lee Trent

From:	Sue Alden-Rudin
To:	OE.Elections
Subject:	[EXTERNAL] 2020 elections
Date:	Wednesday, March 30, 2022 12:22:01 PM

Please investigate the 2020 Hawaii elections for integrity and validity.

Sent from my iPhone

Dear Members of the Election Commissions,

I am sending this email to support agenda items IV and V for the April 1st, 2022 meeting. My support is due to the fact that when there are issues that arise from election issues there is no path to resolving the issues and their consequences. Both agenda items seem to address similar circumstances thus my full support for these two agenda matters.

I respectfully submit my support.

Sincerely,

Signe Godfrey
District 27
signe.godfrey@gmail.com
808 226-6216

Aloha,

I am a US citizen and a resident of House District 20 on the island of Oahu, Hawaii.

It is my understanding that a manual audit of the 2020 election results for the State of Hawaii was not conducted in accordance with the guidelines set forth in HAR §3-172-102. Furthermore, Mr. Adriel Lam's findings regarding inconsistencies in the voter registration database and the election results warrants further investigation. And lastly, The Heritage Foundation's Election Scorecard (https://www.heritage.org/electionscorecard/) ranked Hawaii last with respect to election laws and regulations of each State and the District of Columbia that affect the security and integrity of the process.

Therefore, I support the motion of Election Commissioner Michael Curtis to "Initiate an Investigation into the 2020 Hawaii Election operations of each County's Office of Elections."

It is critically important to the future of our Country and our State that every lawful vote is counted accurately. I sincerely appreciate your consideration of this written testimony for the Elections Commission Meeting on April 1, 2022 at 3:30 PM.

Mahalo,
Andy Crossland

Aloha,

Since the 2020 general election there has been mounting doubt of its integrity.

Like other states, the people of Hawai'i have the right to demand an investigation because there are reasons to believe that this was not a fairly played election.

The corruption linked to elections across the nation as well as with government leaders who are manipulating government protocol for their own benefit, including Hawai'i leaders, leaves doubt in the public's minds that their votes are being counted correctly and that they are being represented based on real voter turnout and real outcomes.

The government should want to investigate based on the evidence of illegitimate election practices across the U.S. It is Hawai'i leaders responsibility to assure the public that every measure is taken to secure sound elections and that the voices and concerns of Hawai'i residence are being heard.

Unfortunately, legislators & top leaders do not make themselves available to the public. The last 2 years has left even further distrust in the leaders here as they have kept the public out of their own Capitol building while busily trying to push through legislation that doesn't line up with most islanders. Another cause for distrust.

When I went to vote in 2020, the polling place had a volunteer with a pro "particular party" t shirt on. The supervisor didn't seem to think it was a big deal. I demanded that the volunteer change their shirt. And I did report this to election officials. But who knows what was done with the countless complaints like mine.

Please do the right thing by seeing to it there is a thorough and pono 2020 election investigation asap.

Mahalo for your time.
Mrs Lissa Cockett
(808)265-0702

Sent from my iPhone

Aloha,

Please find a copy of the NOTICE OF DEMAND TO CONDUCT A FULL FORENSIC AUDIT OF 2020 ELECTION, which I also submitted to the parties listed in the document.

This is the written testimony I am submitting for this Election Commission Meeting in support of today's agenda.

Thank you in advance for your cooperation with its instruction.

Respectfully,

John Heideman

Sent from Mail for Windows

: David Ige, Governor
    Executive Chambers, Hawaii State Capitol
    415 S. Beretania Street
    Honolulu, Hawaii 96813

TO: Josh Green, Lieutenant Governor
    Hawaii State Capitol
    415 S. Beretania Street
    Honolulu, Hawaii 96813

TO: Clare Connors, District Attorney
    Dept of Attorney General
    425 Queen Street
    Honolulu, Hawaii 96813

TO: Scott K. Saiki, Speaker of the House
    Hawaii State Capitol
    415 S. Beretania Street, Rm 431
    Honolulu, Hawaii 96813

TO: Ronald D. Kouchi, President of the Senate
    Hawaii State Capitol
    415 S. Beretania Street, Rm 409
    Honolulu, Hawaii 96813

TO: Charles L. Goodwin, U.S. Marshal
    U.S. Courthouse
    300 Ala Moana Blvd, Rm C-103
    Honolulu, Hawaii 96850

FROM: John F. Heideman (One of the People)

Notice of Demand to conduct a Full Forensic Audit of 2020 Election
Notice to Agent is Notice to Principal and Notice to Principal is Notice to Agent

I, John F. Heideman, one of the People (as seen in the Constitution of the State of Hawaii Bill of Rights Articles I Sections 1, 2, 4,5, 8,) Sui Juris, in the Court of Record, to bring the following claims, that you and your agents may provide due care;

All of the People in all 50 (Fifty) States/Commonwealths are equally entitled to the protections and rights listed in their several Constitutions; all contain similar language protecting the People's rights and reserving to them all powers not delegated to either the federal or the state governments. (See the U. S. Bill of Rights reference below); **[Highlight Added for Emphasis]**

The Constitution of the United States Bill of Rights-Amendment X
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Please take Notice that the references used are taken from various States and Commonwealths in order to impress upon you the similarity of our Constitutions from state to state; and that the Oath of Office that any Legislative, Judicial, or Executive officer takes at any level, binds all of you to protecting and defending the rights of the People of your State. With your Oath of Office, you accepted the responsibility of the Peoples' Trust Indenture, and you swore to legislate in their interests during your entire tenure as a legislator. As such, you are required to determine the will of the People and to act on it. (See ref. to Virginia Constitution below) **[Emphasis by Highlight Added]**

Virginia Constitution-Article I, Section 2-People the Source of Power
That all power is vested in, and consequently derived from the People, that magistrates are their trustees and servants, and at all times amenable to them. [Emphasis by Highlight Added]

Please take Notice that the Constitution of the State/Commonwealth of, to which you have already sworn an oath, also states that all power is inherent in the People, and all free governments are founded on the authority of the People, and said People maintain the right to manage all of the affairs of their government. (see Constitutional additional provisions below); **[Emphasis by Highlight Added]**

Pennsylvania Constitution Article I Section 2: Political Powers
All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper. [Emphasis by Highlight Added]

Please take further notice, that the true relationship between the People and the officers of government. As all power is inherent in the People, officers of government derive power from the People, therefore officers of government are both accountable and answerable to the People (see Texas Constitution referenced below);

Texas Constitution, Bill of Rights, Article I, Section 2:
Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient. [Emphasis by Highlight Added]

Please take further Notice that, in the relationship between officers of government and the People, it is a natural right for the people from time-to-time to come together and discuss matters of importance to the People, and to instruct their representatives on such matters. This relationship is outlined in the Florida Constitution referenced below; **[Emphasis by Highlight Added]**

Florida Constitution Article 1 Section V Right to Assemble
The people shall have the right to peaceably assemble, to instruct their representatives, and to petition for redress of grievances.

Please take further Notice that the officers of government, in deriving power from the People, and representing the will of the People are to set about the work of the People as servants and trustees. When performing the work of servants and trustees of the People, there may arise the temptation to

serve entities other than the People, and further temptation to work against the People, which is abhorrent to the People and a violation of the Trust Indenture between the People and officers of government. To protect against abuses and maladministration, the People retain the power to manage all affairs of government (see Virginia Bill of Rights and Pennsylvania Bill of rights references below); **[Emphasis by Highlight Added]**

<u>Virginia Declaration of Rights</u>
3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal. [Emphasis by Highlight Added]

<u>Pennsylvania Declaration of Rights Part 2: Bill of Rights XVI</u>
That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance. [Emphasis by Highlight Added]

Please take further notice that in consideration of these provisions, and to secure for the People an orderly accounting of the Peoples' affairs in the State of Hawaii, I, one of the People, demands a true full forensic audit be done of the November 2020 election for the entire ballot. This is necessary to ensure that the will of the People, as expressed in the paragraphs above is met. This full forensic audit must include: (1) a forensic examination of all paper ballots cast that includes Physical Kinematic Artifact Detection (PKAD) plus access to embedded government encoding of all paper ballots. This is to be conducted under the direct supervision or at least with the direct consultation of Jovan Hutton Pulitzer, and (2) a forensic examination of all hardware and software used in ballot casting and ballot tabulation, including electronic hardware with software versions and configurations used, all voter databases relevant at the time of the election, all devices and electronic hardware used in the communication of voting information between government entities, all routers and router related software and databases, and (3) All passwords and logs of computer activity are to be provided for any computer-related functions of any kind and all machines used for any phase of the ballot counting process of any type are to be available for audit purposes, and (4) the complete chain of custody documents of all election-related materials including machines, hardware and software and e-mails; and (5) Specific Canvassing information will be obtained if requested by the auditors to prove-out findings unsupported by paper or machine evidence. **[Emphasis by Highlight Added]**

Please take further notice that I, one of the People, demand the following conditions be observed: (1) Colonel Phil Waldron is to lead and coordinate all phases of this examination done by the Cyber Ninjas team and/or any team they recommend, (2) the final results are to be released publicly to one of two established alternate news media. Either the "Gateway Pundit" or "The Epoch Times" and at least two of these citizen journalists, (1) CannCon, (2) Neil Johnson, (3) Flash Point, (4) Exposure by Marcus Dee will report accurately and responsibly; (3) the state Legislature will receive the report at the same time that the public is informed. Posting on a state-controlled website is not acceptable, and (4) this full forensic audit must be as transparent during its conduction as the one done in Arizona and must include all of the components listed above in order to avoid the pitfalls encountered by the Senate of Arizona. The will of the People must be followed and our will is a full forensic audit under every single one of the conditions listed in this and the preceding paragraph. (see Louisiana Constitution); **[Emphasis by Highlight Added]**

Louisiana State Constitution Article I Section 1:
All government of right, originates with the people, is **founded on their will alone**, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this article are inalienable by the state and shall be preserved inviolate by the state. [Emphasis by Highlight Added]

Please take further notice that, I, one of the People, will not accept an "investigation" nor a risk-limiting audit. Only a full forensic audit will satisfy the People. Roadblocks and delays by the legislature are only going to grow the demand from all of us on a daily basis I will no longer accept "investigations by committees" or "feasibility studies" for doing a full forensic audit. Granted, I am only one of the thousands who live in this state. But, I am one of the People who are raising their voices and the volume is growing. Actions are being taken by many of us who are occupying positions critical to carrying out elections in numbers you cannot imagine. The People are reclaiming their election process. The mismanagement of elections to favor one candidate over another is over. The People are waking up to demand their Constitutional rights and no one will stop our taking back control over our government. This means that the People are using their Constitutional rights to solve the problems besetting this country to right the wrongs that have been perpetrated upon the People for years. [Emphasis by Highlight Added]

Please take final notice that We the People of Hawaii are gathering, are watching, and we demand that you as our servants, and our trustees, follow your Constitutional Oaths to the People of this State. Remember, the Power rests in the hands of the People.

Sincerely,

John F. Heideman
March, 30, 2022

I support the consideration of investigating Adriel Lam's written complaints. Two of his examples alone are unimaginable. How are former residents living outside of our state receiving ballots and voting. Our state law prohibits a felon from voting however Lam has proof of individuals who are incarcerated and are voting.
We need a full audit of our Office of Elections as well and as soon as possible.

 Thank you
Carol Kamai

I support the consideration of investigation into the 2020 Hawaii Election Operations of each County's Office of Election. I have been very concerned about this Operation for the last decade. We need a full forensic independent audit performed. It is common practice to independantly audit any operation. It is typically welcomed by compliant and healthy organizations. Our community has seen many irregularities in the election/voting process which has affected our confidence in the entire system. Most especially 2020.Help restore our confidence by investigating all of our County's Office of Election.
Dead people, Non residents and felons must be removed from our voter rolls immediately. Our election results are simply inaccurate with their votes be counted toward any race.

Mahalo

Carol Kamai

Thank you

Aloha,

As a voter and citizen living in the state of Hawaii I would like this email to be testimony during the Hawaii Election Commission 4/1/2022 meeting. I am asking for a full audit of the 2020 Hawaii Election. In past emails I have received from this Election Office there is proof of FRAUD, NEGLIGENCE, & CORRUPTION on the part of the Election Commission of Hawaii. All members of the commission should be subject to full scale investigation based upon:

1. Machines Improperly Certified
2. Lack of Ballot Images
3. Lack of Constitutional integrity
4. Over count of ballots (more ballots then voters to vote)
5. Machines & Software not being certified within the legally appropriated time frame

If the election committee does not agree to a FULL FORENSIC AUDIT then an Investigation into the committee and all its members, advisors, and all legislature tied to elections shall be called upon by "WE THE PEOPLE". Look forward to the audit and the assistance and Kokua of all employees of the election office. Mahalo.

Mr Commissioner, my name is Anthony Gairnese and I live in east Oahu. I moved to Hawaii 12 years ago. I served in the US Army and Army reserves for over 26 years. I was Deployed overseas 4 times and have voted by absentee ballot from combat zone locations in 2008 and 2012.

The national election of 2020 will go down in history as one of the most questioned and researched in our nation and states history. Since November 3rd of 2020, several investigations in several states that examined the how the election was executed, specifically the role of the tabulator machines, the physical mail in ballots, and the time frame allowed for the ballots to be received and counted. I have attached copies of reports and weblinks in states where malfeasance occurred due to lack of safeguards. Specifically in Hawaii, many concerned citizens locally questioned the results of the 2020 election due to the following;

1. Registration data in the State of Hawaii showing the largest percentage increase of voters registering Republican in 2020, which is a contra data point to the result of the election
2. Unaudited physical ballots
3. Unaudited tabulation machines (multiple databases found in Mesa County, Colorado)
4. Lack of ID verification process
5. Lack of transparency proving that no 3rd party intrusion into the tabulation of the results of the Nov 2020 election occurred
6. Occurrence of legal vote harvesting which could result in malfeasance

Our goal is to verify that voting in Hawaii is safe, effective, and is a model for the United States. I do not believe that the mail in ballot system currently used in Hawaii is safe and trustworthy due to the reasons listed above. If it is the will of the people to have a 100% mail in ballot system, several safeguards must be implemented to protect the integrity of the vote.

Safeguards Requested:

1. One ballot protected with serial number issued to each Verified citizen voter with State issued ID. In-person voting. No machine tabulation, Hand count.
2. Voting Day, deem a holiday. Smaller precinct level tabulation, ballots secured with chain of custody.
3. Polls open at 6am. Close at 8pm.Manual tabulation with results send via chain of custody currier by 11pm to voting tabulation HQ by Midnight.
4. Ban private donations including personnel to local elections efforts (ie, Center For Tech and Civic Life)
5. Voting day is a paid holiday.

I have attached the most recent research into the Mesa County, Colorado 2020 election, conducted by computer scientists, and the Gableman report, which outlined machine and ballot fraud in Wisconsin, conducted by retired state supreme court justice Michael Gableman. Additionally, are several reports that have been conducted in the battleground states of Arizona, Texas, Georgia and Pennsylvania which have exposed significant errors and possibly malfeasance. Currently there is active litigation in each of the above listed states. I am not suggesting there has been any malfeasance in the 2020 Hawaii Election. However, as representatives of the citizens of Hawaii, it is your duty to examine by a forensic audit the

processes, machines, software in the machines and conduct close examination of the validity of the voter rolls.

 I want every citizen to have an absolute level of comfort that their voice is correctly counted, tabulated and will stand as a permanent record of the will of the people of Hawaii.

Respectfully,

Anthony M. Gairnese

THE GREAT STATE OF WISCONSIN

FORWARD

E PLURIBUS UNUM

OFFICE OF SPECIAL COUNSEL

Office of the Special Counsel

Second Interim Investigative Report

On the Apparatus & Procedures of the Wisconsin Elections System

Delivered to the Wisconsin State Assembly on March 1, 2022

Table of Contents

Introduction

The Office of the Special Counsel files this Investigative Report on Wisconsin's administration of the 2020 elections as a first step to begin restoring faith in America's elections. This effort is undertaken because Americans' faith in its election system was shaken by events both before and after the November 2020 Presidential election. For example, a January 2022 ABC/Ipsos poll revealed that only 20% of the public is very confident about the integrity of our national election system. This 20% number is a significant drop from 37% from a similar ABC poll conducted one year earlier. America's doubts about its election system crosses partisan lines. Among Democrats, only 30% say they are "very confident" in the U.S. election systems overall. Among independents, only 20% consider themselves "very confident" in the nation's elections. Among Republicans, only 13% are "very confident" with America's elections.

This shaken faith is not a result of legitimate legislative inquiries into election administration, nor is it a result of lawful contests lodged by any candidate or party. Rather, it is largely a function of opaque, confusing, and often botched election processes that could have been corrected, and still can be corrected, with concerted effort on the part of lawmakers and conscientious civil servants who work for Wisconsin State government. <u>Helping correct these processes for future elections is the major purpose of this Report.</u>

On November 10, 2021, the Office of the Special Counsel (OSC) outlined the preliminary steps it had taken to undertake a fully comprehensive review of the 2020 elections in the State of Wisconsin. That document outlined the constitutional authority of the people of the State of Wisconsin, through their Legislature, to investigate their own

government. That Interim Report also outlined the initial roadblocks to a full investigation, and expressed the expectation that the information necessary to provide democratic accountability for and oversight of Wisconsin election proceedings was forthcoming. As outlined in Appendix I, OSC and the Assembly continue to be blocked from investigating portions of the Wisconsin government. Not only has the Wisconsin Attorney General intervened (and lost) in court to block certain subpoenas, and not only have left-wing groups provided support adverse to Wisconsin taxpayers—for instance by providing legal support to government employees seeking to keep their work secret, filing dilatory open records requests, and advancing frivolous complaints before various boards—but the Administrator of the Wisconsin Elections Commission (WEC) has explicitly stated to the Chairwoman of the Assembly Committee on Campaigns and Elections that she is prohibited by law and by private contract from turning over certain public records. Until these lawsuits are resolved, there appears to be no way to fully vindicate the right of the people of the State of Wisconsin to know how their government is run. Such lawsuits have proved a costly and time-wasting exercise.

Nevertheless, the OSC has continued to investigate available records, interview witnesses, and make substantial headway on several issues contained in this report. Further, good work by citizens' groups has provided the Assembly and the OSC with useful leads on how best to cure various systemic problems in the State.

While WEC and the State Attorney General have refused to cooperate with the Legislature's investigation and actively obstructed it, this Report is final in the sense that

it provides a list of recommendations with enough time for the Legislature to act before the close of its session in March. However, the Assembly continues to authorize the OSC to operate past the final adjudication, on the merits, of the various legal challenges to the valid legislative subpoenas we have issued. Following any favorable adjudication, the OSC will manage and process the voluminous responsive records, and will facilitate any available audits.

Despite this cover-up, or perhaps because of it, the OSC can still reach certain conclusions about the integrity of election administration in the State of Wisconsin, and we can still make baseline recommendations. While we cannot, for example, recommend certain server protocols because we have been unable to obtain government records detailing precisely what the numerous electronic systems entail (Wisconsin uses numerous machine and system vendors) or precisely how the existing systems were used in 2020, we do have information relating to how confusing and opaque the system is. It is beyond doubt that no single governmental person or entity in the State of Wisconsin has a handle on these systems—that is a damning indictment on its own. Elections systems must be readily understandable by voters and newly elected county clerks—confusing systems harm voter confidence and tend to facilitate fraud.

The facts contained in this report are substantiated by records the OSC has made available to the Assembly and other public information. To the extent that any of these facts are disputable, the OSC encourages any individual named in this Report, any subject

of validly issued legislative subpoenas, or any other fact witness to make themselves available to the OSC for interview.

Accordingly, at this stage, the recommendations included in this Report largely fall within the umbrella of enabling oversight and transparency of our election systems. It draws no conclusions about specific, unauthorized outside interference or insider threats to machine voting, but it does provide numerous examples of security gaps that tend to enable bad actors to operate in the shadows. Absent access to these systems, it would not be unfair for any citizens to conclude the worst, however. It is a commonplace in the law for it to assume the worst about the nature and impact of hidden or destroyed evidence, and it is up to government to justify its actions to the people, not the other way around.

A few additional recommendations in this Report fall within the second umbrella— maintaining political accountability. While it is clear that the outside groups and the bureaucrats in Madison who run our elections have not been accountable to the voters or the state government, there are some measures that can help return our State to a functional democracy.

This Report has another purpose: to catalog the numerous questionable and unlawful actions of various actors in the 2020 election.

Some unlawful conduct and irregularities outlined in this Report include:

1.   Election officials' use of absentee ballot drop boxes in violation of Wis. Stat. § 6.87(4)(b)1 and § 6.855;

2.   The Center for Tech and Civic Life's $8,800,000 Zuckerberg Plan Grants being run in the Cities of Milwaukee, Madison, Racine,

Kenosha and Green Bay constituting Election Bribery Under Wis. Stat. § 12.11;

3. WEC's failing to maintain a sufficiently accurate WisVote voter database, as determined by the Legislative Audit Bureau;

4. The Cities of Milwaukee, Madison, Racine, Kenosha and Green Bay engaging private companies in election administration in unprecedented ways, including tolerating unauthorized users and unauthorized uses of WisVote private voter data under Wisconsin Elections Commission (WEC) policies, such as sharing voter data for free that would have cost the public $12,500;

5. As the Racine County Sheriff's Office has concluded, WEC unlawfully directed the municipal clerks not to send out the legally required special voting deputies to nursing homes, resulting in many nursing homes' registered residents voting at 100% rates and many ineligible residents voting, despite a guardianship order or incapacity;

6. Unlawful voting by wards-under-guardianship left unchecked by Wisconsin election officials, where WEC failed to record that information in the State's WisVote voter database, despite its availability through the circuit courts—all in violation of the federal Help America Vote Act.

7. WEC's failure to record non-citizens in the WisVote voter database, thereby permitting non-citizens to vote, even though Wisconsin law requires citizenship to vote—all in violation of the Help America Vote Act. Unlawful voting by non-citizens left unchecked by Wisconsin election officials, with WEC failing to record that information in the State's WisVote voter database; and

8. Wisconsin election officials' and WEC's violation of Federal and Wisconsin Equal Protection Clauses by failing to treat all voters the same in the same election.

It is important to state what this Report is not. This Report is not intended to re-analyze the re-count that occurred in late 2020. And the purpose of this Report is not to challenge certification of the Presidential election, though in Appendix II we do sketch how that might be done. Any decisions in that vein must be made by the elected

representatives of the people, that is, the Wisconsin Legislature. Yet it is clear that Wisconsin election officials' unlawful conduct in the 2020 Presidential election casts grave doubt on Wisconsin's 2020 Presidential election certification. <u>This Report thus does surface very big questions: how should Presidential election certification occur in Wisconsin going forward and would the Legislature have any remedies to decertify if it wanted to do so?</u>

In 2020 in Wisconsin, the certification of its Presidential election spanned two steps and to a large extent operated in a legal vacuum. *First*, on November 30, 2020, Wisconsin Elections Commission (WEC) Chairperson Ann Jacobs, on her own and without a full Commission vote, signed the "determination of the recount and the presidential contest." This unilateral action led one of the sidelined Commissioners to call for Jacobs' resignation. *Second*, a few hours later, Governor Tony Evers certified the results of the state's November 3 election by signing the Certificate of Ascertainment that approved the slate of electors for President-elect Joe Biden and Vice President-elect Kamala Harris.

Neither the WEC Chairperson nor the Governor had an incentive to proceed with greater deliberation and address the serious concerns of citizens and other Commissioners. This is a serious gap in the legal structure governing elections that should be corrected as far in advance of the 2024 presidential election as possible. In the meantime, many of the doubts relating to large categories of ballots are continuing to be both broadened and deepened. Recently, a Wisconsin court invalidated the use of drop boxes. Additionally,

this Report flags systematic problems with voting in elder care facilities, an issue that was also recently blown wide open by the Racine County Sheriff.

There are other issues outlined in this Report, many of which could justify post-election administrative correction by WEC under Wis. Stat. § 5.06, which authorizes exactly such a post-certification process to correct mistakes made by election officials. Administrative corrections under Wis. Stat. § 5.06 would flush out election officials' unlawful conduct. Such a post-certification administrative correction will not de-certify the election on a self-executing basis, but these challenges, which can be filed by any voter in an election (or by district attorneys or the Attorney General of the State), are a worthwhile step to take. However, as noted, these complaints are directed *to* WEC. But complaints *about* WEC cannot fairly be adjudicated by this body—another legal gap.

It is the duty of all citizens of our State and our nation to work hard to secure our democracy for this generation and the next. This Report is one small step towards fulfilling that duty we all share. And without the tireless work of concerned citizens, and dedicated public servants such as the Sheriff of Racine County, much of what is made public in this Report would not have been exposed to the light. In our own way, we can each do our part, whether by voting, or by volunteering, or by leading campaigns to improve the integrity of our elections. The true story of the 2020 elections in Wisconsin might never be fully known—as noted, the constitutional duty of the Legislature is still imperiled in the state courts—but the recommendations in this Report constitute a good beginning.

Statement of Progress

The Special Counsel has been maintaining an active investigation and continuing to fight for the Legislature's right to conduct an election-integrity investigation. Since the first Interim report, the Special Counsel has issued 76 new subpoenas. This brings the total subpoenas issued by the OSC to 90. These subpoenas were served upon entities named in this report, including Dominion Voting Systems, Inc., Electronic System and Software, LLC (ESS), Quickbase, Inc., USDR, CTCL, NVAHI, The Elections Group, and others.

The subpoenas were also served upon or sent to some of the persons who had the most information about the role of private companies and individuals in Wisconsin's election. This included Michael Spitzer Rubenstein, Tiana Epps-Johnson, Ari Steinberg, and Harrison Hersch. Finally, the subpoenas were served on local persons such as Hannah Bubacz, a Milwaukee city employee, and Sarah Linske, an IT employee for WEC.

To the extent that individuals responded to subpoena, it was to produce documents. Some recipients, including the major private companies and individuals, did not comply at all. They either informed the OSC that they would not comply with the subpoena or attend the depositions or embroiled the OSC in litigation. As of the writing of this Report, the litigation surrounding the investigation of the 2020 election has been pervasive and time-consuming.

The Special Counsel has been sued three different times in three different cases in Dane County Circuit Court. The OSC has defended against a lawsuit brought by the Wisconsin Attorney General in which he asked the court to declare that the OSC did not have the authority to conduct the investigation. Two additional lawsuits related to open

records requests to the OSC were filed by organizations supported by Democrat-backed labor unions.

In Waukesha County, the OSC filed a petition to enforce the legislative subpoenas. Initially, the lawsuit included only four defendants. Six additional defendants were later added, bringing the total to ten. Two attorneys from the OSC are assigned to that case and briefing is underway. Prosecuting the enforcement action detracts from the OSC's ability to conduct and complete its investigation.

The OSC did receive a large quantity of documents from the Zuckerberg 5. Those documents were electronic in form. The process of organizing and reviewing them has required a significant expenditure of time and resources, and that will continue to be the case as OSC receives additional documents.

The OSC launched a major investigation into nursing home abuse. Attorneys and investigators were dispatched to multiple nursing homes across the State. They identified and met with multiple residents who voted, despite the fact they were clearly incapable of voting and/ or not legally permitted to vote because of a guardianship order. The OSC representatives made detailed notes and videos of these residents for evidentiary purposes.

The Special Counsel intended to use a professional statistician in the nursing home setting. Using a controlled environment, the OSC could take a detailed sampling of nursing home abuse and voting irregularities to determine, statewide, the number of improperly cast ballots in residential care facilities. The OSC was not able to complete this task by the time this Report was due. Instead, the personnel conducting the nursing home investigation were also repurposed to assist in the drafting of this Report.

The OSC received information that an entity had cellphone pinging data related to the City of Milwaukee and its absentee ballot drop boxes. As of the time of this Report, the OSC has not been able to run to ground all the issues relating to obtaining this data.

The OSC consulted with multiple computer security experts regarding voting machines. Two major machine manufacturers were identified in Wisconsin, Dominion Voting and ESS. The OSC viewed extensive reporting about the integrity of the machines. The OSC learned that some Dominion machines are extremely vulnerable to hacking and manipulation. These specific machines can be manipulated to alter actual votes cast— either surreptitiously or by the machine technicians.

The Special Counsel reviewed extensive reporting of a Dominion machine failure event in another State. The OSC was able to identify, through the reports of experts, that the failed machine recorded two anonymous and unauthorized access events from its VPN. This means, contrary to what Dominion has publicly stated, that at least some machines had access to the internet on election night. Shortly after the unauthorized access was recorded, the machine failed and was reset, wiping all voting history and forcing that election administrator to rely on unverifiable paper printouts from the failed machine.

ESS machines were equally problematic. The central problem is that several of the machines are made with a 4G wireless modem installed, enabling them to connect to the internet through a Wi-Fi hotspot. One municipality under investigation in Wisconsin by the OSC admitted that these machines had these modems and were connected to the internet on election night. The reason given was to "transmit data" about votes to the county clerks.

The OSC learned that all machines in Green Bay were ESS machines and were connected to a secret, hidden Wi-Fi access point at the Grand Hyatt hotel, which was the location used by the City of Green Bay on the day of the 2020 Presidential election. The OSC discovered the Wi-Fi, machines, and ballots were controlled by a single individual who was not a government employee but an agent of a special interest group operating in Wisconsin.

The OSC began a comprehensive investigation of voting machines in Wisconsin. As part of that investigation, subpoenas were sent to Dominion, ESS, and Command Central, LLC, a Dominion reseller and servicer. The information sought included information about who, when, where, and what updates the machines were provided. The OSC learned that one machine company representative stated that the voting machines were "wiped" during updates, meaning they did not retain federally required voter data.

It was discovered that Command Central, LLC, received images of cast ballots on election night using the internet. Command Central is alleged to be holding actual ballots cast on election night at its offices in Minnesota in violation of Wisconsin law. The OSC was not able to complete this portion of its investigation, however.

As of the date of this Report, the voting machine companies have refused to comply with the OSC's legislative subpoenas, and have provided no data. The OSC considers this investigation incomplete but ongoing.

The OSC also sought information about the machines in Wisconsin used on election night from the clerks. The clerks either did not possess the data sought by the OSC or refused to provide it, with Green Bay and Madison insinuating that providing secure voting machine data to the OSC would somehow compromise election integrity. In other words,

these cities claim that it is impossible to verify the integrity of the voting machines because doing that would jeopardize the integrity of both the machines and future elections. The Special Counsel intends to resolve this issue as the investigation moves forward.

The OSC's investigation discovered the use of a ballot tracking and harvesting application in Wisconsin. An extensive amount of time and effort went into this portion of the investigation. The OSC became attuned to the possibility of an application when reviewing email exchanges between the Zuckerberg 5 and third parties. This involved tracking applications in Georgia and Pennsylvania.

The OSC discovered ballot tracking programs in both Georgia and Pennsylvania. The OSC was able to locate and identify the developer of both programs in those States. The OSC obtained the source code for the Pennsylvania application. Ultimately, that data and source code would not prove to be helpful to discovering information about the Wisconsin application.

However, the OSC still located the Wisconsin application and its developers. In the course of that investigation, the OSC documented multiple misrepresentations of material facts by WEC administrator Meagan Wolfe. For example, Ms. Wolfe told the Assembly Committee on Campaigns and Elections both that she did not know about the CTCL grants and that cities did not have access to statewide WisVote or BadgerBooks data. Both of these statements are demonstrably untrue.

Ms. Wolfe also told the Commission that there was no API (Application Programming Interface that allows direct access) into the WisVote or BadgerBooks system. Yet cities have provided information that they *do* have access to statewide WisVote and BadgerBooks data. At least one city apparently provided an API to the WisVote and

BadgerBooks systems, which provided real time, free information to special interest groups who used that information for selective, racially-targeted get-out-the-vote purposes under the contracts. That application may still have an active API and may remain viable, so that it might be used by the private groups in future elections.

Moving forward, the OSC will continue working to obtain answers to the important questions raised by these findings. The tasks remaining include:

1. Vindicating the legislature's subpoena and investigative authority through ongoing litigation;

2. Compelling witnesses (individual or institutional) with crucial information about Wisconsin elections to provide testimony. This includes Meagan Wolfe, Ann Jacobs, Michael Spitzer Rubenstein, Tiana Epps-Johnson, Trina Zanow, Sarah Linske, Hannah Bubacz, Harrison Hersch, Dominion, ESS, and the Zuckerberg 5 through ongoing litigation.

3. Determining the identities of any groups or individuals engaged in ballot harvesting in Wisconsin;

4. Verifying the integrity of Wisconsin's voting machines;

5. Identifying additional votes cast unlawfully as a consequence of WEC's directives to clerks regarding SVDs;

6. Providing additional reporting as necessary, possibly including a more robust roadmap to the outside groups and leadership that interfered with the administration of past Wisconsin elections.

Chapter 1

The Center for Tech and Civic Life's $8,800,000 Zuckerberg Plan Grant with the

Cities of Milwaukee, Madison, Racine, Kenosha and Green Bay (the Zuckerberg 5)

Facially Violates Wisconsin Law Prohibiting Election Bribery.

The Cities of Milwaukee, Madison, Racine, Kenosha and Green Bay entered into an agreement with Center for Tech and Civic Life (CTCL). In the agreement, the Cities took CTCL's money to facilitate in-person and absentee voting within their respective city. The agreement documents included the Wisconsin Safe Voting Plan (WSVP), the CTCL worksheets and the CTCL acceptance letters, which were conditioned on the Cities spending CTCL's transferred money in accordance with the WSVP. These documents are in the accompanying appendix: App. 7-27 (WSVP); App. 513-519, (CTCL worksheet blank form), 520-537 (Green Bay worksheet), 538-551 (Kenosha worksheet), 552-563 (Madison worksheet), 564-575 (Milwaukee worksheet), 576-587 (Racine worksheet); 588-601 (CTCL grant application acceptance letters for Milwaukee, Madison, Kenosha, Green Bay and Racine).

Any Agreement Where a City's Election Officials Receive CTCL or Other's Private Money to Facilitate In-Person and Absentee Voting Within a City Facially Violates Wis. Stat. § 12.11's Prohibition on Election Bribery Under Wis. Stat. § 12.11.

The CTCL agreement facially violates the election bribery prohibition of Wis. Stat. § 12.11 because the participating cities and public officials received private money to facilitate in-person or absentee voting within such a city. Any similar agreements in the 2022 and 2024 election cycle would also be prohibited election bribery.

Wis. Stat. § 12.11, in relevant part, prohibits a city from receiving money to facilitate electors going to the polls or to facilitate electors to voting by absentee ballot:

Election bribery

 (1) In this section, "anything of value" includes any amount of money, or any object which has utility independent of any political message it contains and the value of which exceeds $1…

(1m) Any person who does any of the following violates this chapter:

1. Offers, gives, lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or immunity to, or for, any elector, or *to or for any other person, in order to induce any elector   to*:

 1. *Go to … the polls*.

 2. *Vote*….

Wis. Stat. § 12.11 (emphasis added). Although the word "person" is not defined in section 12.11, it is defined elsewhere to include "bodies politic," which also includes municipalities. *See* Wis. Stat. § 990.01(26).   Although the word "induce" is not defined in Wis. Stat. § 12.11, it is commonly defined to mean "to call forth or bring about by influence or stimulation."

 Wis. Stat. § 12.11 requires three elements for a municipality or its officials to engage in "election bribery:" (1) the definition of "anything of value" must be met; (2) the thing of value must be received by a municipality or its election officials; and (3) the municipality must receive the thing of value in order to facilitate electors going to the polls or voting by absentee ballot. With respect to the first element, Wis. Stat. § 12.11 defines "anything of value" to mean "any amount of money, or any object which has utility independent of any political message it contains and the value of which exceeds $1." To

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meet the second element, Wis. Stat. § 12.11 requires that the item of value be received by a municipality. Finally, the city must receive the item of value in order to facilitate electors to go to the polls or in order to facilitate electors to vote.

1. Conception of the Election Bribery Scheme

The record created by public document requests shows that CTCL, a private company headquartered in Chicago[3], engaged in an election bribery scheme. CTCL reached out to the City of Racine to allow CTCL to provide grant money to certain handpicked cities in Wisconsin to facilitate increased in-person and absentee voting in the cities. App. 402. This first grant of $100,000 was to be split among the five largest cities in Wisconsin at $10,000 per city, plus an extra $50,000 to Racine for organizing the five cities. App. 402. This first grant required the mayors of the five largest cities in Wisconsin and their respective staffs to complete CTCL election administration forms, including goals and plans to facilitate increased in-person and absentee voting in their respective cities and "communities of color" and develop a joint plan for elections only in these cities and not statewide. App. 297.

Christie Baumel (a City of Madison employee) wrote on June 9, 2020, regarding CTCL and "Election Cost Grant:"

> My understanding is that this is a small planning grant that Racine received from the Center for Tech & Civic Life to produce, by June 15th, a proposal for safe and secure election administration, according to the **needs identified by the five largest municipalities**. In other words, this information informs the Center for Tech & Civic Life in their consideration of where and how to support complete, safe, secure [sic] elections in Wisconsin.

 App. 603 (emphasis added.)

As part of the election bribery scheme, CTCL was reaching out to the five largest cities in Wisconsin, and CTCL wanted information from those cities in determining how to provide money to those cities to facilitate increased in-person and absentee voting. *Id.* This program and the larger amount of grant money was not available to any cities or counties in Wisconsin other than the five largest cities. These five cities began to identify themselves and to be identified by CTCL as the "Zuckerberg 5," including a letterhead with the five cities' seals.[4] App. 7, 141-143. Whitney May, Director of Government Services at CTCL, wrote to representatives of the other Zuckerberg 5 cities on August 18, 2020, stating, "You are the famous WI-5 … excited to see November be an even bigger success for you and your teams." *Id.*; App. 375-376.

The attempt of CTCL to target the five largest cities in Wisconsin for election support to facilitate increased in-person and absentee voting had been ongoing since early 2020, as indicated in emails and invitations from Vicky Selkowe, a Racine employee who opposed Trump and those that voted for him,[5] to Kenosha, Madison, Milwaukee, and Green Bay mayors, and a few other city officials from the Zuckerberg 5. App. 331-349; 392-401; 481-487. Only those four cities plus Racine were invited to "[a]pply for a COVID-19 grant" from CTCL and to thus be in on the "plan" to accept CTCL's private money to facilitate increased in-person and absentee voting in the 2020 election. App. 603-604.

The CTCL Agreement required the Zuckerberg 5 Mayors and their respective staffs to develop a joint plan for the Zuckerberg 5's elections pursuant to the agreement by June 15, 2020:

> The City of Racine, and any cities granted funds under paragraph 4, shall produce, by June 15th, 2020, a plan for a safe and secure election

administration in each such city in 2020, including election administration needs, budget estimates for such assessment, and an assessment of the impact of the plan on voters.

App. 2. The carrot for the Zuckerberg 5 to provide this information for CTCL was to get part of a $100,000 grant. Once the Zuckerberg 5 expressed interest in receiving the $10,000 grants from CTCL, they quickly provided information to Ms. Selkowe and CTCL on CTCL's form so they could develop a "comprehensive plan" for election administration for their "national funding partner, the Center for Tech & Civic Life" by June 15, 2020. App. 604 (emphasis added).

Following the expected "Council approval" on June 2, Ms. Selkowe of Racine sought to "immediately" connect with "municipal clerks and other relevant staff" to "swiftly gather information about" the cities' "election administration needs." App. 604. Ms. Selkowe obtained the information from the Zuckerberg 5 through the five completed CTCL forms, then either Racine or CTCL used that information to prepare the WSVP, as requested by CTCL. App. 513-519, (CTCL blank form), 520-537 (Green Bay), 538-551 (Kenosha), 552-563 (Madison), 564-575 (Milwaukee), 576-587 (Racine). Ms. Selkowe made clear that she was the point person for communicating with the different city staffs to gather information to prepare this plan. *Id.* at 604.

2. **The First Contract Between CTCL and the Zuckerberg 5**

On about May 28, 2020, the Racine Common Council approved, and signed, the CTCL conditional grant in the amount of $100,000 to recruit and later coordinate with the Zuckerberg 5 to join the WSVP 2020 submitted to CTCL on June 15, 2020. App. 325-349, 402-405. The grant and distribution to the Zuckerberg 5 was not random, rather it was the

intentional culmination of meetings or virtual meetings on May 16, 2020, June 13, 2020, and August 14, 2020. *Id.* These meetings were also secretive. The mayors and their staff were invited to the meeting. However, neither the Common Council members nor the public were informed that the meetings were even set to occur. *Id.* The Common Council members of Racine were later asked to vote only to approve what was decided at the secret meetings. App. 486-487.

It is not believed that the Common Councils of the other four cities of the Zuckerberg 5 were asked to vote on the $100,000 grant, except perhaps long after they had already received the money and committed to accepting the larger grant and its conditions. *Id.* For example, the City of Madison received the $10,000 even though on July 13, 2020, Maribeth Witzel-Behl, the Madison City Clerk, wrote that "Common Council has yet to accept the $10,000" from CTCL. App. 605-606.

The grant approved by the Racine Common Council stated, "[t]he grant funds must be used exclusively for the public purpose of planning safe and secure election administration in the City of Racine in 2020 and coordinating such planning." App. 404. Thus, the consideration for the Zuckerberg 5 to receive the first, small grant, was that they provide information for CTCL to use in preparing the WSVP for the large grant. *Id.*

3. **The WSVP and CTCL's Grant Acceptance Letter Incorporating the WSVP Is the Agreement Where the City Agreed to Take CTCL's Private Money to Facilitate Increased In-Person Voting and to Facilitate Absentee Voting.**

The WSVP and CTCL's grant acceptance letter incorporating the WSVP is the agreement in which the City agreed to take CTCL's private money to facilitate increased

in-person voting and to facilitate absentee voting. The WSVP was developed ostensibly "in the midst of the COVID-19 Pandemic" to ensure voting could be "done in accordance with prevailing public health requirements" to "reduce the risk of exposure to coronavirus." Further, it was intended to assist with "a scramble to procure enough PPE to keep polling locations clean and disinfected." App. 7-27.

However, another election purpose existed as evidenced by the documents obtained by the Special Counsel. That other election purpose was to fuse together the CTCL, their allied private corporations, the Zuckerberg 5, and $8.8 million of private funding into joint operations in that group of cities, where the focus would be on facilitating increased in-person and absentee voting, particularly in their "communities of color." *See, e.g., App.* 7-27 (WSVP). From the beginning, the purpose of the WSVP contract and its private funding was for the Zuckerberg 5 to use CTCL's private money to facilitate greater in-person voting and greater absentee voting, particularly in targeted neighborhoods.

4. Having Agreed to the Initial $10,000 Per City Grants (Plus $50,000 Extra for Racine), the Zuckerberg 5 Entered New Grant Agreements for Larger Grants Which Included CTCL's "Conditions" and Performance Requirements Under WSVP.

On or about July 6, 2020, Ms. Selkowe announced that the WSVP had been fully approved for funding by the Center for Tech & Civic Life; the initial $10,000 grant was just the first step for the Zuckerberg 5 to get an even larger grant from CTCL. *See, e.g.,* App. 1-27. Also, on July 6, Tiana Epps-Johnson of CTCL emailed Ms. Selkowe stating CTCL intends to fund each of the Zuckerberg 5 with far larger sums of money: Green Bay—$1,093,400; Kenosha—$862,779; Madison—$1,271,788; Milwaukee—

$2,154,500; and Racine—$942,100. App. 11. This brought the total grants to the Zuckerberg 5 to $6,324,567.00. *Id.* Each of the Zuckerberg 5, expressly or impliedly, accepted the large grant money. For example, sometime in July 2020 the City of Madison accepted $1,271,788 by vote of Common Council. App. 605.

Concurrently with CTCL's plans to provide the Zuckerberg 5 with $6,324,567.00 in grant money, CTCL agents began to inform the Zuckerberg 5 of the conditions and the consideration for that grant money. App. 588-601. In other words, the grants were not for purely altruistic purposes as "strings" were clearly attached. On July 10, 2020, Ms. Selkowe started contacting each of the Zuckerberg 5 to let them know Tiana Epps-Johnson would contact them to start introducing the Zuckerberg 5 to CTCL's "partners." App. 463-464. "Tiana and her team have arranged for extensive expert technical assistance from fantastic and knowledgeable partners across the country, to help each City implement our parts of the Plan." *Id.* Tiana will send a "draft grant agreement" for the city's review and "approval on Monday." *Id.* It was assumed that each City would vote to accept the money, and the terms of the agreement were not important. *Id.*

On July 10, 2020, Ms. Selkowe sent an email to Celestine Jeffreys and copied Tiana Epps-Johnson, stating that Green Bay should work with CTCL, along with several of the other largest Wisconsin cities, to "implement our parts of the Plan," and to allow the City of Green Bay to "understand the resources she's [Tiana Epps-Johnson of CTCL] bringing to each of our Cities [the "cities" of Milwaukee, Racine, Madison, Kenosha and hopefully Green Bay] to successfully and quickly implement the components of our Plan." App. 261-262. By approximately July 24, 2020, each of the Zuckerberg 5 had agreed to contracts with CTCL, along with the conditions, rules, and regulations CTCL attached to the grants.

App. 32-33 (Green Bay), 3-5 (Racine), 371-373 (Kenosha), 392-401 (Milwaukee), 406-410 (Madison).

5.   The Grant Agreements and the WSVP Between CTCL and the Zuckerberg 5 Contain Conditions Regarding the City Facilitating Increased In-Person and Absentee Voting.

In addition to being informed that the Zuckerberg 5 should work with CTCL's "partners," the grant agreement contained express conditions that each of the Zuckerberg 5 had to follow in order to receive and keep the grant funds. *Id.* The grant agreement incorporated the WSVP and its provisions:

> The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration in the City of _____ in accordance with the Wisconsin Safe Voting Plan 2020.

Id. The consideration for the second contract heavily implied that the Zuckerberg 5 were to use CTCL's "partners" for election administration. By the time the second contracts and grants came to be issued, the Zuckerberg 5 were deeply embedded in election administration, especially in Green Bay and Milwaukee. Michael Spitzer Rubenstein was listed as a "CTCL grant mentor" who was directing election administration in Green Bay. The contracts for the Zuckerberg 5 required the cities to report to CTCL its spending, not make changes to their spending, or pay the grant money back to CTCL. *Id.*

Specifically, the conditions in the second contract included:

a.   The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration in the City of _____ in accordance with the Wisconsin Safe Voting Plan 2020.

b.   Requiring each city or county receiving the funds to report back to CTCL by January 31, 2021 regarding the moneys used to conduct federal elections;

c.   The City of _____ shall not reduce or otherwise modify planned municipal spending on 2020 elections, including the budget of the City Clerk of _____ ('the Clerk') or fail to appropriate or provide previously budgeted funds to the Clerk for the term of this grant. Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant.

d.   The City of _____ shall not use any part of this grant to give a grant to another organization unless CTCL agrees to the specific sub-recipient in advance, in writing.

App. 588-589 (Milwaukee), 591-592 (Madison), 595-596 (Kenosha), 598-599 (Green Bay), 3-4 (Racine). CTCL provided a grant tracking form to the Zuckerberg 5 to keep track of their expenditures, which they would later have to report to CTCL. App. 609.

Thus, the text of the grant document provides the conditions clearly: the grant funds had to be used for "planning and operationalizing … election administration." App. 3-4, 588-589, 591-592, 595-596, 598-599. The Zuckerberg 5 had to "report back to CTCL by January 31, 2021" regarding the moneys they used. Any moneys used "in contravention" of the grant agreement would have to be "repaid to CTCL" up to the whole amount of the grant. *Id.* The Zuckerberg 5 were not allowed to pay any part of the grant money to another organization "unless CTCL agrees … in advance, in writing." *Id.*

The Zuckerberg 5 have admitted that these were "conditions" and that generally the money from CTCL was "conditional." To underscore the conditions on the grant money, on July 24, 2020, Dennis Granadas of CTCL wrote Celestine Jeffreys of Green Bay:

> Please find attached the revised grant agreement for review and signature. Please note that we made a few edits to clean up language, but this did not change the substance of the agreement, unless an update was requested. If you have any concerns please let me know. In addition, we also updated Section 7 for clarity to the following (changes highlighted in bold): "**The City of Green Bay shall not reduce** or otherwise modify planned municipal spending on 2020 elections, including the budget of the City Clerk of Green

Bay ('the Clerk') or fail to appropriate or provide previously budgeted funds to the Clerk for the term of this grant. Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant." I look forward to receiving the signed agreement. Please let me know if you have any questions/concerns. Have a great weekend.

App. 611 (emphasis added).

These provisions requiring repayment of the grant moneys are referred to as "claw-back" provisions and require the Zuckerberg 5 to return the moneys to CTCL, if CTCL disagreed with how the Zuckerberg 5 spent the money and conducted their 2020 elections. App. 4, 589, 592, 596, 599. After the election in November 2020, CTCL demanded that the Zuckerberg 5 submit forms to CTCL to prove they complied with the grant conditions by January 31, 2021. App. 609. These conditions, including the WSVP provisions to facilitate increased in-person and absentee voting in each participating city, were not merely "boilerplate" provisions. Instead, CTCL intended to, and did, enforce its contractual requirements on the Zuckerberg 5. *Id.*

6. The Grant Agreements and the WSVP Between CTCL and the Zuckerberg 5 Contain Conditions Requiring Participant Cities to Place CTCL-Funded Absentee Ballot Drop Boxes in Targeted Neighborhoods, Even Though Absentee Ballot Drop Boxes Are Unlawful in Wisconsin.

The WSVP and CTCL's grant acceptance letter incorporated the agreement where the cities agreed to take CTCL's private money to purchase and place absentee drop boxes in targeted neighborhoods. App. 10, 16-17. The WSVP provided Green Bay $50,000, Kenosha $40,000, Madison $50,000, Milwaukee $58,500, and Racine $18,000 for absentee ballot drop boxes. App. 17. The WSVP provided at total of $216,500 for absentee ballot drop boxes in the Zuckerberg 5. App. 17. The use of absentee ballot drop boxes, outside

of narrow exceptions, has been successfully challenged as being a violation of Wisconsin law.

In a case in the Wisconsin Circuit Court for Waukesha County, the plaintiffs sued the WEC to challenge 2020 guidance memos that the WEC issued to municipal clerks. Complaint, *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. June 28, 2021) (under review by the Wisconsin Supreme Court), available at App. 649-660. In particular, the plaintiffs challenged a memorandum that purported to authorize unstaffed ballot drop boxes:

> Despite this requirement in the statutes [i.e., the requirement that an absentee ballot either be returned by mail or be returned by the voter "in person, to the municipal clerk." Wis. Stat. § 6.87(4)(b)1], WEC Commissioners sent a memo to municipal clerks dated August 19, 2020, (the "August 2020 WEC Memo") stating that absentee ballots do not need to be mailed by the voter or delivered by the voter, in person, to the municipal clerk but instead could be dropped into a drop box *and that the ballot drop boxes could be unstaffed*, temporary, or permanent. (A true and correct copy of the August 2020 WEC Memo is attached hereto as Exhibit B.)

Id. ¶ 10, available at App. 651 (emphasis added).

The Waukesha County Circuit Court granted summary judgment to the plaintiffs and declared the use of ballot drop boxes, outside of narrow exceptions, to be inconsistent with Wisconsin law:

> For the reasons set forth by the Court on the record at the January 13, 2022 hearing, the Court hereby declares that WEC's interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector's behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) *the use of drop boxes, as described in the Memos, is not permitted under Wisconsin law unless the drop box is staffed*

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by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.

Order Granting Summary Judgment for Plaintiffs, *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. January 20, 2020), available at App. 66 (emphasis added). The Zuckerberg 5's privately funded absentee ballot drop boxes in the 2020 election were legally unauthorized under Wisconsin law. This makes the Zuckerberg 5 and CTCL's agreement for CTCL-funded purchase and placement of absentee ballot drop boxes a void contract provision as against state law and public policy.

7. Other Entities Have Reported About CTCL's Selective Funding to the Zuckerberg 5.

It is important to note that two non-profit corporations have analyzed the Zuckerberg 5's acceptance and use of the CTCL moneys and published analytical reports in 2021. App. 488-512. Both reports are consistent with our conclusions here. *Id. First*, the Wisconsin Institute for Law & Liberty (WILL) in a June 9, 2021, report titled "Finger on the Scale: Examining Private Funding of Elections in Wisconsin." That report had the following "key takeaways:"

1. WILL received records from 196 communities that received a total $10.3 million in funding from CTCL. These grants ranged from a high of $3.4 million for the City of Milwaukee to $2,212 for the Town of Mountain in Oconto County.

2. The largest five cities in the state (Milwaukee, Madison, Green Bay, Kenosha, and Racine) received nearly 86% of all CTCL grant funds in Wisconsin.

3. While most small towns used CTCL resources for voting equipment

and COVID-related equipment, Milwaukee, Green Bay, and Madison spent close to or above $100,000 on ostensibly "non-partisan" voter education efforts.

4. Areas of the state that received grants saw statistically significant increases in turnout for Democrats. Increases in turnout were not seen for Donald Trump.

5. This WILL report highlights the inequitable distribution of private resources that came into the state during the 2020 election. Reforms that are designed to ensure that any grant money is distributed in a per capita manner across the state will go a long way in increasing faith that our elections are being conducted in an open and honest manner.

App. 491.

The WILL report also calculated the CTCL funding per 2016 voter in Wisconsin's ten largest cities. It showed a huge amount of CTCL funding went to the Zuckerberg 5 per voter and in total showed only a small amount of CTCL funding went to the Wisconsin cities which were not among the Zuckerberg 5:

Municipality	CTCL Funding Per 2016 Voter	Total CTCL Grant Amount
Milwaukee*	$13.82	$3,409,500
Madison*	$8.30	$1,271,788
Green Bay*	$36.00	$1,600,000
Kenosha*	$20.94	$862,799
Racine*	$53.41	$1,699,100
Appleton	$0.51	$18,330
Waukesha	$1.18	$42,100

Eau Claire	$2.01	$71,000
Oshkosh	$0.00	$0.00
Janesville	$6.11	$183,292

App. 500 (" * " denotes a Zuckerberg 5 City).

Notably, the WILL Report concluded that the CTCL funding affected Wisconsin's 2020 election outcomes in favor of candidate Biden over then-President Trump by at least 8,000 votes:

> For candidate Biden there was a statistically significant increase in turnout in cities that received CTCL grants. In those cities, candidate Biden received approximately 41 more votes on average. While the coefficient was also positive for then-President Trump, it did not reach traditional levels of statistical significance. This means that we cannot say that turnout for Republicans in CTCL receiving areas swas any different than it would have been without the grants. Given the number of municipalities in the state that received grants, this is a potential electoral impact of more than 8,000 votes in the direction of candidate Biden.

App. 503.

Second, the Foundation for Government Accountability (FGA) in a June 14, 2021 report titled "How Zuckerbucks Infiltrated the Wisconsin Election" made five key findings:

1. More than 200 Wisconsin jurisdictions received "Zuckerbucks" for the 2020 election, totaling more than $9 million;

2. Nearly $3.5 million was funneled into the City of Milwaukee via two grants;

3. Green Bay spent only 0.8 percent of funds on personal protective equipment—instead purchasing two new 2020 Ford 550s and paying a public relations firm nearly $150,000 for voter outreach;

4.   A representative of CTCL had behind-the-scenes access to election administration in Green Bay and Milwaukee; and,

5.   A former staff member for Governor Evers worked for the grantor to coordinate grant applications in Eau Claire.

App. 508. The FGS report contends that "Wisconsin can—and should—prohibit local jurisdictions from accepting private money for election administration." *Id.* The relative funding levels for personal protective equipment also gives the lie to a claim that the extraordinary injection of "Zuckerbucks" into this election was necessitated by or intended primarily to ensure the election did not worsen the public health as opposed to influencing voting patterns.

The Zuckerberg 5 Agreed to the Wisconsin Safe Voting Plan Which Contains Geographic and Demographic Classifications to Increase In-person Voting and Absentee Voting for Targeted Areas and Groups—the Kinds of Efforts Typically Associated with Campaigning.

According to the CTCL website, CTCL is not "a grantmaking organization" in "normal years."[6] The WSVP contains provisions to increase in-person voting and absentee voting for targeted areas and groups. These groups met particular demographic criteria, which not-coincidentally, matched that of the Biden-voter profile. App. 7-27. Typically, candidates and campaigns, not cities, engage in get-out-the-vote efforts targeting areas and groups; CTCL provided the Zuckerberg 5 about $8.8 million to carry out the WSVP provisions. App. 493.

The following WSVP provisions are geographic and demographic classifications designed not for safe voting during COVID but to increase in-person voting for targeted

areas and groups, increase absentee voting for targeted areas and groups, or both. App. 7-27. Additionally, these provisions are privately funded and disfavor Wisconsinites outside of the Zuckerberg 5. *Id.*

1. **"[T]o be intentional and strategic in reaching our historically disenfranchised residents and communities"**

On page one, the WSVP requires the Zuckerberg 5 to "be intentional and strategic in reaching our historically disenfranchised residents and communities; and, above all, ensure the right to vote in our dense and diverse communities" within the Zuckerberg 5. App. 7. This election administration provision, promoting in-person voting and absentee voting, is privately funded, disfavors Wisconsinites outside the Zuckerberg 5, and favors black and minority voters as opposed to the rest of the residents and communities within the Zuckerberg 5. *Id.*

2. **"[E]ncourage and increase … in-person" and "absentee voting by mail and early" voting**

On pages 5 and 6, the Zuckerberg Plan states that about one-half of the grant money will be used by the Zuckerberg 5 to "encourage and increase … in-person" voting and "dramatically expand strategic voter education & outreach efforts"—"particularly to historically disenfranchised residents" within the Zuckerberg 5. App. 11-12. The remainder was slated to be used to encourage and increase absentee voting by mail and early voting" and "dramatically expand strategic voter education & outreach efforts"—"particularly to historically disenfranchised residents" as opposed to the rest of the residents and communities within the Zuckerberg 5. *Id.*; App. 11-12.

Goal	Green Bay	Kenosha	Madison	Milwaukee	Racine	Totals
Encourage and Increase Absentee Voting By Mail and Early, In-Person	$277,000	$455,239	$548,500	$998,500	$293,600	$2,572,839
Dramatically Expand Strategic Voter Education & Outreach Efforts	$215,000	$58,000	$175,000	$280,000	$337,000	$1,065,000
Totals:	$1,093,400	$862,779	$1,271,788	$2,154,500	$942,100	$6,324,567

One way the Zuckerberg 5 were to accomplish this feat was through a specific and targeted campaign directed at black and minority voters.

3.   "Dramatically Expand Voter & Community Education & Outreach, Particularly to Historically Disenfranchised Residents"

On page fifteen, the WSVP calls for the cities to specifically target "[h]istorically [d]isenfranchised [r]esidents" within the Zuckerberg 5. The WSVP and CTCL defined "historically disenfranchised voters" to mean:

> All five municipalities expressed strong and clear needs for resources to conduct voter outreach and education to their communities, with a particular emphasis on reaching **voters of color, low-income voters without reliable access to internet, voters with disabilities, and voters whose primary language is not English.**

App. 21 (emphasis added). Each of the Zuckerberg 5 had their own plans to "target" certain residents and communities for higher in-person voter turnout.

Green Bay wanted private grant funds to "be distributed in partnership with key community organizations including churches, educational institutions, and organizations serving African immigrants, "LatinX" residents, and African Americans." App. 21-22. Green Bay wanted to reach out to the Hmong, Somali and Spanish-communities with targeted mail, geo-fencing, posters (billboards), radio, television and streaming PSAs, digital advertising, automated calls and automated texts, [sic] as well as voter-navigators. App. 544. Green Bay's goal was to increase voter participation in these select, race-based groups by 25% for the November 2020 elections. *Id.* Green Bay's privately funded get-out-the-vote effort did not include electors who did not live in Green Bay or electors in Green Bay who were not members of preferred racial groups.

In Kenosha, grant funds would be used "for social media advertising, including on online media like Hulu, Spotify, and Pandora ($10,000), targeted radio and print advertising ($6,000), and large graphic posters ($3,000) to display in low-income neighborhoods, on City buses, and at bus stations, and at libraries ($5000)." App. 22. Kenosha's privately funded get-out-the-vote effort did not include electors who did not live in Kenosha or electors in Kenosha who did not live in low-income neighborhoods. *Id.*

In Madison, private funds would support partnering "with community organizations and run ads on local Spanish-language radio, in the Spanish-language newspapers, on local hip hop radio stations, in African American-focused printed publications, and in online publications run by and for our communities of color (advertising total $100,000)." App. 22. Madison's privately funded get-out-the-vote effort did not include electors who did not live in Madison, were not Spanish-speaking, did not listen to hip hop radio stations, read

African American-focused printed publications, or online publications run by and for Madison's preferred racial groups. *Id.*

Milwaukee stated that it intended to use these private funds to "get-out-the-vote" based on race, criminal status, and harnessing "current protests" related to the Black Lives Matter movement. App. 571. The City used the private funds to support a "communications effort [that] would focus on appealing to a variety of communities within Milwaukee, including historically underrepresented communities such as LatinX and African Americans, and would include a specific focus on the re-enfranchisement of voters who are no longer on probation or parole for a felony." App. 22-23. Milwaukee's privately funded get-out-the-vote efforts did not include electors who did not live in Milwaukee or electors who are not members of preferred racial groupings. *Id.*

In Racine, the private funds supported renting "billboards in key parts of the City ($5,000) to place messages in Spanish to reach Spanish-speaking voters" and "targeted outreach aimed at City residents with criminal records to encourage them to see if they are not eligible to vote." App. 23. Racine's privately funded get-out-the-vote efforts did not include either electors who did not live in Racine or electors who were not Spanish-speaking. *Id.*

Additionally, in Racine, private funds were to be used "to purchase a Mobile Voting Precinct so the City can travel around the City to community centers and strategically chosen partner locations and enable people to vote in this accessible (ADA-compliant), secure, and completely portable polling booth on wheels, an investment that the City will be able to use for years to come." *Id.* This privately funded get-out-the-vote effort excluded

electors who did not live in Racine and those who did not live near "strategically chosen partner locations." *Id.*

Individually and collectively, these privately funded election administration provisions promoting in-person voting classifications disfavor Wisconsinites outside the Zuckerberg 5 and favor only selectively defined minorities. App. 21-23.

4.   WSVP's "Absentee Voting" provisions.

On page four, the WSVP requires the Zuckerberg 5 to take specific actions with early voting:

Absentee Voting (By Mail and Early, In-Person)

1.   Provide assistance to help voters comply with absentee ballot requests & certification requirements;

2.   Utilize secure drop-boxes to facilitate return of absentee ballots;

3.   Deploy additional staff and/or technology improvements to expedite & improve accuracy of absentee ballot processing; and,

4.   Expand In-Person Early Voting (Including Curbside Voting)

App. 10. This election administration provision, promoting absentee voting, is privately funded and disfavors Wisconsinites outside of the Zuckerberg 5. Only electors in the Zuckerberg 5 benefit from the "assistance," "drop-boxes," "improvement," and increased "early voting." *Id.*

5. **"Provide assistance to help voters comply with absentee ballot request & certification requirements"**

On pages nine and ten, the WSVP requires that the Zuckerberg 5, "[p]rovide assistance to help voters comply with absentee ballot request & [sic] certification requirements." App. 15-16. None of the private funding in this regard would benefit residents outside the Zuckerberg 5. *Id.* Instead, it targeted only the "Biden profile voter."

In Green Bay, the City would use the private money to fund bilingual LTE "voter navigators" to help Green Bay residents properly upload a valid photo ID, complete their ballots, comply with certification requirements, offer witness signatures, and assist voters prior to the elections. App. 15. Green Bay would also utilize the private funds to pay for social media and local print and radio advertising to educate and direct Green Bay voters so they could upload photo IDs and request and complete absentee ballots. *Id.* In Kenosha, the City would use the private money to have Clerk's staff train Kenosha library staff on how to help Kenosha residents request and complete absentee ballots. *Id.*

6. **"Utilize Secure Drop-Boxes to Facilitate Return of Absentee Ballots"**

On pages ten and eleven, the WSVP requires the Zuckerberg 5 to establish and use ballot drop boxes. App. 16-17. In Green Bay, the City intended to use private money to add ballot drop-boxes, at a minimum, at the transit center and two fire stations. *Id.* at 16. This was in addition to the one already in use at City Hall. *Id.* Green Bay intended to possibly use the drop boxes at its libraries, police community buildings, major grocery stores, gas stations, the University of Wisconsin Green Bay, and Northern Wisconsin Technical College. *Id.*

In Kenosha, the City intended to use the private money to install four additional internal security boxes at Kenosha libraries and the Kenosha Water Utility to provide easy access to each side of the City to ballot drop-boxes. *Id.* at 16. Madison intended to use the private money to place and maintain one secure drop box for every 15,000 voters, or twelve drop boxes total, and to provide a potential absentee ballot witness at each drop box. *Id.* at 16. Milwaukee intended to use the private money to install secure 24-hour drop boxes at all thirteen of its public library branches, while Racine intended to use the private money to have three additional drop boxes to be installed at key locations around the city. *Id.* at 16–17.

7. "Expand In-Person Early Voting (Including Curbside Voting)"

On pages twelve through fourteen, the WSVP set out the plan to expand in-person absentee voting. App. 18-20. Green Bay used private money to expand and establish at least three EIPEV sites in trusted locations, ideally on the east (potentially UWGB) and west sides (potentially NWTC or an Oneida Nation facility) of the City, as well as at City Hall. *Id.* at 18. The city also used the private money to print additional ballots, signage, and materials to have available at these early voting sites. *Id.* Kenosha used private money to offer early drive-thru voting on City Hall property and for staffing for drive-thru early voting. *Id*.

In Madison, the City intended to use private money to provide eighteen in-person absentee voting locations for the two weeks leading up to the August election and for the four weeks leading up to the November election. *Id*. The City purchased and utilized tents for the curbside voting locations in order to protect the ballots, staff, and equipment from getting wet or damaged. Additionally, it purchased and utilized large feather flags to identify the curbside voting sites. *Id*.

Milwaukee also used private money to set up three in-person early voting locations for two weeks prior to the August election and fifteen in-person early voting locations and one drive-thru location. *Id.* at 18-19. Racine used private money to offer a total of three EIPAV satellite locations for one week prior to the August election as well as offering a curbside in-person early voting option. *Id.* at 19. For the November election, Racine intended to use private money to offer EIPAV at four satellite locations two weeks prior to the election and at the Clerk's office six weeks prior. *Id.*

Chapter 2

The Motive for These Grants Was Impermissible and Partisan Get –

Out-the-Vote Effort (GOTV)

While it is clear that the statute prohibiting election bribery was violated, the reader may be asking (to put it simply): "*So what? Aren't we told all the time that voting is a good thing and that we should encourage more people to vote? Isn't that what American democracy is all about? Why should we care if outside groups came in and used their financial resources to get more people to vote? Isn't it just sour grapes to allege that this effort to "fortify" the election crossed over into bribery?*

These questions, and others like it, have been presented to the Wisconsin public by the outside groups who came here and by their advocates in the press and elsewhere as a sort of prophylactic defense of the entire bribery scheme. The outside groups know that their questions act as a potent offensive weapon used to discourage the kind of public scrutiny this Report reflects. This is so because anyone who asks critical questions will immediately be put back on their heels: "Tell us why you don't want more people to vote. What do you have against more *people of color* voting in our elections—are you *racist*?" For the record, all those concerned with this Report are, all things being equal, in favor of more people voting and no one has considered race as a factor one way or the other except to the extent necessary to determine the partisan motives of the private groups who designed and implemented this scheme and who are now cynically and hypocritically

deploying the charge of racism in an attempt to shield their misconduct from the light of day.

The scheme designed and implemented by Zuckerberg's CTCL had its origins in a man named David Plouffe. Plouffe's political track record and savvy were likely taken into account by Mark Zuckerberg and his wife Pricilla when they hired David Plouffe to run their political operation-- the [Pricilla] Chan [and Mark] Zuckerberg Initiative— for the purpose of electing Joe Biden president and defeating then-President Trump.

Writing about President-elect Trump's first public appearance after his 2016 presidential victory, Plouffe had this to say: "It's not that we were simply horrified by the reality show performer and his grifter family appearing on stage as America's next first family—though what a horrifying sight it was." (p. xiii) Writing his book in late summer of 2019, Plouffe tells the reader he does not care who the Democratic nominee will be because it does not matter: the goal for everybody should be to defeat President Trump. And Plouffe knew just how to do it: "**We'll do it through turnout**—growing the overall number of people who walk the walk and actually cast votes. Democracy isn't a metaphor or a game. This year especially it's a deadly serious test." (p. xiv (emphasis added))

Turnout, otherwise known as "getting out the vote," (GOTV) has before 2020 been an exclusively partisan phrase (CITE) used by partisan campaigns to (1) identify; (2) locate; (3) inform; (4) persuade; and, (5) facilitate increasing the number of votes for the candidate that *they favor*. The same is true of efforts to get their ballots into the hands of

a "voter navigator," or ballot harvester, or into a drop box (another concept largely unknown prior to November 2020).

The Zuckerberg-funded CTCL/ Zuckerberg 5 scheme would prove to be an effective way to accomplish the partisan effort to "turnout" their desired voters and it was done with the active support of the very people and the governmental institution (WEC) that were supposed to be guarding the Wisconsin elections administrative process from the partisan activities they facilitated.

Chapter 3

Government Oversight Has Been Obstructed by Governmental and

Outside Corporate Collusion

WEC and the State Attorney General have failed to cooperate with this investigation. In fact, WEC and the State Attorney General each have actively resisted and obstructed the investigation's search for the truth. Wisconsin law requires that actions taken by WEC be accomplished by a majority vote, at a publicly noticed meeting. Wis. Stat. 5.05 (1e); Wis. Stat. § 5.05(5s)(a). Yet WEC, aided by the State Attorney General, has impeded this investigation through obstructive litigation carried on without any record of an approval by the majority of the Commission at a public meeting of the Commission.

These actions of WEC continue a pattern of misconduct by the agency that rose to new heights during the 2020 election cycle, in which new election related polices were spread throughout the state (such as the expanded use of unlawful "drop boxes" and the fraudulent use of the "indefinitely confined" status) without having been approved by either the administrative rule-making process, ensuring that changes in law are vetted in properly noticed public meetings, or by receiving a majority vote of the Commission.

Following initial compliance with the valid Assembly subpoenas, the OSC subsequently faced numerous dilatory actions constituting obstruction of this investigation. Such actions include:

1. Instructions by the Governor to governmental actors not to comply with Legislative oversight;

2. Frivolous and subsequently dismissed ethics complaints against OSC staff;

3. Voluminous open record requests by outside, dark money nonprofits;

4. Free, dark money attorneys provided to various governmental actors;

5. Private investigators looking into the private lives of OSC staff, and outside hacks of devices;

6. Coordinated media campaigns against Legislative oversight and the OSC;

7. Intervention in lawsuits by the Attorney General on behalf of individuals and adverse to the mission of his Office; and,

8. Withholding and destruction of evidence, often poorly justified by claimed contractual obligations with commercial vendors, placing private business ahead of the public interest.

Chapter 4

This Collusion and Entanglement Also Caused a Host of Questionable Actions by the Zuckerberg 5

Wisconsin engaged private companies in election administration in unlawful ways for the 2020 Presidential election.

1. Wisconsin law and WEC's 250-page Election Administration Manual for Wisconsin Municipal Clerks do not legally authorize CTCL and its "partners" to participate in Zuckerberg 5's election administration.

2. WEC's WisVote security policies do not legally authorize the Zuckerberg 5 election officials to share WisVote data with CTCL and its partners.

3. The security of WisVote FIDO Keys required by WEC for WisVote access is unacceptable and an invitation to fraud as the ability to properly track all of the access points and personnel is a key feature required to maintain voting integrity.

4. CTCL pushed onto the Zuckerberg 5 the CTCL "partners" who would unlawfully administer aspects of the election.

5. The projects that CTCL's partners promoted had nothing to do with Covid-19 safety.

6. After the Zuckerberg 5 agreed to the large grants, and CTCL convinced the Zuckerberg 5 to utilize CTCL's "partners," CTCL sought to unlawfully embed those "partners" into the Zuckerberg 5's election administration.

7. Given a blank check to run the election, CTCL and its "partners" took full advantage of the opportunity to administer the election in at least one of the Zuckerberg 5.

8. The "private corporate partners" were from out of state, and not necessarily knowledgeable about Wisconsin election law, or concerned about it.

9. Safe voting was a pretext—the real reason for CTCL's WSVP grants was to facilitate increased in-person and absentee voting in specific targeted areas inside the Zuckerberg 5.

10. The Zuckerberg 5 became beholden to CTCL as a result of the WSVP's private funding and the WSVP's provisions.

11. The Zuckerberg 5 ceded administrative control over the election to CTCL and its private partners, including WisVote data sharing, so they could collectively facilitate increased in-person and absentee voting in the 2020 election.

1.   Wisconsin Law and WEC's 250-Page Election Administration Manual for Wisconsin Municipal Clerks Cannot Legally Authorize CTCL and Its "Partners" to Participate in Zuckerberg 5's Election Administration.

Wisconsin's municipal clerks are provided training on administering elections, including being provided WEC's 250-page Election Administration Manual for Wisconsin Municipal Clerks. This Manual also illustrates why the WSVP, CTCL and its "partners" participating in the Zuckerberg 5's election administration for the 2020 Presidential Election was not legally authorized.

According to the Manual, "The municipal clerk's election duties include, but are not limited to, supervision of elections and voter registration in the municipality, equipping polling places, purchasing and maintaining election equipment, preparing ballots and notices, and conducting and tracking the training of other election officials."

The Manual reserves those duties to municipal clerks, and nowhere does it authorize CTCL and its "partners," to engage in Zuckerberg 5's election administration. We also have seen no evidence that personnel from CTCL or its partners were trained in Wisconsin election law, as is required of the municipal clerks.

2.   **WEC's WisVote Security Policies Do Not Legally Authorize the Zuckerberg 5 Election Officials to Share WisVote Data with CTCL and Its Partners.**

WEC's policies on WisVote security are written so that municipal clerks do not work hand-in-hand with private companies to administer the elections. So, the Zuckerberg 5's municipal clerks jeopardized WisVote security when data sharing with CTCL and its partners.

The WisVote system is the Statewide Voter Registration System (SVRS) that originated in 2006 and provided key tools for the former State Elections Board to carry out its critical election business practices. In early 2016, SVRS was replaced by WisVote, which reportedly improved usability and functionality and lowered costs.

Three fundamental goals served as the strategic vision for the WisVote system: improved usability for clerks, reduced costs, and creating a stable and supportable system.

WisVote is not simply a voter registration list, but a full elections administration package. The system is accessed by more than 1,600 users in 700 separate locations across the State. Users connect to the system using the internet. Some locations in Wisconsin do not have high-speed internet access available, in which case, the municipal clerk relies on another clerk (usually the county clerk) to perform data entry functions. The system includes several confidential fields, including driver license numbers, dates of birth, partial social security numbers and voters who are under a protective order, which must be protected by statute.

There are four security to gain access to the WisVote system:

1. User must have a viable computer that can access the internet. That computer must have a "Fast Identity Online" (FIDO) user authentication key applet downloaded to the system

2. User must have an assigned User Name

3. User must have an assigned password

4. User must possess a WEC issued FIDO Key

WEC controls the username and password access.

There are four levels of access to the WisVote system:

1. Clerk: this access certification was developed to train new staff in the complete WisVote system application. This access level allows users to perform all WisVote functions, including printing poll books, mapping, and other election administration duties.

2. Data Entry: this access certification was developed to train new staff to enter voter registration applications, update voter status, and record voter participation. This access level will not allow users to merge voters, print poll books, or perform other election administration duties unless the user completes the full WisVote system training.

3. WEDC Entry: this role does not require additional WisVote training other than the WisVote Introduction tutorials and the Security Series videos; however, the clerk, or authorized designee, must still submit the Request to Add Authorized Users form to ensure users receive the correct WisVote permissions. These users can view municipal data and Election Reconciliation information, but only have the ability to modify or edit Inspectors' Statement and EDR Postcard data.

4. Read Only: this role does not require any additional WisVote training other than the WisVote Introduction tutorials and the Security Series videos; however, the clerk, or authorized designee, must still submit the Request to Add Authorized Users form to ensure users receive the correct WisVote permissions. These users can view municipal data, but will not have the ability to add, delete, or modify data in WisVote.

WEC's WisVote security rules do not contemplate or authorize non-governmental outside parties receiving WisVote data shared by Zuckerberg 5's election officials.

Further, WEC's rules provide a specific process to obtain access to WisVote data:

To obtain access to WisVote, the clerk, or authorized designee, will complete the following process:

1) Email a completed and signed copy of the Request to Add Authorized Users in The Learning Center (TLC) to Elections Help Desk (elections@wi.gov). Identify the role type for each user identified on the form. There are four user access levels in WisVote from which to choose:

2) Upon receipt of the completed Request to Add Authorized Users in TLC form, the Elections Help Desk will create and issue a login and password for the user to obtain access to TLC website to allow for the new users to complete the following training:

a. Securing WisVote: this is a series of electronic learning modules located under the Election Security Awareness tile in TLC. All WisVote users are required to complete this training regardless of their access level (please also note that this specific training may also be made available and accessed by individuals identified by the clerk, or an authorized designee, who do not require WisVote access and still wish to participate in this cybersecurity educational opportunity—indicate Requested WisVote Access Level as "Not Applicable" on the Request to Add Authorized Users in TLC form); *AND* The training associated with the access levels listed above, if applicable.

3) Once new users complete the Securing WisVote training series AND all required training related to their WisVote Access Level, if applicable, an email shall be sent to the Elections Help Desk (elections@wi.gov). The email should state that the Securing WisVote series was completed and should also contain the appropriate Access Certification document (also found on this page), as an attachment. Upon receipt, WEC staff will issue a WisVote username and password.

4) When logging into WisVote for the first time, new users will see the WisVote User Agreement and the WisVote Confidentiality Agreement, in electronic

format. To acknowledge and accept the terms of these agreements, the user will click the "I agree" button when prompted with each agreement.

CTCL and its partners did not follow this process and yet obtained WisVote data from Zuckerberg 5's election officials. By contrast, the public receives WisVote only as WEC updates the information and for a charge of $12,500 for a daily snapshot of statewide data. Accordingly, under Wisconsin Elections Commission's security policies, CTCL's and its partners were allowed to access to WisVote in this way, opening the system up to unauthorized uses by unauthorized users. The Zuckerberg 5's WisVote data sharing with CTCL and its partners was thus unlawful.

5.   The Security of WisVote FIDO Keys Required by WEC for Wisvote Access Is Unacceptable.

The security of WisVote FIDO Keys, required by WEC for WisVote security is unacceptable. Under WEC's policies for a multi-factor authentication, three things are needed for WisVote access: login in name; password; and FIDO Key. The FIDO Key is contained in a flash drive that is inserted into a personal computer.

In 2018, WEC mass-issued FIDO Keys across the State to counties and municipalities. The instructions received from WEC to the key recipients were unclear as to security protocols. For example, one county indicated they had requested 2 FIDO Keys and they received 15 keys. When the clerk received the 15 keys, she called WEC and asked, "what should I do with the additional 13 keys you sent that I didn't request?" WEC said, "hold on to them just in case you need another or one breaks." One would think that at the time these FIDO Keys were issued, WEC would have a master record of custody as

to how many FIDO Keys had been shipped. If that was the case, WEC cannot apparently find it now.

In mid-September 2021, an open records request was sent to the WEC requesting the total number of FIDO Keys that had been issued by WEC to the various counties and municipalities across the State. The request also asked for a list of individuals to whom the keys were issued. WEC initially issued a copy of a 2020 list of FIDO Key users. Knowing this list changes monthly, a second request was made to determine how many of those users had changed. The 2020 list listed 3,137 FIDO Key users across the State. Of that list, 404 active users had been disabled leaving a balance of 2,733 active users. The updated list indicated that205 active users had been added two weeks later and accounted for a total of 2,938 keys. Of those 2,938 active keys, 1,929, or 66% were issued with clerk access.

WEC apparently does not know how many FIDO Keys they have actually issued because individual county or municipal clerks have FIDO Keys that were not assigned or listed on WEC's list. For example, WEC issued a total of 36 FIDO Keys to the Fond du Lac County Clerk, who issued 12 keys to various municipalities and still has 24 in her possession. In contrast, WEC's list confirms 12 keys that were issued without accounting for the 24 keys that remain in the Clerk's possession. WEC's records similarly reflect two of the 15 FIDO Keys that WEC issued to the Kewaunee County Clerk and that the Clerk then issued, but they fail to reflect the other 13 FIDO Keys that WEC issued to the Clerk that remain in the Clerk's filing cabinet. Our investigation repeatedly found that counties

and municipalities have more keys than WEC can account for. Yet, the FIDO Keys are supposed to be a major part of WEC's security policy for WisVote data.

There does not seem to be a meaningful pattern as to how FIDO Keys are used to counties or municipalities. For example, as mentioned in the previous paragraphs, clerks have different methods of distributing the keys that they receive from WEC. Some clerks manage their municipality or county WisVote data entry very carefully. For example, the Kewaunee County Clerk only allows 2 people to make entries or adjustments in the WisVote system. Fond du Lac County allows 12 people in the entire County to enter data or make changes to the data. A close look at the Zuckerberg 5 cities of Madison, Milwaukee, Kenosha, Green Bay and Racine shows a remarkable array of differences in how the FIDO Keys are issued and ultimately used.

There is no known explanation as to why there is such diversity of FIDO Key distribution and accountability in the different cities. The chart below lists the Zuckerberg 5 cities where large sums of CTCL money was applied. It is unclear why 64% of FIDO Keys assigned to one city consist of keys with clerk-level access that would allow unfettered access to the entire WisVote database and enable the user to activate and deactivate voters.

FIDO Keys by Zuckerberg 5 Cities per April 2021 WEC Report

City	Population over 18 yrs	Total Keys	Clerk Keys	% of Keys for Clerks	Data Entry Keys	Other Key Types	One Key for every X residents
Madison	214,180	124	17	14%	107	N/A	1,727
Kenosha	74,766	23	6	26%	17		3,251
Milwaukee	450,233	306	196	64%	108	2	1,471
Green Bay	78,777	13	4	31%	8	1	6,060
Racine	60,123	98	22	22%	76		614

In talking to various clerks across the State, it is known that employees of municipalities that have been issued FIDO Keys will often allow other employees in their organization to use their computer, username, password, and FIDO Key to access the WisVote system and make entries. During the 2020 election, this type of usage was extended to third parties in the Zuckerberg 5 cities as further detailed below. FIDO Keys are an area of concern and require more investigation and attention overall.

1.   CTCL Pushed Onto the Zuckerberg 5 the CTCL "Partners" Who Would Unlawfully Administer Aspects of the Election.

As part of the WSVP, CTCL pushed onto the Zuckerberg 5 the CTCL "partners" who would effectively administer aspects of the election in an unlawful manner. Under the WSVP, CTCL promoted to the Zuckerberg 5 numerous entities, CTCL's "partners.," CTCL would then recommend that the Zuckerberg 5 connect with and use those partners in the administration of the election. App. 39-52, 53-69, 78-80. However, since the Zuckerberg 5 were contractually bound to use only the "organizations" that CTCL approved "in advance, in writing," the "partner" referrals that CTCL made were more than mere "suggestions," they were part of the CTCL's binding contractual agreement with the Zuckerberg 5. App. 4, 589, 592, 596, 599.

In late July 2020, CTCL Director of Government Services Whitney May hosted a series of separate "kick off" calls for each of the Zuckerberg 5 city's public officials, where she introduced and provided an overview of CTCL's allied corporations (sometimes-called "technical partners") to inject themselves into that city's election administration. App. 454-459, 480. CTCL's "partners" introduced to the Zuckerberg 5 were private corporations that would act to unlawfully aid or administer the relevant city's election administration:

1.   The National Vote At Home Institute ("VoteAtHome" or "NVAHI") was represented by CTCL as a "technical assistance partner" that could consult about, among other things, "support outreach around absentee voting," voting machines and "curing absentee ballots," and to even take the duty of curing absentee ballots off the city's hands. App. 39-52, 53-69. The NVAHI also offered advice and guidance on accepting ballots and streaming central count during election night and on the day of the count. App. 70-77.

2.   The Elections Group and Ryan Chew were represented to be able to provide "technical assistance partners to support your office" and "will be connecting

with you in the coming days regarding drop boxes" and technical assistance to "support your office," and worked on "voter outreach." App. 78-80, 81-83, 171. Elections Group Guide to Ballot Boxes. App. 84-124.

3.   Ideas42 was represented by CTCL as using "behavioral science insights" to help with communications. App. 324.

4.   Power the Polls was represented by CTCL to help recruit poll workers. App. 124.

5.   The Mikva Challenge was recommended to recruit Chicago-based high school age students to be Zuckerberg 5 poll workers. App. 127.

6.   US Digital Response was suggested to help with and then take over "absentee ballot curing," and to "help streamline the hiring, onboarding, and management" of Green Bay's poll workers. App. 130-138.

7.   Center for Civic Design was tapped to design absentee ballots and the absentee voting instructions. App. 196.

8.   Eric Ming, the Communications Director for CSME, was selected to serve as a "communications consultant to review your [City of Green Bay] advertising plan for November." App. 43, 158-159.

9.   The Brennan Center, which focuses on "election integrity" including "post-election audits and cybersecurity" was involved. App. 160.

10.   HVS Productions added "voter navigator" FAQs and Election Countdown Copy for the city of Green Bay. App. 163-168.

11.   Modern Elections was picked to address Spanish language issues. App. 169-171.

Importantly, none of the referenced "partners" mandated by CTCL were health or medical experts that one might expect for efforts allegedly tied to the COVID pandemic; rather, as the grant contracts required, these were "experts" in "election administration." *See* App. 454-462, 480. Further, several clerks did inform the OSC that actions by these representatives adversely affected the public health safety of staff and voters.

Former Green Bay Clerk Kris Teske has described this usurpation by CTCL and its "partners" of election administration. She stated in her Answer in a prior WEC proceeding:

1. "Others in the Mayor's office began to hold meetings and make decisions relating to the election outside of the Clerk's office." App. 674.

2. "This caused planning for the election to become VERY dysfunctional and caused great confusion in the Clerk's office as many of the meetings and decisions were driven by the Mayor's chief of staff and other senior officials without the knowledge or consent of the Clerk's office." *Id.*

3. "I wrote several emails outlining my concerns with meetings that excluded the Clerk's office and decisions that were made without consulting the Clerk's office." App. 675.

4. "[T]he office's [Clerk's office] ability to fulfill the obligations for the election were greatly hindered and diminished by outside interference." App. 677.

As Teske asserted, Wisconsin law and WEC's Election Administration Manual for Wisconsin Municipal Clerks did not legally authorize CTCL and its partners to engage in Zuckerberg 5's election administration.

12.   The Projects That CTCL's Partners Promoted Had Nothing to Do with Covid-19 Safety.

CTCL's partners had nothing to do with Covid-19 safety. Neither CTCL nor its "partners" were medical or health professionals. Instead, CTCL boasted that it had a "network of current and former election administrators and election experts available" to "scale up your vote by mail processes," and "ensure forms, envelopes, and other materials are understood and completed correctly by voters." App. 38.

On July 31, 2020, shortly after the grant agreements were negotiated and executed CTCL's Director of Government Services wrote to Madison employee Maribeth Witzel-Behl about the "projects" CTCL required:

> Hi Maribeth:
>
> Reflecting on your Safe Voting Plan and the kickoff call last week. I wanted to get your feedback about the **projects** our technical partners should tackle first. What are the most urgent areas where you'd like support from the partners? Here's what we captured in our notes as the likely top 3-4:
>
> 1. **Adding satellite locations and drop boxes**—help site locations and provide tailored guidelines and implementation support (Elections Group)
>
> 2. **Printing materials for mail ballots** – redesign bilingual **absentee ballot** instruction sheet and letter (Center for Civic Design, who is working with WEC on envelope design)
>
> 3. **Targeting communities with election information** – NVAHA is launching a communications toolkit on August 5 to support **outreach** around **absentee voting** (National Vote at Home Institute), share research insights about how to engage people who might not trust the **vote by mail** process (Center for Civic Design)
>
> 4. **Training election officials**—review quick guides and other training materials (Elections Group)

App. 479 (emphasis added).

Explaining this "targeting" of communications, Celestine Jeffreys wrote to Whitney May of CTCL on August 27, 2020 that "[t]here are probably 5 organizations that are focused on working with disadvantaged populations and/or with voters directly." App. 37, 45.

CTCL, when working with the Zuckerberg 5, had other conditions that had nothing to do with COVID prevention, including:

1. Employing "voter navigators" to help voters "complete their ballots." App. 34-35.

2. The "voter navigators" would later be "trained and utilized as election inspectors." App. 35.

3. "Utilize paid social media" and "print and radio advertising" to direct voters "to request and complete absentee ballots." App. 34.

4. "enter new voter registrations and assist with all election certification tasks." App. 34.

5. "reach voters and potential voters through a multi-prong strategy utilizing 'every door direct mail,' targeted mail, geo-fencing, billboards radio, television, and streaming-service PSAs, digital advertising, and automated calls and texts," and direct mail to "eligible but not registered voters." App. 36.

6. Assist new voters to "obtain required documents" to get valid state ID needed for voting, targeting African immigrants, LatinX residents, and African Americans. *Id.*

7. "facilitate Election day Registrations and verification of photo ID." App. 36.

Thus, after the grant agreements commenced, CTCL promoted election activities having nothing to do with Covid-19 safety. CTCL instead focused on targeting voter outreach and absentee voting. CTCL also required the Zuckerberg 5 to target specific geographic and demographic voter characteristics. App. 7-27. Using the grant funds to target voter outreach was required by CTCL as one of the WSVP conditions. App. 3, 7-27.

Again, CTCL and its partners had no specific medical or health experience, and the WSVP "projects" had nothing to do with Covid-19 safety. App. 7-27.

5. After the Zuckerberg 5 Agreed to the Large Grants, and CTCL Convinced the Zuckerberg 5 to Utilize CTCL's "Partners," CTCL Sought to Unlawfully Embed Those "Partners" into the Zuckerberg 5's Election Administration.

After the Zuckerberg 5 agreed to the large grants, CTCL offered Milwaukee to provide "an experienced elections staffer [from the Elections Group] that could potentially embed with your staff in Milwaukee in a matter of days and fill that kind of a role." App. 382 (emphasis added).

CTCL and its partners pushed to get involved with, and take over, other parts of the election administration, as well. One of CTCL's recommended "partners" was the National Vote at Home Institute ("NVAHI"). Michael Spitzer Rubenstein, NVAHI's employee, wrote to Claire Woodall-Vogg, the Executive Director of the City of Milwaukee Election Commission: "[C]an you connect me to Reid Magney and anyone else who might make sense at the WEC? Would you also be able to make the connection with the Milwaukee County Clerk?" App. 381.

CTCL and its "partners" made many other attempts to access information to which private entities were obviously not entitled. *Id.* The following communications demonstrate such efforts, not authorized by the governing law:

1. **If you could send the procedures manual and any instructions for *ballot reconstruction,* I'd appreciate that**. On my end: · By Monday, **I'll have our edits on the absentee voter instructions.** · We're pushing Quickbase to get their system up and running and I'll keep you updated. · I'll revise the planning tool to accurately reflect the process. App. 381 (Michael Spitzer Rubenstein emailing to Claire Woodall-Vogg of Milwaukee).

2. I'll create a flowchart for the VBM [vote by mail] processing that we will be able to share with both inspectors and also observers. · **I'll take a look at the reconstruction process** and try to figure out ways to make sure it's followed. App. 381 (Michael Spitzer-Rubenstein emailing to Claire Woodall-Vogg of Milwaukee)

3. "That sounds like a real pain. It would be helpful to just understand the system and maybe the USDR folks can figure out a way to simplify something for you. … if it's okay with you, **they'd also like to record the screen-share to refer back to, if needed.**" **We're hoping there's an easier way to get the data out of WisVote than you having to manually export it every day or week**. To that end, we have two questions: 1**. Would you or someone else on your team be able to do a screen-share so we can see the process for an export**? 2. **Do you know if WisVote has an API or anything similar so that it can connect with other software apps**? **That would be the holy grail** (but I'm not expecting it to be that easy). App. 389 (Michael Spitzer-Rubenstein to Claire Woodall-Vogg).

4. I know you won't have the final data on absentee ballots until Monday night but I imagine you'll want to set things up beforehand. **Just let me know your timeline for doing so and if you get me the absentee data a day ahead of time and I can set things up. And as a reminder, here's what I'll need: 1) Number of ballot preparation teams 2) Number of**

returned ballots per ward 3) Number of outstanding ballots per ward. App. 390 (Michael Spitzer-Rubenstein to Claire Woodall-Vogg).

5. **In order to get the data by ward, are you able to run a summary in WisVote or do you have to download all the active voters, absentee applications, etc. and then do an Excel pivot table or something similar**? We added Census data and zip codes to the map and so now we'’re moving to figure out how we'll update this. Also, **if you can send these reports (whether in summary form or just the raw data), we can put them in: Active voters, Absentee applications, Ballots received, Ballots rejected/returned to be cured**. App. 391, Michael Spitzer Rubenstein to Claire Woodall-Vogg.

6. "I'll try and do a better job clarifying the current need. We are not actually using anything visual right now (though will in the future). In the state of affairs now, **we are just looking for raw data. The end result of this data will be some formulas, algorithms and reports that cross reference information about ballots and the census data**. For example, **we want to deliver to Milwaukee + Voteathome answers to questions like "How many of age residents are also registered to vote?" or "what percentage of ballots are unreturned in areas with predominantly minorities?"** To do that, we need a clear link between address + Census Tract. We need this for all ~300k voters and the ~200k+ absentee ballots, and it needs to be able automatic as we perform more

inserts. To accomplish this, we were making calls to the Census API. They allow you to pass in an address and get the Census Tract. That solution "works", but is far too slow. Their batch solution isn't working either." App. 388 (emphasis added).

CTCL and its partners were influencing public officials while those officials were doing their jobs to administer the election. *See, e.g.*, App. 381, 383-388, 390-391. Although some of these attempts by CTCL and its partners to tamper with, or take over the Zuckerberg 5's election administration, may have been rebuffed, others were not *Id.* The Zuckerberg 5 apparently agreed that some of CTCL's attempts would have been too egregious. App. 389. For example, Claire Woodall-Vogg responded:

While I completely understand and appreciate the assistance that is trying to be provided, *I am definitely not comfortable having a non-staff member involved in the functions of our voter database, much less recording it.* While it is a pain to have to remember to generate a report each night and less than ideal, it takes me less than 5 minutes. Without consulting with the state, which I know they don't have the capacity or interest in right now, I don't think I'm comfortable having USDR get involved when it comes to our voter database. I hope you can see where I am coming from – this is our secure database that is certainly already receiving hacking attempts from outside forces.

App. 389 (Claire Woodall-Vogg to Michael Spitzer Rubenstein) (emphasis added).

Kris Teske confirmed that CTCL and its "partners" sought to improperly interject or "embed" themselves into the election administration. App. 674. She stated in her answer in a prior WEC proceeding: "A further complicating factor arose when outside (private) organizations were engaged to participate in the planning and administration of the election." *Id.*

Another example of embedding is in Milwaukee. The Elections Group employee Ryan Chew wrote at 4:07 a.m. on November 4, 2020, the day after the Presidential election, to Milwaukee election official Claire Woodall-Vogg:

> Damn Claire, you have a flair for drama, delivering just the margin needed
> at 3:00 a.m. I bet you had those votes counted at midnight, and just wanted
> to keep the world waiting.

App. 610. Woodall-Vogg responded, "LOL. I just wanted to say I had been awake for a full 24 hours." *Id.*

1. **Given a Blank Check to Run the Election, CTCL and Its "Partners" Took Full Advantage of the Opportunity to Administer the Election in at Least One of the Zuckerberg 5.**

The Zuckerberg 5 used (at a minimum) the following group of CTCL's allied corporations to engage in election administration: Center for Civic Design, App. 451-453, 467-471, 474-475, 478; Vote at Home Institute, App. 447, 449, 465-466, 477; Voter Participation Center, App. 476; healthyvoting.org, App. 445; Elections Group, App. 444; Brennan Center, App. 440; Simon and Company, Inc., App. 448, 450. CTCL and its partners assumed numerous aspects of administration of Zuckerberg 5's election processes.

See, e.g., App. at 451-453, 467-471. For example, in Green Bay, the private corporations and their employees engaged in the following aspects of election administration:

a. Vote at Home volunteered to take the curing of ballots off of a municipality's plate; (*id.* at 172-174);

b. Elections Group offered to "lend a hand" to Central Count stations (*id.* at 175-76);

c. Offered to connect a municipality to "partners like Power the Polls" to recruit poll workers and to partner with CTCL to send out e-mails to recruit poll workers; (*id.* at 177);

d. Advised the City as to using DS200 voting machines; (*id.* at 178);

e. Provided a "voter navigator" job description; (*id.* at 182);

f. Advised a municipality regarding moving the "Central Count" from City Hall to a different location, which was wired to provide election results directly to private corporate employees; (*id.* at 262);

g. The Center for Civic Design offered a municipality to design the absentee voting instructions and the absentee envelopes; (*id.* at 184-196);

h. The Elections Group issued a Guide to Ballot Drop Boxes, a report on Planning Drop Boxes, Voter Outreach, and Communication; (*id.* at 197-236);

i. Provided advice about procedures for challenging an elector's ballot; (*id.* at 232-236); and

j.   Conservation Voices and curing. (*id.* at 237-240).

Whitney May of CTCL advised Milwaukee's Information Coordinator, Michelle Nelson, on how to request additional funding for election administration from the City and encouraged her to consult with other Zuckerberg 5 clerks:

> Below is some language I drafted along with 2 links that may help you frame the need for more staff. And have you asked Kris in Green Bay or Tara in Racine about their staffing levels? If they have similar numbers of registered voters as Kenosha, but more staff than Kenosha, then I think that's also a way to make your case to Admin.

App. 377. This email raises the concern that CTCL was drafting documents regarding municipal funding for election administration for the Zuckerberg 5. *Id.* Based on CTCL contact with the Commission, the CTCL and its partners may have drafted documents for Commission staff as well. *Id.*

Kris Teske saw these acts of usurpation as well, describing them in her communications. App. 318-319. As early as July, she claimed that the Mayor's office was diverting her authority as a result of the CTCL Contract. She wrote in an e-mail:

> I haven't been in any discussions or emails as to what they are going to do with the money. I only know what has been on the news/in the media... Again, I feel I am being left out of the discussions and not listened to at the meetings.

Id. at 318. Kris Teske also wrote, "Celestine also talked about having advisors from the organization giving the grant who will be 'helping us' with the election and I don't know anything about that." *Id.* at 319. "I don't understand how people who don't have the

knowledge of the process can tell us how to manage the election." *Id.* Teske expressed

concern that voting laws may be being broken. She wrote:

> I just attended the Ad Hoc meeting on Elections…. I also asked when these people from the grant give us advisors who is going to be determining if their advice is legal or not…I don't think it pays to talk to the Mayor because he sides with Celestine, so I know this is what he wants. I just don't know where the Clerk's Office fits in anymore.

Id. at 318-319.

Some of the most aggressive and egregious usurpation of election administration

was performed by Michael Spitzer Rubenstein of NVAHI. Mr. Spitzer Rubenstein

performed tasks such as:

a. Providing instructions to the Central Count workers (App. 241-242);

b. Augmenting the City of Green Bay's "guide with the DS450" voting machine instructions; issuing a purchase order (*id.* at 49); asking about 62001 openers (*id.* at 243);

c. Corresponding with the Green Bay City Attorney and other employees to interpret Wisconsin law and even to develop absentee voting protocols potentially inconsistent with Wisconsin Law (App. 73);

d. Offering to take "curing ballots" off of the City of Green Bay's plate (*id.* at 135, 137, 138, 172-173);

e. "[H]elping Milwaukee assign inspectors to Central Count stations," and offering to do the same for Green Bay (*id.* at 244);

f. Setting up the voting machines and patterns in the Central Count location (App. 175, 178, 179-195);

g. Offering "additional resources" such as "funding available, both from ourselves, and the Center for Tech and Civic Life (thanks to Priscilla Chan and Mark Zuckerberg)" (*id.* at 124);

h. Determining whether to accept ballots after the deadline of 8 pm (*id.* at 291-292);

i. Allocating poll workers on election day (App. 252);

j. Teske stating finance person does not want NVAHI person in office, but Chief of Staff is running show (*id.* at 249-251);

k. Sharing Central Count guidance # of poll workers (*id.* at 252).

Further: "Michael Spitzer Rubenstein will be the on-site contact for the group [on Election Day]." App. 257-261. Mr. Spitzer Rubenstein was one of three people providing "supervision and check-in duties" for workers on the days of the election and subsequent vote counting. App. 306.

One of the functions of Mr. Spitzer Rubenstein's service as "on-site contact" was to coordinate with the contractor staff at the Hyatt Regency and KI Convention Center to set up wireless networks for Election Day operations. At Mr. Spitzer Rubenstein's instruction, there were three WiFi networks available. One was the general conference facility public network that would be available to members of the press and others. That network was password-protected, but the password was widely available. A second password-protected WiFi network was created for Central Count staff. Mr. Spitzer Rubenstein also directed that a third WiFi network be established, but that network was to be hidden and it was not

to be password-protected. Spitzer Rubenstein also ensured that "both networks reach[ed] [his] hotel room on the 8th floor" (App. 262-266).

Spitzer Rubenstein had unfettered access to the Central Count, ballots, and ballot counting:

1. Spitzer Rubenstein developed a diagram and map of the "Central Count" area of the election and developed roles for the staff to handle and count ballots, and Central Count procedures (App. 267-288);

2. Assigned inspectors for vote counting and polling places (App. 244);

3. Pushed for control of ballot curing process (App. 172-173);

4. Provided advice to Green Bay's City Attorney regarding interpretation of Wis. Stat. governing the timing and receipt of ballots (App. 289-292);

5. Instructed "pull the numbers on the absentee ballots returned and outstanding per ward" information on vote results so he could determine which wards were on which voting machines (App. 293-295);

6. Created a "poll worker needs" spreadsheet (App. 296-298);

7. Put himself in charge of transporting ballots to City Hall and then to Central Count on election day; and then counting them. (Discussion of "moving ballot boxes in the morning and evening." November, 2, 2020 (App. 280, 299-301);

8. Stated "I'm putting together instructions for the Central Count

workers, …" (App. 302);

9.   Corresponded with Saralynn Flynn, also of Vote at Home, who wrote: "here is the document I made to hand out to central count observers." (App. 241) The "document" he created warned Election Observers to "NOT interfere in any way with the election process," while CTCL personnel, partners, "pollworkers" and others deputized by CTCL, transported ballots, counted ballots, and "cured" defective mail in and absentee ballots, and otherwise exercised considerable control over the election process (App. 303);

10.   Had unrestricted access on election day to the Central Count floor (App. 304).

On election day, Spitzer Rubenstein had access to ballots and determined which ones would be counted or not counted. Spitzer Rubenstein wrote to Vanessa Chavez, Green Bay City Attorney, on November 3, 2020 at 9:29 pm: "Be prepared: ballots delayed." The text stated: "I think we're probably okay; I don't think anyone challenged the ballots when they came in." App. 304 (emphasis added). Spitzer Rubenstein explained that someone "prevented one of the drop box deliveries from getting to City Hall by 8 PM," so the ballots were "delayed," i.e., did not arrive on time as required by law. Forty-seven boxes of ballots were expected to be delivered and apparently, according to Spitzer Rubenstein's email, some of them were late but he decided that despite some of them being late, they were to be counted anyway because no one "challenged them." *Id.*

1. **The "Private Corporate Partners" Were from Out of State, and Not Necessarily Knowledgeable About Wisconsin Election Law, or Concerned About It.**

Notably, CTCL's "private corporate partners" were from out of State, and not necessarily knowledgeable about Wisconsin election law, or concerned about it. Ryan Chew of the Elections Group was located outside of Wisconsin. Further, Chew was described by Whitney May of CTCL as having "decades of election experience working with the Cook County Clerk in Illinois. They [Mr. Chew and Gail, also from the Elections Group] are available to discuss your drop box plans (and more!)." App. 374. CTCL is headquartered in Illinois. Spitzer Rubenstein is a lawyer who lives in Brooklyn. Kris Teske stated in her answer that "[m]any of these [election administration] decisions were made by persons who were not authorized to do so and some were made by people not qualified to make them as, again, election laws need to be followed to ensure the integrity of the election." App. 676.

2. **Safe Voting Was a Pretext—The Real Reason for CTCL's WSVP Grants was to Facilitate Increased In-Person and Absentee Voting in Specific Targeted Areas Inside the Zuckerberg 5.**

The real reason for CTCL's WSVP grants was to facilitate increased in-person and absentee voting in specific targeted areas inside the Zuckerberg 5. App. 7-27. Safe voting was merely a pretext.

On June 10, 2020, Vicky Selkowe informed the representatives of the other Zuckerberg 5 that: "[o]ur national funding partner, the Center for Tech & Civic Life, has one additional question area they'd like answered: "What steps can you take to update

registered voters' addresses before November? What steps can you take to register new voters? How much would each cost?" App. 604.

3.   The Zuckerberg 5 Became Beholden to CTCL as a Result of the WSVP's Private Funding and the WSVP's Provisions.

The documents show that the Zuckerberg 5 became beholden to CTCL as a result of the WSVP's private funding and the WSVP's provisions.

On August 1, 2020, Maggie McClain of Madison emailed Maribeth Witzel-Behl stating: "is there an approval/letter giving the go-ahead for this? Or an okay from CTCL saying the *grant funds could be used for this*? I need something to attach to the requisition." App. 607.

On August 31, 2020, Kenosha sought and obtained CTCL permission for purchasing 3 DS450 high speed ballot tabulators for use at absentee central count locations at an amended cost of $180,000 instead of $172,000. App. 378-380. Madison sought similar approval from CTCL regarding election administration financing. App. 437-439, 441-443, 446, 450, 472-473.

On September 22, 2020, Karalyn Kratowitz, the interim deputy mayor of Madison, asked CTCL for instruction on and permission as to how to spend the money. App. 446.

On January 7, 2021, pursuant to the agreement, CTCL told Madison to report by January 31, 2021. App. 609.

The Zuckerberg 5 were periodically required to report to CTCL on election administration. All the Zuckerberg 5 were required to report to CTCL on their expenditures

by January 31, 2021. App. 4 (Racine), 589 (Milwaukee), 592 (Madison), 596 (Kenosha), 599 (Green Bay).

4.   The Zuckerberg 5 Ceded Administrative Control Over the Election to CTCL and its Private Partners, Including WisVote Data Sharing, so they Could Collectively Facilitate Increased In-Person and Absentee Voting in the 2020 Election.

As set forth above, CTCL's stated and implied conditions led to the Zuckerberg 5's municipal clerks and other staff to sometimes eagerly step aside, and other times to be pushed aside, to let CTCL and its private corporate partners engage in aspects of election administration—including exclusive free access to WisVote data not available to the public and not for free (e.g., $12,500 for copy of statewide WisVote data). *See, e.g.*, App. 7-27. CTCL and the private corporations, as revealed by the documents, had an ulterior motive in the WSVP to facilitate increased in-person and absentee voting in the Zuckerberg 5 and among their preferred racial groups. *Id.*

Chapter 5
Corporate Legal Defense to Facilitate Obstruction Might Violate the
Wisconsin Ethics Code

The unlawful actions of various Wisconsin election officials has opened them up to legal liability. In certain contexts, Wisconsin's election officials can enjoy legal immunity; in others, they can be represented by government attorneys or government-financed attorneys. Finally, in some contexts, unlawful actions of officials can place them in a position where they-- just like any other members of the public-- may have to hire and pay their own attorneys to defend themselves.

CEIR's Election Officials Legal Defense Network (EOLDN), announced in December of 2021, provides legal services for government officials on the hook for misconduct. In Wisconsin, this is not a solution to these election officials' legal problems. In fact, accepting EOLDN's legal services may get these election officials into more jeopardy, because the EOLDN system facially violates Wis. Stat. § 19.59 (1)(b), prohibiting such transactions. Wis. Stat. § 19.59 (1)(b) provides:

> (b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official.

The problem is that CTCL and CEIR are Zuckerberg-Chan financed entities that worked together as a joint venture in the 2020 election. CTCL received $350 million for the 2020 election. CEIR received $69 million for the 2020 election. CTCL funded the $8.8

million Wisconsin Safe Voting Plan (WSVP), which the cities of Milwaukee, Madison, Green Bay, Racine and Kenosha used to purchase illegal drop boxes and the provision of those funds constitutes election bribery under Wis. Stat. § 12.11.

EOLDN's three leaders: David Becker, Bob Bauer and Ben Ginsberg have different roles regarding the Zuckerbergs' CTCL and WSVP. Becker, as President of CEIR, received $69 million from Zuckerberg-Chan. Bauer and Ginsberg are election law attorneys who likely represent-- or are being paid by-- CEIR, CTCL, or related entities. Not surprisingly, all three—Becker, Bauer and Ginsberg—have publicly supported CTCL's distributions in Wisconsin as lawful.

EOLDN should know that CTCL and CEIR are potential parties or witnesses to future illegal drop box or election bribery litigation or prosecutions. In turn, CEIR and related entities are disqualified from providing attorneys for Wisconsin election bribery defendants because they are potential parties, potential witnesses or biased due to previous representation of related parties. Further, it appears, EOLDN, on behalf of Zuckerberg and Chan, are improperly coordinating legal defenses of election officials to protect CTCL, CEIR, Zuckerberg, Chan and related entities and individuals.

By providing free legal defense services for election officials in these subject areas, EOLDN may be violating the first part of Wis. Stat. § 19.59 (1)(b), which prohibits such transactions:

> No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or

indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment.

The law applies to these circumstances as follows. The "person" is EOLDN or their attorney. The local public official is the election official receiving free EOLDN legal services. The "anything of value" provided is the free legal defense services provided by EOLDN. The gift of the free legal services could reasonably be expected to influence the election officials' official actions or judgment. Since EOLDN's free legal services will have foremost in mind protecting the interests of CTCL, CEIR, Zuckerberg and Chan, it will influence the election officials' official actions and judgment in defending Wis. Stat. § 5.06 administrative corrections and related criminal prosecutions. So, all the elements are satisfied for the transaction to be deemed prohibited.

By providing free legal defense services for election officials in these subject areas, EOLDN may be violating the second part of Wis. Stat. § 19.59 (1)(b) prohibiting such transactions:

> No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it …could reasonably be considered as a reward for any official action or inaction on the part of the local public official

The law applies to the circumstances as follows. The "person" is EOLDN or their attorney. The local public official is the election official receiving free EOLDN legal services. The "anything of value" provided is the free legal defense services provided by EOLDN. EOLDN or its attorney's gift of the legal services could reasonably be considered a reward for the official's actions regarding the illegal drop boxes, election bribery and/or violating

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the special voting deputies law.   Recall CTCL, Zuckerberg and Chan financed the illegal

drop boxes and election bribery, so EOLDN's free legal services to the election officials

could be reasonably seen as a "reward" for their participation in unlawful actions related

to the election.

Chapter 6

Wisconsin Election Officials' Widespread Use of Absentee Ballot Drop Boxes

Facially Violated Wisconsin Law

In Wisconsin, election officials' unprecedented use of absentee ballot drop boxes facially violated Wisconsin law. This practice of unlawful absentee ballot drop boxes was particularly pervasive in the cities of Milwaukee, Madison, Kenosha, Racine and Green Bay. These bulk absentee ballot drop boxes were privately financed by Center for Tech and Civic Life (CTCL). The WSVP and CTCL's grant acceptance letter incorporating the WSVP is the agreement in which the city agreed to take CTCL's money to purchase and place absentee drop boxes in targeted neighborhoods. App. 10, 16-17.

In total, the WSVP provided \$216,500 for unlawful absentee ballot drop boxes in the Zuckerberg 5. App. 17. The WSVP provided Green Bay \$50,000 for absentee ballot drop boxes. App. 16. The WSVP provided Kenosha \$40,000 for absentee ballot drop boxes. App. 16. The WSVP provided Madison \$50,000 for absentee ballot drop boxes. App. 16. The WSVP provided Milwaukee \$58,500 for absentee ballot drop boxes. App. 16. The WSVP provided Racine \$18,000 for absentee ballot drop boxes. App. 17.

The use of absentee ballot drop boxes has been successfully challenged in state court as being unlawful. In a case in the Waukesha County Circuit Court, the plaintiffs sued the WEC to challenge 2020 guidance memos that the WEC issued to municipal clerks. Complaint, Teigen v. Wisconsin Elections Commission, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. June 28, 2021) (under review by the Wisconsin Supreme Court), available

at App. 649-660. In particular, the plaintiffs challenged a memorandum that purported to authorize unstaffed ballot drop boxes:

> Despite this requirement in the statutes [i.e., the requirement that an absentee ballot either be returned by mail or be returned by the voter "in person, to the municipal clerk." Wis. Stat. § 6.87(4)(b)1], WEC Commissioners sent a memo to municipal clerks dated August 19, 2020, (the "August 2020 WEC Memo") stating that absentee ballots do not need to be mailed by the voter or delivered by the voter, in person, to the municipal clerk but instead could be dropped into a drop box and that the ballot drop boxes could be unstaffed, temporary, or permanent. (A true and correct copy of the August 2020 WEC Memo is attached hereto as Exhibit B.).
>
> Id. ¶ 10, available at App. 651.

The court granted the plaintiffs motion for summary judgment and declared the use of ballot drop boxes, outside of narrow exceptions, to be inconsistent with Wisconsin law:

> For the reasons set forth by the Court on the record at the January 13, 2022 hearing, the Court hereby declares that WEC's interpretation of state statutes in the Memos is inconsistent with state law, to the extent they conflict with the following: (1) an elector must personally mail or deliver his or her own absentee ballot, except where the law explicitly authorizes an agent to act on an elector's behalf, (2) the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk, (3) the use of drop boxes, as described in the Memos, is not permitted under Wisconsin law unless the drop box is staffed by the clerk and located at the office of the clerk or a properly designated alternate site under Wis. Stat. § 6.855.
>
> Order Granting Summary Judgment for Plaintiffs, Teigen v. Wisconsin Elections Commission, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. January 20, 2020), available at App. 66.

Accordingly, the Zuckerberg 5's privately funded absentee ballot drop boxes in the 2020 election were unlawful under Wis. Stat. § 6.87(4)(b)1 and § 6.855. Thus, the

Zuckerberg 5 and CTCL's agreement for CTCL-funded purchase and placement of absentee ballot drop boxes was also unlawful and contrary to public policy. We suggest below legislative action that would make this prohibition even more clear.

Chapter 7

The Wisconsin Elections Commission (WEC) Unlawfully Directed Clerks to Violate Rules Protecting Nursing Home Residents, Resulting in a 100% Voting Rate in Many Nursing Homes in 2020, Including Many Ineligible Voters

Contrary to statements made by several groups and media sources over the past months, the OSC has uncovered evidence of election fraud in the November 2020 election. Rampant fraud and abuse occurred statewide at Wisconsin's nursing homes and other residential care facilities in relation to absentee voting at these facilities. This fraud and abuse was the ultimate result of unlawful acts by WEC's members and its staff, the end results being:

1. Residents were illegally assisted with "marking" their ballots by nursing home staff and administrators;

2. Absentee ballots for residents were illegally handled by facility staff and administrators;

3. Resident absentee ballots were illegally "witnessed" by nursing home staff and administrators;

4. Suspected forger of resident signatures by nursing home staff and administrators;

5. Improbably high voting rates for residents at nursing homes; and

6. Ballots cast by residents—

   1. Where those residents were unaware of their surroundings, with whom they are speaking at any given time, or what year it is; and/or

2.	Where those residents' right to vote had been taken away by court order because they have been adjudicated as mentally incompetent.

Through these acts, the members and staff of WEC mandated widespread election fraud to take place where our most vulnerable adult citizens reside.

The OSC has spent significant time and resources investigating the fraud and abuse that occurred at Wisconsin's nursing homes. However, that part of the investigation is nowhere near complete. While the OSC has been able to audit the votes of several nursing homes in five counties, and has interviewed the families of many residents who have been abused, the OSC believes a state-wide, complete audit of all absentee votes from all facilities governed by Wis. Stat 6.875 is necessary. The OSC is continuing to pursue this avenue of the investigation with an eye towards completing that audit.

There are four distinct types of Elderly Care Facilities in Wisconsin, Assisted Living (including assisted living apartments), Adult Day Care Centers, Nursing Homes and Memory Care Units. Many of the memory care units are operated within the Nursing Home environment. In total, there are about 92,000 people in Wisconsin who reside in these facilities.

Wisconsin law defines "election fraud" at Wis. Stat. § 12.13. That section provides in pertinent part—

"12.13 Election Fraud

(1) ELECTORS. Whoever intentionally does any of the following violates this chapter:

	…

(h) Procures, assists or advises someone to do any of the acts prohibited by this subsection.

(2) ELECTION OFFICIALS.

…

(b) No election official may:

…

3. Permit registration or receipt of a vote from a person who the official knows is not a legally qualified elector or who has refused after being challenged to make the oath or to properly answer the necessary questions pertaining to the requisite requirements and residence; or put into the ballot box a ballot other than the official's own or other one lawfully received.

4. Intentionally assist or cause to be made a false statement, canvass, certificate or return of the votes cast at any election.

…

7. In the course of the person's official duties or on account of the person's official position, intentionally violate or intentionally cause any other person to violate any provision of chs. 5 to 12 or which no other penalty is expressly prescribed.

(3) PROHIBITED ACTS. No person may:

…

(L) When not authorized, during or after an election, break open or violate the seals or locks on a ballot box containing ballots of that election or obtain unlawful possession of a ballot box with official ballots; conceal, withhold or destroy ballots or ballot boxes; willfully, fraudulently or forcibly add to or diminish the number of ballots legally deposited in a ballot box; or aid or abet any person in doing any of the acts prohibited by this paragraph.

…

(N) Receive a ballot from or give a ballot to a person other than the election official in charge.

…

(P) Receive a completed ballot from a voter unless qualified to do so."

Wisconsin has enacted rules specifically related to the conduct of absentee voting in nursing homes and other residential care facilities. These rules are found in Wis. Stat. § 6.875. Wis.. Sat. § 6.875(2)(a) specifically states—

> Absentee voting in person inside residential care facilities and qualified retirement homes shall be conducted by municipalities only in the manner prescribed in this section. At any residential care facility or qualified retirement home where a municipality dispatches special voting deputies to conduct absentee voting in person under this section, the procedures prescribed in this section are the exclusive means of absentee voting in person inside that facility or home for electors who are occupants of the facility or home.

Among the rules that must be followed are that municipal clerks or boards of election commissioners <u>must</u> designate "Special Voting Deputies" (SVDs) for the purpose of supervising absentee voting in qualified retirement homes and residential care facilities, and that these SVDs <u>must</u> be dispatched to nursing homes to supervise absentee voting in those facilities, except in very limited circumstances.

If a resident at a nursing home or other residential care facility requests an absentee ballot, and SVDs are dispatched to that facility (which again must happen except in very limited circumstances) the law provides that the clerks or the board of electors <u>must</u> give the ballot to the SVDs "who shall personally deliver the ballot to the elector" when the SVDs visit the facility.

Once the ballot is delivered, the SVDs may assist the resident with "marking" the ballot. Importantly, the only people authorized by Wisconsin law to assist a resident in

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"marking" an absentee ballot are SVDs and "immediate family members." It is illegal for anyone else under any circumstances to do so. Further, the law specifically provides that "the [SVDs] **shall not accept** an absentee ballot submitted by an elector whose ballot was not issued to the elector by the [SVDs]" and that "[a]ll voting shall be conducted in the presence of the [SVDs]."

Once voting is complete on the day of an SVD's visit to the facility, Wisconsin law provides—

> **(d)** Upon completion of the voting on each day at each residential care facility or qualified retirement home, the deputies shall seal the absentee ballot envelopes and any absentee ballot applications inside a carrier envelope and shall seal the carrier envelope and sign their names to the seal. The deputies shall place the envelope inside a ballot bag or container. As soon as possible after visiting each residential care facility or retirement home, but not later than 18 hours after the visit, the deputies shall deliver the ballot bag or container to the clerk or board of election commissioners of the municipality in which the elector casting the ballot resides.
>
> There is no provision in Wis. Stat. § 6.875 for absentee ballots from nursing home

residents to be returned by mail, except in the case of a voter that "maintains a residence outside the facility or home" in which case the voter may request and return an absentee ballot in the standard manner as provided for elsewhere in the statutes. Wis. Stat. § 6.875(ar)2.

Despite the clear mandates of Wisconsin law, in a June 24, 2020 memorandum directed to all clerks of the state, WEC directed clerks not to send SVDs to facilities, and to instead mail ballots to voters in those facilities. WEC further stated that "The regular rules for absentee voting by mail will apply to ballots sent by mail to care facility voters."

On September 25, 2020, WEC forwarded to all clerks of the State two documents, a "Sample Nursing Home and Care Facility Letter" (the "Facility Letter") and a training document entitled "Absentee Voting at Nursing Homes and Care Facilities" (the "Training Document").

The Facility Letter was provided to clerks as a template for letters to be sent by the clerks to nursing homes in their jurisdiction, directing those facilities as to the purported new rules for absentee voting for the November 2020 election. In the Facility Letter, WEC told the clerks to advise facilities that the normal restrictions against facility staff assisting residents with voting will not be in place "because of SVDs being restricted from visiting." It further provided that "[r]esidents who receive ballots will have to vote their ballot, have a witness provide required information on the return envelope, and return their ballot by mail in order to participate." The letter also stated that facility staff may assist residents in "completing the information required on the voter registration form" and completing absentee ballot request forms.

In addition to providing further details as to how facility staff could assist residents with registration, absentee ballot application, and voting, the Training Document stated—

As a care facility administrator or staff member, you are able to:

1. Assist residents in filling out their ballots or certificate envelopes.

2. Assist residents in completing voter registration forms and absentee requests.

3. Sign the special certificate envelope (EL-122sp) if necessary (see below for explanation).

4. Witness ballots.

The Training Document also provided certain "Absentee Voting FAQs" with answers thereto, including—

Q: How do residents of my facility return their ballot? We used to have people (SVDs) come to the facility and administer the voting and take the ballots back. Now what is expected?

A: Ballots should be mailed back to the clerk using the postage-paid return envelope provided by the clerk with the voter's ballot. They can also be returned to the clerk's office in-person at the request of the voter.

Q: Who can assist the voter in voting their ballot?

A: Anyone can assist the voter in reading and/or marking their ballot, except the voter's employer, including care facility staff and family. Normally, care facility staff are restricted from assisting voters, but this restriction is not in effect because the voter is casting their ballot by mail. Wis. Stat. § 6.87(5)

Q: Can a resident's ballot be returned using a drop box at the Town/Village/City Hall?

A: Yes, the ballot may be returned to a drop box or directly to the clerk's office at the request of the voter. All ballots must be received by 8:00 PM on election day in order to be counted. Not all municipalities offer drop boxes, so you should check with the clerk to see if one is available for ballot return.

Each and every WEC directive identified above in regard to absentee voting in nursing homes and other resident care facilities is a direct violation of Wisconsin law, and ultimately encouraged widespread fraud in regard to absentee voting at these facilities.

In addition to other violations, WEC's directives were illegal in the following ways:

1. Directing that facility staff may assist voters in registering to vote, applying for an absentee ballot and/or assisting the voter in marking the ballot are all violations of provisions of Wis. Stat. § 6.875;

2. Directing that clerks not send SVDs to any facilities violated the basic tenets of Wis. Stat. § 6.875 that absentee voting in nursing homes "shall" be conducted in compliance with that statute and that all absentee voting at nursing homes must be conducted "in the presence of [SVDs];"

3. Directing clerks to mail ballots directly to nursing home residents violated the rule that absentee ballots requested by facility residents <u>must</u> be given first to SVDs, and then the SVDs are the <u>only</u> persons authorized to then give those ballots to the residents;

4. Directing that absentee ballots may be returned by mail, by placing them in a ballot drop box, and/or by returning them directly to the clerk (by someone other than an SVD) "at the request of the voter" all violate the rule that these absentee ballots are to be returned <u>only</u> to an SVD, who then <u>must</u> place them in a ballot bag or container and return them to the clerk within 18 hours.

Ultimately, WEC's directives mandated that widespread "election fraud" be undertaken in relation to the November 2020 election. As is noted above, "election fraud" occurs when ballots are given to, or received by anyone other than "the election official in charge" or when a person receives a completed ballot from a person "unless qualified to do so."

WEC's directives caused ballots to be mailed directly to nursing home residents rather than the "election officials in charge"—who would have been the SVDs. By the same token, it caused completed ballots to be illegally given to facility staff or returned by mail rather than the SVDs, violating both the rule that ballots cannot be given to anyone other than the "election official in charge" as well as the prohibition against receiving a completed ballot from someone "unless qualified to do so."

The <u>only</u> persons qualified to receive completed ballots from nursing home residents are, and were, SVDs. The law did not change before or after the November 2020 election, and WEC's directives were in direct violation thereof. As a result, WEC's directors and

staff committed election fraud themselves by mandating and/or encouraging others to commit acts prohibited by the election fraud statute.

The OSC has evidence that facility staff and directors—

1. Assisted residents in completing ballots;

2. Assisted residents in obtaining absentee ballots;

3. Pressured residents to vote;

4. Collected completed ballots from residents;

5. Forged signatures of residents;

6. Illegally returned residents' ballots to the municipal clerks by mail, by placing the ballots in drop boxes, and/or delivering them directly to the clerks;

7. Pressured and/or assisted incompetent persons to complete and cast ballots in the November 2020 election, up to and including persons who have had their right to vote take away by court order due to mental incompetence.

Not only did WEC's directives mandate and/or encourage violations of Wis. Stat. § 6.875 and the election fraud statute: it led to absurd results relating to nursing home voting in the November 2020 election. The following chart shows the registered voting rates in the November 2020 election for nursing homes that were vetted by the OSC in Milwaukee, Racine, Dane, Kenosha, and Brown Counties:

County	# of Nursing Homes Vettted	# of Registered Voters	# of Voters Nov 2020	% of Registered Voters that Voted
Milwaukee	30	1084	1084	**100%**
Racine	12	348	348	**100%**
Dane	24	723	723	**100%**
Kenosha	9	866	841	97%
Brown	16	280	265	95%

It is important to note that the above chart only reflects voting at the nursing homes that the OSC has been able to vet to this juncture. There are more facilities in these counties, and after auditing the votes from other facilities, the above percentages may change. Further, as is noted above, the OSC believes a complete state-wide audit of absentee ballots sourced from nursing home and other residential care facility residents is necessary.

Election fraud is a crime. The Racine County Sheriff's Office recommended criminal prosecution of certain members of WEC relating to their instructions to municipal clerks not to send SVDs to nursing homes for the November 2020 Presidential election. Specifically, the Sheriff recommended charges for WEC Commissioners Margaret Bostelmann, Julie Glancey, Ann Jacobs, Dean Knudson, and Mark Thomsen. The recommended charges are the same for each Commissioner, and include:

1. Misconduct in Public Office in violation of Wis. Stat. § 946.12(2) (Felony);

2. Election Fraud—Election Official Assisting with Violations in violation of Wis. Stat. § 12.13(2)(b)7 (Felony);

3. Party to the Crime of Election Fraud—Receive Ballot Non-Election Official

in violation of Wis. Stat. § 12.13(3)(n) (Misdemeanor);

4. Party to the Crime of Election Fraud—Illegal Ballot Receipt in violation of Wis. Stat. § 12.13(3)(p) (Misdemeanor);

5. Party to the Crime of Election Fraud—Solicit Assistance in violation of Wis. Stat. § 12.13(3)(s) (Misdemeanor)

In a recent letter, Racine County District Attorney Patricia Hanson, after stating she did not have jurisdiction to prosecute, stated to Sheriff Christopher Schmaling that, in her expert legal opinion, multiple members of WEC acted "contrary" to Wisconsin Elections laws. District Attorney Hanson stated:

> Despite knowing that what they were doing was contrary to law and despite being told by the Governor's Office that they were exceeding their authority, the WEC instructed municipal and county clerks to eliminate the SVD process for elections in 2020. Proof of this comes directly from the recordings of the WEC meetings that can be found on their website and their recorded meetings.

District Attorney Hanson further stated:

> It is appalling to me that an appointed, unelected group of volunteers, has enough authority to change how some of our most vulnerable citizens access voting. Dispensing with the mandatory process created by the legislature of using sworn and trained SVDs to assist citizens in nursing homes, directly led to what occurred at Ridgewood Care Center in Racine County. Residents who did not request ballots voted because someone else made a request for a ballot on their behalf and then voted on their behalf. If even one person's right to freely choose to vote or not to vote was diminished, then a travesty of justice has occurred.

While the Racine County District Attorney has decided not to prosecute on jurisdictional grounds, the OISC has learned that the Racine County Sheriff's Office has forwarded referrals to the District Attorneys for the resident counties of the above-noted

WEC members—St. Croix, Sheboygan, Green Lake and Milwaukee Counties. No decision has been made by those District Attorneys regarding prosecution as of this writing.

In an October 28, 2021 press release, WEC Chairman Ann Jacobs inaccurately denied that anyone at WEC broke the law and attempted to justify WEC's possibly unlawful acts by stating that had they not performed them, "many residents in Wisconsin care facilities could have and would have been disenfranchised and not able to vote in the 2020 elections." The OSC finds this statement to be no excuse.

WEC's solution to the potential "disenfranchisement" of nursing home residents who wished to vote absentee (a privilege under the law) was to completely strip away the protections afforded to those persons by Wisconsin law and allow nursing home residents to be subjected to undue influence, overzealous solicitation, and outright fraud.

Under Wisconsin law, while voting is a right, voting by absentee ballot is a privilege. Wisconsin law specifically provides that "the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses." Beyond the stringent safeguards of absentee voting in general, absentee voting in nursing homes requires specialized supervision precisely because those facilities house our state's most vulnerable residents.

In stark contrast to what Wisconsin law seeks to prevent, WECs directives led to the abuse of some of our State's most vulnerable citizens. Many residents were pressured

to vote when there is no scenario under which that should have ever happened legally or morally. The OSC conducted interviews with the families of several facility residents who were extremely vulnerable, and yet cast ballots in the November 2020 election. Among the stories we were told were—

1. In Brown County Facility 1, 20 absentee ballots were cast. A study of the Absentee Ballot Envelopes obtained through open records request revealed all 20 of the envelopes were witnessed by the same person. At this facility, Resident A voted, and Resident A's family provided copies of that resident's signature against the signature on the absentee envelope, and they do not match. Further, Resident A does not have the mental capacity to vote as is evinced in a video interview.

2. At the same facility, Resident B, according to WisVote data, voted twice, both by absentee ballot.

3. In Brown County Facility 2, Resident C voted in 2020. According to family, Resident C was not of sound mind for over 10 years. This is documented in a video interview;

4. In Brown County Facility 3, Resident D was taken from the facility to vote by family and guardian to Resident D's assigned polling location. Resident D had registered to vote at this location on Oct 29th as well. When Resident D presented herself to vote on election day, the Resident D was told that Resident D had already voted. After questioning from family, Resident D recollected that someone at the nursing home had come around talking about voting at the nursing home, however, Resident D denied voting at the home. WisVote shows her voting absentee;

5. In Dane County Facility 1, Resident E, who has been adjudicated incompetent since 1972, voted in 2020. Video of Resident E shows Resident E is clearly not mentally capable of voting;

6. In Dane County Facility 2, Resident F never requested an absentee ballot for the November 2020 election, yet received one. Resident F's guardian intercepted the ballot and subsequently Resident F did not vote. The guardian notified the nursing home that Resident F was no longer going to be voting yet in the Spring of 2021, WisVote records reveal that Resident F voted again;

7. In Kenosha Facility 1, Resident G voted absentee in the Nov 2020 election. Resident G was interviewed on video and it shows she is clearly incapable of voting;

8. In Kenosha Facility 2, Resident H voted absentee in November of 2020. Resident H's guardian reported it as Resident H is incapable of voting as Resident H suffered from severe dementia. However, WisVote records indicate Resident H voted throughout the calendar year 2020;

9. In Milwaukee County Facility 1, WisVote data shows 3 adjudicated incompetent voters voted in the November 2020 election. However, it was actually 2 individuals with one casting two ballots;

10. In Milwaukee County Facility 2, Resident I is 104 years old and clearly incompetent. Resident I's family indicated Resident I had been incompetent for several years. This is an extremely egregious case as shown by video of Resident I with family. Resident I cannot comprehend anything;

11. In Outagamie County facility 1, Resident J, who has been adjudicated incompetent not only voted in the November 2020 election, but she also voted in February 2021. The video of Resident J verifies the fact that Resident J is incompetent.

12. In Washington County Facility 1, Resident K was found incompetent in 2018 by two separate doctors. Resident K cast a ballot in the November 2020 Presidential election. Resident K passed in November of 2021.

It is "disenfranchisement" when electors are pressured to fill out ballots they did not wish to or in a way they don't desire or even understand. It is "disenfranchisement" when ballots are illegally cast on behalf of persons who have had their right to vote taken away by the courts of this State due to their mental incompetence. In no way was WEC's mandating illegal activity a "solution" to "disenfranchisement" and to suggest that WEC's actions were a good faith effort at doing so ignores the facts and the law.

WEC's unlawful activities facilitated and encouraged possible widespread criminality and election fraud. Aside from the fact that they were legally and morally

wrong, these acts led to 100% voting rates in many nursing homes in Brown, Dane, Kenosha, Milwaukee and Racine Counties and incapacitated people voting statewide. Given that there are approximately 92,000 residents of facilities governed by Wis. Stat. § 6.875 statewide, the fact that tens of thousands of illegal ballots from these facilities were counted casts doubt on the 2020 Presidential election result.

Chapter 8

WEC Also Unlawfully Encouraged Evasion of Ballot Security Measures Related to "Indefinitely Confined" Voters at the Behest of Outside Corporations

Wisconsin, like many States, has strict absentee voting laws. These laws are designed to avoid the many prevalent dangers of fraud or abuse that are inherent in an absentee setting. It was never the intention of the Legislature to make absentee voting easily accessible from one's home without meeting voting identification requirements and complying with stringent voter protection laws. However, the Legislature made a special, narrow exception for indefinitely confined voters.

This exception for voting absentee applies when voters are confined to their homes and declare themselves to be indefinitely confined. An elector who is indefinitely confined because of age, physical illness, or infirmity, or is disabled for an indefinite period may, by signing a statement to that effect, require that an absentee ballot be sent to the elector automatically for every election. There are two requirements to vote indefinitely confined. The voter must be indefinitely confined to their home, and the reason for this confinement must be the voter's age, physical illness, sickness, or disability. While one can indefinitely confine themselves to their home for any reason, that confinement does not qualify for an absentee ballot unless the confinement is for a statutory reason—not including a reasonable or unreasonable fear of becoming ill from COVID.

This statute was grossly misconstrued by the Dane and Milwaukee County clerks. Both clerks issued statements that they would send absentee ballots to voters who were indefinitely confined to their homes because of a fear of contracting COVID. The Wisconsin Supreme Court corrected this legally erroneous statement. However, during the time the clerks made their announcement until the judiciary forced the clerks to stop their announcements, the number of newly designated indefinitely confined voters skyrocketed. The clerks did nothing to remove these voters or determine which voters met the true legal definition of "indefinitely confined." Instead, the clerks sent these registrants absentee ballots. In doing so, they not only gave ballots to unqualified indefinitely confined voters but skirted a very important protection for election fraud.

Voter identification is required for every ballot issued in Wisconsin except to the indefinitely confined voter.

Instead, the voter "may, in lieu of providing proof of identification, submit with his or her absentee ballot a statement . . . which contains the name and address of the elector and verifies that the name and address are correct." Wis. Stat. § 6.87. This feature of indefinitely confined voting was also abused. In one documented incident from the Dane County recount, a voter reported that he called the clerk's office and requested an absentee ballot. He was asked if he had identification that had his current address. Having just moved to the city, he responded that he had not obtained a new identification card. He was told not to worry, that he could still get a ballot by declaring himself to be indefinitely confined. Then, he was instructed to say that he would provide proof of his address by statement.

The clerk's office said not only would it send him a ballot for the 2020 general election, but they would send him a ballot to his home every year after without his having to request the ballot and without the necessity for identification until he stopped voting or reported that he was no longer indefinitely confined. The voter, an honest individual, declined the clerk's suggestion and reported his experience.

This was not the only abuse of the indefinitely confined voting law. A flagrant example is that of State Senator Patricia Schachtner. Schachtner and her husband signed statements indicating that they were indefinitely confined voters for the November 2020 election and opted to receive absentee ballots pursuant to Wis. Stat. § 6.87(2). However, social media showed the Schachtner family to be active outside their home in the months prior to and during the election both for personal recreation and as Schachtner campaigned for reelection. Additionally, Schachtner was named to be a Presidential elector to cast electoral college votes for Biden at the Wisconsin Capitol on December 14, 2020, approximately one month after the election for which she was indefinitely confined.

This is an egregious violation of the indefinitely confined status. One cannot be confined to one's home for a length of time with no definite end because of age, physical illness or infirmity, or disability and also campaign for reelection, enjoy social and family life, and appear at the Wisconsin Capitol to vote. Clearly, Schachtner and her husband were not indefinitely confined to their home when she requested and cast her ballot in the 2020 election. Schachtner and many others failed to follow our election law and no enforcement action was taken.

Our Republic and way of life is in danger if we fail to follow and enforce the law. The rule of law requires that legal rules be publicly known, consistently enforced, and even-handedly applied. Violating the rule of law can lead to uncertainty. Uncertainty provides opportunities for arbitrary power. Without the rule of law, citizens may be tempted to take justice into their own hands.

My investigation will determine why the clerks failed to act on their obligation to review and expunge from the voter rolls those claiming to be indefinitely confined voters when the clerk has "reliable information that [the] . . . elector no longer qualifies for the service." Wis. Stat. § 6.86(2)(b). I am concerned that the electors who claimed they were indefinitely confined, but were not physically ill, infirm, elderly, or disabled failed to take steps to remove themselves from that status prior to the November 3, 2020, election. *See* Wis. Stat. § 6.86(2)(a). I am even more concerned that ineligible voters might have taken advantage of that status in order to vote without the need to properly identify themselves. I expect to issue another report that includes the impact of indefinitely confined voting abuses and how the Legislature can prevent these abuses in the future to restore confidence in the rule of law.

Chapter 9

Wards Under Guardianship Order Voted Unimpeded by Wisconsin's Election Officials as They Are Not Recorded in the WisVote Voter Database, Even Though the Circuit Courts Have This Information.

Wis. Stat. § 6.03 disqualifies from voting those citizens who are incapable of understanding the voting process or are under court-ordered guardianship, unless the court has determined that the right to vote is preserved. The statute states:

6.03   Disqualification of electors.

(1) The following persons shall not be allowed to vote in any election and any attempt to vote shall be rejected:`

(a) Any person who is incapable of understanding the objective of the elective process or who is under guardianship, unless the court has determined that the person is competent to exercise the right to vote.

(b) Any person convicted of treason, felony or bribery, unless the person's right to vote is restored through a pardon or under s. 304.078 (3).

(2) No person shall be allowed to vote in any election in which the person has made or become interested, directly or indirectly, in any bet or wager depending upon the result of the election.

(3) No person may be denied the right to register to vote or the right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated incompetent in this state. If a determination of incompetency of the person has already been made, or if a determination of limited incompetency has been made that does not include a specific finding that the subject is competent to exercise the right to vote, and a guardian has been appointed as a result of any such determination, then no determination of incapacity of understanding the objective of the elective process is required unless the guardianship is terminated or modified under s. 54.64.

The Help America Vote Act, section 21083, provides "if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. §§ 1973gg–2(b))

[now 52 U.S.C. § 20503(b)], that State shall remove the names of ineligible voters from the computerized list in accordance with State law." Wisconsin is described in section 20503(b); so, section 21083 requires the state's election officials to follow state law on removal of ineligible voters from the computerized list. Accordingly, section 21083 requires that WEC remove the names of ineligible voters from the computerized list, WisVote, in accordance with Wisconsin law.

In Wisconsin, ineligibility information about wards under guardianship without the right to vote is available from the circuit courts. Information about persons who are incapable of understanding the objective of the elective process is available from family, friends, medical authorities and nursing homes.

Under federal law, WEC is legally required to include in WisVote ineligibility information about ineligible wards and incapacitated persons. WEC is also legally required under federal law to distribute to the State's municipal clerks lists of wards and incapacitated person so as to prevent these ineligible non-citizens from election day registration and voting.

In violation of its federal and state legal duties, Wisconsin election officials failed to prevent wards and incapacitated persons from voting in the 2020 Presidential election—casting doubt on the election result.

Chapter 10

Non-citizens Voted Unimpeded by Wisconsin's Election Officials, as They Are not Recorded in the WisVote Voter Database, Even Though Wisconsin Law Requires Citizenship to Vote.

Wis. Stat. § 6.02 requires citizenship to be qualified as an elector. The statute states:

6.02   Qualifications, general.
(1) Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector.
(2) Any U.S. citizen age 18 or older who moves within this state later than 28 days before an election shall vote at his or her previous ward or election district if the person is otherwise qualified. If the elector can comply with the 28-day residence requirement at the new address and is otherwise qualified, he or she may vote in the new ward or election district.

Section 21083 of the Help America Vote Act provides "if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. §§ 1973gg–2(b)) [now 52 U.S.C. § 20503(b)], that State shall remove the names of ineligible voters from the computerized list in accordance with State law." Wisconsin is described in section 20503(b); so, section 21083 requires the state's election officials to follow state law on removal of ineligible voters from the computerized list. Accordingly, section 21083 requires that WEC remove the names of non-citizens, who are by definition ineligible voters, from the computerized list, WisVote, in accordance with Wisconsin law.

In Wisconsin, ineligibility information about non-citizens is available from the Department of Transportation. The Department of Transportation issues driver licenses to non-citizens who qualify. Under federal law, WEC is legally required to include in

WisVote ineligibility information about non-citizens from the Department of Transportation. WEC is also legally required under federal law to distribute to the state's municipal clerks lists of non-citizens so as to prevent these ineligible non-citizens from election day registration and voting.

In violation of its federal and state legal obligations, Wisconsin election officials failed to prevent non-citizens from voting in the 2020 Presidential election—casting doubt on the election result.

Chapter 11

Milwaukee, Madison, Racine, Kenosha, and Green Bay Election Officials May Have Violated the Federal and Wisconsin Equal Protection Clauses by Not Treating All Voters Equally in the Same Election.

Importantly, the Zuckerberg 5 election officials violated Federal and Wisconsin Equal Protection Clauses by not treating all voters the same in the same election. Treating all voters equally in the same election is a bedrock principle of election law.

The public record shows that the public's right to vote was unjustifiably burdened by the Zuckerberg 5 targeting geographic and demographic groups for increased voting. The Zuckerberg 5's conduct promoting voting for certain voter groups affected election outcomes—as concluded by WILL's 2021 analytical report. The Zuckerberg 5 in the WSVP crossed the line between election administration and campaigning and that never should have never occurred.

The appropriate standard of review for Equal Protection Clause analysis is Anderson-Burdick scrutiny for the disparate treatment of voters and, also, here, strict scrutiny of the government's rationale. When a plaintiff alleges that a state has burdened voting rights through the disparate treatment of voters, the legal standard used is generally found in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992). *See also Clements v. Fashing*, 457 U.S. 957, 965

(1982). Although *Anderson* and *Burdick* were both ballot-access cases, the Supreme

Court has confirmed their vitality in a much broader range of voting rights contexts.

See Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 204 (2008) (Scalia, J.,

concurring.) ("To evaluate a law respecting the right to vote—whether it governs

voter qualifications, candidate selection, or the voting process—we use the approach

set out in Burdick.... "). The *Burdick* Court stated the standard as follows:

> A court considering a challenge to a state election law must weigh "the
> character and magnitude of the asserted injury to the rights protected
> by the First and Fourteenth Amendments that the plaintiff seeks to
> vindicate" against "the precise interests put forward by the State as
> justifications for the burden imposed by its rule," taking into
> consideration "the extent to which those interests make it necessary to
> burden the plaintiffs' rights."

Burdick, 504 U.S. at 434, (quoting *Anderson,* 460 U.S. at 789). This standard is

sufficiently flexible to accommodate the complexities of state election regulations while

also protecting the fundamental importance of the right to vote. *Obama for America v.*

Husted, 697 F.3d 423, 428–30 (6th Cir. 2012). There is no "litmus test" to separate valid

from invalid voting regulations; courts must weigh the burden on voters against the State's

asserted justifications and "make the 'hard judgment' that our adversary system

demands." *Crawford,* 553 U.S. at 190 (Stevens, J., announcing the judgment of the Court).

Similar to the federal constitution, Wisconsin's Constitution requires equality from

the government, including the Zuckerberg 5 when it takes on a government function:

> Equality; inherent rights. Section 1. All people are born equally free and
> independent, and have certain inherent rights; among these are life, liberty

and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Art. I, sec. 1. The same legal standard of review applies for state constitutional claims.

The *Anderson–Burdick* standard, therefore, applies.

Additionally, when a state's classification "severely" burdens the fundamental right to vote, strict scrutiny is the appropriate standard. *Burdick,* 504 U.S. at 434 (1992). The federal courts "have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined." *Harper v. Va. Bd. of Educ.,* 383 U.S. 663, 670 (1966). Here, it is the CTCLs private funding of the Zuckerberg Plan's governmental classifications that treat voters differently in the same elections, which triggers strict scrutiny.

Nothing could be more repugnant to democracy than private corporations paying to increase voting access for targeted demographic groups, so that they can manipulate election outcomes—something that will occur repeatedly under the auspices of the WSVP provisions. Private corporations were paying money to affect the election outcome. So strict scrutiny must apply when private funding of election administration targeting voter groups is involved—because the credibility of our federal elections is at stake

Additionally, in *Bush v. Gore*, the U.S. Supreme Court emphasized that equal protection restrictions apply not only to the "initial allocation of the franchise," but "to the manner of its exercise" as well. *Bush*, 531 U.S. 98, *at* 104 (2000). The State may not subject voters to "arbitrary and disparate treatment" that "value[s] one person's vote over that of

another." *Id.* This equal protection prohibition on "arbitrary and disparate treatment" of different voters participating in the same election is what at least one commentator calls *Bush'*s "Uniformity Principle." Michael T. Morley, *Bush v. Gore's Uniformity Principle and the Equal Protection Right to Vote,* 28 Geo. Mason L. Rev. 229 (Fall 2020).

Courts have applied the Uniformity Principle to intentional discrimination concerning in-person voting opportunities. For example, in *Obama for America v. Husted,* 697 F.3d 423 (6th Cir. 2012), the Sixth Circuit held that it was unconstitutional for the State of Ohio to allow only domestic military voters to cast ballots in person over the weekend before Election Day. *Id.* at 437. The court noted that, although military voters can face unexpected emergencies that prevent them from voting in person on Election Day, other voters may face similar contingencies:

> At any time, personal contingencies like medical emergencies or sudden business trips could arise, and police officers, firefighters and other first responders could be suddenly called to serve at a moment's notice. There is no reason to provide these voters with fewer opportunities to vote than military voters .... *Id.* at 435. The court concluded that the Equal Protection Clause therefore prohibited the state from making special accommodations only for military voters. *Id.* at 436. The court added that it would be "worrisome ... if states were permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges."

Id. at 435.

Similarly, the Zuckerberg 5's WSVP was their collective effort "to pick and choose among groups of similarly situated voters to dole out special voting privileges"—which, when the Zuckerberg 5 is taking on a government function, violates the Equal Protection

Clause. *Id.* at 435. Accordingly, a post-certification administrative correction for the 2020

Presidential election should be made that the Zuckerberg 5 violated the federal and state

Equal Protection Clauses.

Chapter 12

Recommendations

As noted above, OSC respectfully submits the following recommendations to the Wisconsin Assembly for its consideration, and its staff is pleased to provide additional information, testimony, and technical assistance. These recommendations fall into two categories: those facilitating transparency, and those facilitating political accountability. However, there is a strong positive synergy between the two goals: *i.e.*, the more transparent a process, the more politically accountable, and vice versa.

The OSC also submits a number of recommendations for WEC, as currently constituted, and for clerks. As the Administrator of WEC has noted, however, advice from WEC does not provide a legal safe harbor for clerks, and neither does advice from the OSC or any other merely persuasive authority in this area. Ultimately, it is incumbent upon the approximately 1,852 municipal clerks, the primary agents of election supervision in the State, to consult with their available counsel and make their own independent legal determinations in every case.

Legislative Recommendations to Serve Transparency

1. **<u>Eliminate the Wisconsin Elections Commission</u>**. As outlined in the Interim Report and above, replacing the disgraced and abolished Government Accountability Board with WEC has continued many of the same abuses of secrecy and confusion. The staff remains deeply connected to special interest groups and fails to adequately respond to voter and clerk complaints. Its biennial appropriation is over $10 million, money which could be spent to

support municipal and county clerk operations. In addition, as its Administrator has noted, WEC provides no authoritative legal safe harbor for clerks: eliminating WEC would help clarify the constitutional and statutory authority of popularly elected officials and the voters in handling election matters. Any functions of WEC that might arguably be required by various federal laws could lawfully be handled by an empowered executive branch office of the Secretary of State, or by a collective body of county clerks themselves, or by some other structure. Currently, Wisconsin is only one of two States with a politically unaccountable bureaucracy tasked with providing guidance in election administration.

2. **Eliminate or Reduce Fees for Voter Registration Data**. Currently, voter registration information, including addresses, names, and voter history, are available for purchase. WEC sells that information for $12,500. However, this information is not available in real-time and, worse yet, the fees are waived by contract with special interest groups. This fee should be eliminated or reduced by statute to a token fee (say, $40 as it is in Arizona) to put all citizens on equal footing, and to allow for citizens to help keep the system up-to-date. It is important that the names and addresses of those who voted—with certain exceptions—are made freely available so that anyone so interested could compare, at no, or low cost, the names and addresses of those eligible to vote with those who, in fact voted. This would remove much of the opacity of the current system and bolster public faith in elections.

3. **Maintain a Single Statewide Voter Registration Database, and Make it Publicly Available and Secure**. As it stands, Wisconsin maintains several competing sets of interlocking databases and access systems. Clerks have noted that they were often given

superfluous sets of access keys, and that these systems are theoretically accessible out of state or out of the United States. WEC has also complained to the Assembly that providing comparisons between data sets on certain dates is extremely expensive. Making the information publicly available would place all individuals and parties on an equal footing and allow academic institutions (for example) to compare data sets over time. This would facilitate data quality and transparency with no cost to voter privacy.

1. **Set Up An Office to Engage in Auditing and Oversight of Elections**. Currently, there is no office in the State of Wisconsin with an ongoing charge to audit elections, or to systematically intake and respond to citizen complaints. The Legislature could consider setting up an office whose role is distinct from the Legislative Audit Bureau (LAB) and which merely undertakes periodic and random auditing of elections in various jurisdictions and delivering those results to the Legislature. This should professionalize and standardize oversight and facilitate long-term improvement and data quality. In addition, the Legislature could consider appropriating funds to enable the Attorney General to vigorously engage in investigation and prosecution of election law violations.

2. **Standardize a Process for Post-Election Contest**. Inevitably, elections will be contested. The Legislature should consider reviewing remedies to enable losers of elections to audit a small number of wards for a nominal cost, or for free. It should consider other remedies, including injunctive relief, to preserve the *status quo* while electoral contests are investigated.

3. **Prohibit Certain Contractual Terms in Government Contracts**. The Legislature should consider prohibiting certain vendor contractual terms as a matter of public policy.

For example, it should limit the use and release of sensitive voter data by vendors. It should prohibit terms that block Wisconsin governmental entities from obtaining or releasing data they paid for. And it should prohibit contracting with entities that do not timely respond to governmental requests for information, such as valid criminal or legislative subpoenas.

4. **Minimize Pre-Voting**. It is evident that widespread use of absentee and absentee-in-person voting renders public participation and oversight of counting impossible. Guidance by WEC "enabling" clerks to open envelopes prior to the statutorily mandated deadline denies citizens their right to observe that process. If public oversight of absentee voting is too burdensome, a better option is to prioritize traditional, in-person voting.

5. **Encourage In-House Technical Support**. Each clerk OSC spoke with made clear that their office simply does not have the technical ability to service various electronic voting machines. They simply do not and cannot understand how the various machines work. In the past, municipal public works departments maintained expertise in servicing analog machines. The Legislature should consider funding a program to bring technical expertise in-house, including considering a single state-wide machine system or single-client vendor.

6. **Exit the Electronic Registration Information Center (ERIC)**. The State of Wisconsin pays this outside group six figures per year to assist it in cleaning up our voter rolls, but receives little to no benefit from it. In fact, as was recently noted in testimony before the Assembly, the contract with ERIC ties the hands of election officials in numerous ways. The State can seek lawful, bilateral agreements with States to ensure only lawful voters are on the rolls, without the concerns about partisanship.

Legislative Recommendations to Serve Political Accountability

1. **Provide a Method in Law for Private Challenge to Wisconsin Voter Rolls.** As it stands, there is no clear method for individuals with facial evidence of inaccurate voter rolls to enter state court and seek to fix that problem. The Assembly could consider various legal methods to enable citizens or civil rights groups to help maintain election database integrity in this way. Such a cause of action should take into account administrative burdens, and could even provide nominal rewards for successful voter roll challenges.

2. **Locate Certification of Presidential Electors in a Politically Accountable Body.** In 2020, the presidential electors were certified by a single member of WEC and the Governor. As a political action, certification of electors cannot be subject to the whim of the courts, or purely legal processes. Legitimate contests have occurred in the past and will occur again. To ensure widespread bipartisan confidence in the system, state law should explicitly authorize the contingent creation by campaigns of alternative slates of electors, and could consider penalties for certain actions of those alternates if results are not contested. In the event of widespread contest, the thumb should be on the scale in favor of withholding certification of electors. As noted in the Interim Report, "Hasty certification of electors in a tightly contested election may disenfranchise voters to the same extent as missing a deadline and failing to certify electors at all. While hasty certification may violate the state constitutional duties of the Legislature, delaying certification of electors until resolution of relevant issues does no such violence to our legal system." Finally, placing certification of electors in a politically accountable body, such an association of elected county clerks, could restore confidence in the results of even a closely contested

presidential contest in the State.

3. **Provide a Method for Pre- and Post-Certification Challenges to Presidential Elections.** As noted in Appendix II, certification of electors in a Presidential election is a quintessentially political act, delegated by the state and federal constitutions to our elected state Legislature. However, the Legislature can consider establishing processes for standardizing challenges both pre-and post-certification. Such processes might establish administrative or legal rights, or establish opportunities to raise or expedite decertification procedures on the floor of the Assembly or Senate. The Legislature might also consider formalizing the ability of candidates to assemble alternative slates of electors, to ratify an already lawful process.

4. **Prohibit Outside Funding and Staff in Elections Administration**. OSC concurs in the recommendation of numerous clerks that outside money be prohibited in the administration of Wisconsin elections. Our State has a deep, progressive history and is suspicious of private entities engaging in governmental activity. Clerk's offices should be (and in 2020 were) adequately funded by state and federal entities, as appropriate, but outside grants should be disfavored or prohibited, especially where those grants have any conditions on them. Further, outside volunteers and observers should all be treated on equal footing.

Recommendations for the Wisconsin Elections Commission

(as currently constituted)

1. **Comply with Legislative Audit Bureau Recommendations**. In particular, promulgate statutorily required administrative rules prescribing the contents of training that municipal clerks provide to special voting deputies and election inspectors; eliminate all statutorily non-compliant guidance.

2. **Enter Into Data-Sharing Agreement with Wisconsin Department of Transportation**. In particular, execute with the Department of Transportation a new written data-sharing agreement that includes provisions for verifying the information provided by individuals who register to vote by all methods and that specifies the procedures for verifying this information; establish a system to regularly review and update the data-sharing agreement; and comply with statutes by working with the Department of Transportation to obtain the electronic signatures of individuals who register online to vote. An enforcement mechanism to align the data, such as by citizen suit, perhaps accompanied by a small monetary bounty, would also be a useful supplement to this reform.

1. **Enter Into Data-Sharing Agreement with Wisconsin Department of Health Services**. In order to ensure that our most vulnerable are not exploited, and to facilitate accurate voter rolls, WEC should work to execute a new written data-sharing agreement with the Department of Health Services and establish a system to regularly review and update the data-sharing agreement. Again, a citizen suit and bounty reform could be added on here as well to ensure data-sharing occurs properly.

2. **Enter Into Data-Sharing Agreement with Wisconsin Department of Corrections (DOC)**. In order to ensure that only eligible voters are registered, WEC should work with DOC to execute a new data-sharing agreement and implementation system. Again, a citizen suit and bounty reform could be added on here as well to ensure data-sharing occurs properly.

3. **Provide Additional Training to Clerks**. If there is one function that an independent election administration can perform well, it is training. WEC should consider providing additional training to clerks along several dimensions: providing training for clerks related to machine certification, security, and statutorily mandated pre-election testing; training related to reviewing Election Day forms after each election and investigating relevant issues, including those related to tamper-evident seals; and training on ensuring that ballots are counted accurately when paper jams occur in electronic voting equipment.

Recommendations for Clerks

1. **Familiarize Yourself with Your Wisconsin Code Authority**. Surprisingly, many clerks have expressed to the OSC that they are under the impression that WEC guidance is binding, even when they believe such guidance (say, on drop boxes) is unlawful. Clerks and whatever counsel they have available should review their authority ahead of any conflict.

2. **Make Independent Assessments**. In circumstances where WEC guidance is contrary to law, clerks are empowered to make independent assessments, as they are the elected officials responsible for elections administration. As the Administrator of WEC has noted,

WEC guidance provides no legal safe harbor or immunity for clerks: it is true that clerks are on the legal hook for their own assessments, and should develop good relationships with corporate or outside counsel.

3. **Carefully Review Outside Contracts**. Clerks and other election officials should be careful not to enter into contractual arrangements with outside groups that do not serve the public interest, even when these agreements sound attractive or come with funding grants. As we saw in 2020, these contracts can be leveraged to coerce election officials and cause them to violate their oaths of office. When clerks do enter into outside contracts, they should endeavor to make those contracts public in their entirety. In the interests of transparency, clerks should endeavor to obtain comparable contracts, and donor lists, from nonprofits before engaging them.

4. **Explicitly Prohibit Your Staff from Engaging in Get-Out-The-Vote (GOTV) Operations**. In 2020, we did see widespread GOTV operations engaged in by municipal clerk's offices. This is inappropriate, as GOTV is a partisan activity, historically (and currently) engaged in by candidates and their parties. Staff should be apprised that even when described as "voter education," encouraging voting by any group is not the duty of a busy and potentially underfunded clerk's office.

5. **Consider Robust Voter Roll Review in Your Jurisdiction**. County and municipal clerks are responsible for maintaining the integrity of the voting rolls. Even in election years, federal law does not prohibit Wisconsin officials from removing ineligible voters from the rolls.

6. **Maintain An Exhaustive and Clear List of Election Day Personnel**. Under Wisconsin law, there are two classes of person on election day: election workers, and the general public. There is no third category. Election workers are bound by legal and ethical norms. Do not permit unauthorized individuals to operate under the color of state law.

7. **Catalog All Absentee Ballots Sent Out and Match These with Ballots Returned.** Some voters have reported receiving as many as four absentee ballots leading up to the November 3, 2020 election.

8. **Do Not Engage in Ballot Curing for Absentee Ballots Missing Requisite Voter Data.** Neither state nor federal law mandate curing ballots that are legally incomplete: clerks can take reasonable efforts to contact voters to remedy seemingly minor defects, but should be mindful of their own resources and state law.

Chapter 13

Conclusion

As noted at the outset, this Report by no means represents a "full audit" of the 2020 elections in the State of Wisconsin. Instead, it represents a snapshot of various issues identified by the OSC, other governmental actors, and citizens in the State, and makes a number of recommendations to fix them. Without full transparency by governmental actors, without a fully equipped office to investigate, and without time, some degree of triage by OSC was necessary. A full audit would undoubtedly take a look not just at evidence of major issues and draw inferences, but would take a comprehensive look at election processes, contracts, and machines, to stress test and run other technical reviews. This office has engaged with outside contractors and entered preliminary steps in the government procurement process. However, these auditors have let us know that without full access to information, they are unable to provide robust conclusions.

Again, as discussed by the Committee of Jurisdiction and the Speaker in public, the work of the Office of the Special Counsel is just getting started. The Office will remain authorized during the pendency of litigation to ensure that once the Wisconsin Supreme Court vindicates the right of the people to know what their own government is up to, we can expeditiously run necessary tests.

In the meantime, the major issues identified with compliance and oversight, especially at a time when the federal Congress is making known that legislative oversight is critical to lawmaking, are themselves cause for concern. The Special Counsel hopes that

the Assembly and the public can continue to fight to hold our election administration accountable and to ensure it is secure and efficient.

Finally, the Special Counsel would like to thank the concerned citizens and citizen groups, the numerous clerks and other public servants who have cooperated with the investigation, and the staff, contractors, and partners of the OSC and Assembly for their hard work and dedication to improving our democratic system.

Appendix I: Litigation Summary

As noted throughout, this Report regarding the administration of the 2020 election in Wisconsin is incomplete because the Office of the Special Counsel has received little to no cooperation in its investigation from the government officials and others that were responsible for conducting the election. As part of its investigation, the OSC has sent out ninety subpoenas for witness testimony. While we have conducted numerous interviews with voluntary witnesses, including governmental witnesses, due to public pressure from the Governor and out-of-state actors, word has gone out that the government does not need to respond to the elected Assembly. Instead, the OSC has been embroiled in litigation relative to those subpoenas since late 2020.

1. **Dane County Case Number 2021CV002552, *Wisconsin Elections Commission et al. vs. Wisconsin State Assembly et al.***

On October 21, 2020 WEC and its Administrator—Meagan Wolfe—sued the OSC and the Wisconsin Assembly in Dane County Circuit Court seeking an order that OSC subpoenas with which they had been served were invalid as impinging upon her personal rights. In doing so, WEC aims at the authorized mission of the OSC to investigate whether officials "have failed to adhere to our election laws by, at various times, ignoring, violating, and encouraging noncompliance with bright-line rules established by the statutes and regulations governing the administration of elections in Wisconsin."

Notably, WEC took the unprecedented step of employing the Wisconsin Department of Justice as its attorneys in the lawsuit against the OSC and the Assembly.

Until this lawsuit, never before in the history of the State had one arm of the executive branch of Wisconsin's state government (WEC) used another arm of the executive branch (the DOJ) to seek a ruling from a separate branch (the judiciary) that an action by a third branch of state government was invalid and unenforceable (the subpoenas issued by OSC via the Assembly). In short, taxpayer money is being used by the Attorney General to block routine oversight by the duly-elected legislative body in the State, leading to a great waste of taxpayer money.

On October 25, 2021, the Attorney General lost, as Dane County Circuit Court Judge Rhonda Lanford ruled that WEC was not entitled to an emergency injunction invalidating the subpoenas or preventing OSC from seeking to enforce them. After further litigation, on January 10 2022, Judge Lanford ruled that while WEC did have the authority to bring the lawsuit and it would not be dismissed outright, WEC had not established that it was entitled to a temporary or permanent injunction against enforcement of the subpoenas. The matter was held open for further proceedings to address the WEC's overall complaint that the subpoenas are an invalid exercise of legislative authority.

Since that time, WEC has filed an Amended Complaint setting forth additional facts in support of its claims that the subpoenas are invalid, and other parties have sought to intervene and participate in the matter. A hearing is scheduled for March 17, 2022 on the proposed intervention of these other parties, but there is no other scheduled court activity.

In the meantime, neither WEC or Ms. Wolfe have voluntarily agreed to present their testimony to the OSC. It is likely that unless and until the matter is resolved by the Dane

County Circuit Court (and then all potential appeals are exhausted) the subpoenas for WEC and Ms. Wolfe will remain unsatisfied.

2. **Waukesha County Case Number 2021CV001710,** *Michael J. Gableman vs. Eric Genrich et al.*

Among the parties that have been subpoenaed for their testimony are the Mayor of Green Bay—Eric Genrich—and the Mayor of Madison—Satya Rhodes-Conway. In response to subpoenas with which they were served, the mayors did provide some documents that were requested, but at the same time neither agreed to appear to testify as required by the subpoenas. As a result, the OSC was put in a position of having to seek judicial assistance to direct that the mayors provide that testimony.

To do so, the OSC filed petitions for "writs of assistance" from the Waukesha County Circuit Court to require the mayors to appear and give the required testimony. A judicial writ of assistance is provided for by Wisconsin's statutes. When a judge issues one, a witness must appear for testimony required by a subpoena. If the witness does not, the judge may order that the recalcitrant witness be subjected to punitive action, up to and including incarceration. However, before that can happen, the witness has the opportunity to appear before the court and argue that he or she is excused from appearing because the subpoena is invalid or for any number of other reasons.

The OSC filed for writs of assistance in Waukesha County Circuit Court as the statute setting forth the procedure for obtaining such writs commands that the writ be

sought "in the county where the person was obliged to attend." Wis. Stat. § 885.12. As the mayors' testimony was compelled by the subpoenas to occur in Waukesha County, the OSC was mandated to seek writs of assistance from the Waukesha County Circuit Court.

Before there was any substantive court appearance or action of any kind, Mayor Genrich appeared in the action represented by two law firms—Stafford Rosenbaum. LLP and Law Forward, Inc. Stafford Rosenbaum is a Madison-based law firm with over 50 attorneys, and Law Forward is an "impact litigation firm committed to protecting and advancing democracy and to restoring Wisconsin's pragmatic progressive tradition." Law Forward has a "Legal Advisory Council" that is comprised of, among others, prominent Democrat politicians, including former United States Senator Russ Feingold, and former Lt. Governor Barbara Lawton. There are no current or former elected officials on Law Forward's advisory council that identified as Republican over the course of their respective careers. There are also several attorneys on the Council that have written about, and advocated for, progressive political causes, but none that appear to have ever advocated for conservative ones.

Mayor Genrich is now additionally represented by two more attorneys—Aaron Scherzer and Christine P. Sun. Mr. Scherzer and Ms. Sun are associated with the "States United Democracy Center," an organization whose professed mission is "advancing free, fair, and secure elections," focusing on "connecting State officials, law enforcement leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy."

Mayor Rhodes-Conway appeared by two lawyers for the City of Madison.

At the very outset, the mayors' attorneys portrayed the actions of the OSC as—

3. "lacking in legal merit;"

4. a "gross distortion of the relevant facts" and "a gross mischaracterization of the facts;"

5. "departing so greatly from legal standards" so that the Special Counsel should be sanctioned by the Court;

6. "an abuse of process;" and

7. "a bad-faith effort to publicly harass local officials with no legal basis."

None of these statements are remotely true, of course, but the OSC has been forced to respond to these scurrilous accusations both in the press and in court.

Shortly afterward, the representatives of WEC and the mayors began "cross-pollinating" the Dane County matter with the Waukesha County matter by filing letters with the respective courts smearing the OSC and improperly attempting to influence the respective judges. The Wisconsin Department of Justice filed a letter in the Waukesha County matter, arguing that the subpoenas were invalid and that the validity of the subpoenas addressed to the mayors would be addressed in large part by the court in the Dane County matter discussed above. In addition, mayor Genrich's representatives attempted to influence the outcome of the Dane County matter by filing a letter with that court arguing that the OSC had made "misrepresentations" to the Waukesha County court and that the subpoenas were "unauthorized, quasi-depositions of mayors and elections officials throughout Wisconsin."

As of this writing, written briefs are being submitted to the Court regarding the following inquiries submitted by the Court:

1. The Court's authority to issue the writs;

2. The correct procedure to follow; and

3. The factual basis of the writs.

A hearing is scheduled on those issues on April 22, 2022. While the Court has asked that these issues be addressed, it is only a preliminary inquiry. The Court has additionally stated that it will not be addressing the actual issuance of the writs or whether the mayors have a reasonable excuse for their failure to comply with the subpoenas. Those issues will be addressed subsequently.

As with the Dane County matter, the Waukesha County matter is nowhere near resolution. First, all issues will need to be addressed by the Circuit Court judge, and then it is likely that any decision will be appealed up to the Wisconsin Supreme Court (and potentially the United States Supreme Court). In the meantime, as with WEC and Ms. Wolfe, neither mayor has voluntarily agreed to give testimony, and it is likely their subpoenas will remain unsatisfied until the conclusion of all litigation.

1. **Dane County Case Number 2021CV003007,** *American Oversight vs. Assembly Office of Special Counsel et al.*

In addition to the above, the OSC has been forced into litigation over issues surrounding the voluminous requests for documents it has received pursuant to Wisconsin's Open Records law. While these requests and the attendant litigation have not

directly affected the OSC's ability to obtain necessary information—as the lack of cooperation and litigation over the subpoenas has done—at the same time, it has strained the OSC's resources and indirectly affected the OSC's work in a very significant way.

In Dane County Case Number 2021CV003007, a group called American Oversight has sued the OSC, along with the Wisconsin State Assembly, Speaker of the Assembly Robin Vos, and Wisconsin State Senate Sergeant-at-Arms Edward Blazel over purportedly insufficient responses to requests made to the OSC and the other defendants under Wisconsin's Open Records law.

Before the work of the OSC has finished, or even begun in large part, American Oversight has referred to the OSC's efforts on behalf of the Assembly as "baseless," that the OSC is "perpetuating Trump's big lie that the election was somehow stolen," and that the real purpose of the OSC's work is to "create a pretext for enacting new restrictions on voting rights."

Pursuant to their efforts to establish their narrative prior to the work of the OSC coming to fruition, American Oversight has served numerous open records requests upon the OSC, including the following—

2. A September 15, 2021, demand for all "organizing materials," of the OSC, including contracts, agreements, scopes of work, and other documents related to the "scope of investigative authority" of the OSC;

3. A September 15, 2021, demand for all "work product" materials, including "interim reports, analyses, notifications, or other work product produced or collected by individuals or entities under contract to investigate" the November 2020 election, or any other;

4. A September 15, 2021, demand for all "communications" between "former justice Michael Gableman, or anyone communicating on his behalf, such as an administrative assistant, or any individual designated or engaged as an investigator, including, but not limited to Steven Page, and (ii) any other contractor or agent of the Wisconsin Assembly charged with investigating the November 2020 election," as well as all "calendar entries" maintained by any investigators;

5. An October 15, 2021 demand for "external communications" between the OSC and a list of 30 individuals and/or entities;

6. An October 26, 2021, demand for "organizing materials" similar to the one served in September of 2021;

7. An October 26, 2021, demand for "work product" similar to the one served in September of 2021; and

8. An October 26, 2021, demand for "communications" similar to the one served in September of 2021.

All of the above open records requests are currently part of the litigation pending in Dane County.

In addition, American Oversight has served four additional open records requests, dated January 18, 2022, and February 1, 2022, that are still being processed by the OSC, and are not part of any litigation as of yet.

Beyond those served by American Oversight, the *Milwaukee Journal Sentinel*, via reporter Patrick Marley, served an open records request dated February 7, 2022, in which the following records were demanded:

— The call log showing all calls to and from all cell phones used by Gableman;

—The call log showing all calls to and from all cell phones used by any of Gableman's staff (including direct employees, contractors and subcontractors);

— All paper and electronic calendars for Gableman;

— All emails and/or text messages between Gableman and Rudy Giuliani;

— All emails and/or text messages between Gableman and John Eastman;

— All emails and/or text messages between Gableman and Phill Kline;

— All emails and/or text messages between Gableman and Erick Kaardal;

— All emails and/or text messages between Gableman and Phil Waldron;

— All emails and/or text messages between Gableman and James Troupis;

— All emails and/or text messages between Gableman and Kenneth Chesebro;

— All emails and/or text messages between Gableman and David Clarke;

— All emails and/or text messages between Gableman and Rep. Janel Brandtjen;

— All emails and/or text messages between Gableman and Rep. Timothy Ramthun;

In addition, I am requesting the following documents since Sept. 28, 2021:

— All emails and/or text messages between Gableman and Robin Vos;

— All emails and/or text messages between Gableman and Reince Priebus;

— All emails and/or text messages between Gableman and Nick Boerke;

— All emails and/or text messages between Gableman and Andrew Kloster;

— All emails and/or text messages between Gableman and Harry Wait;

— All emails and/or text messages between Gableman and Gary Wait;

— All emails and/or text messages between Gableman and Peter Bernegger;

— All emails and/or text messages between Gableman and Jefferson Davis;

— All emails and/or text messages between Gableman and Mike Lindell;

— All emails and/or text messages between Gableman and Steve Bannon;

— All emails and/or text messages between Gableman and Seth Keshel;

— All emails and/or text messages between Gableman and Shiva Ayyadurai;

— All emails and/or text messages between Gableman and Ron Heuer;

— The computer security protocols for the Office of Special Counsel;

— Transcripts of witness interviews;

— Audio and/or video recordings of witness interviews;

— All submissions to wifraud.com.

The Special Counsel believes in governmental transparency and is making every effort to comply with the above demands.

However, including the Special Counsel himself, the OSC has a full-time staff of two persons. It also has five part-time staff members consisting of four attorneys and an investigator. Simply responding to these voluminous open records requests is a task that has taken up a tremendous amount of staff time. In addition, the Assembly has engaged outside counsel to defend the American Oversight lawsuit and will likely have to hire counsel to defend further lawsuits if the responses provided to the outstanding demands do not satisfy American Oversight or the *Milwaukee Journal Sentinel*.

While the OSC will continue to see that its duties under Wisconsin's open records law are fulfilled, doing so has, and will continue to materially hamper the ability of the OSC staff to address the substantive issues with which it was charged with investigating and reporting upon to the Wisconsin State Assembly.

Appendix II: Decertification and the Electoral Count Act

Certification of electors in a state is a quintessentially political act, delegated by the United States Constitution to state legislatures, which may voluntarily adopt revocable and defeasible rules to guide the process. Wisconsin election law does not explicitly authorize the decertification of electors. But neither does it prohibit it. For this reason, the U.S. Constitution and the gap-filling common law against which backdrop the federal and Wisconsin Constitutions were adopted provide the ultimate guidance. And under those two documents, it is clear that the Wisconsin Legislature could lawfully take steps to decertify electors in any Presidential election, for example in light of violations of state election law that did or likely could have affected the outcome of the election. Furthermore, notwithstanding the current debate over amending the federal Electoral Count Act, the supreme responsibility for running state elections in Wisconsin is vested in our state Legislature—not any other state instrumentality, and not the federal government.

The U.S. Constitution provides in relevant respect that "Each State shall appoint, *in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress ....*" U.S. Const., art. II., § 1, cl. 2. This is a direct delegation to each state legislature. It is not a delegation to the Wisconsin Governor (or WEC) *and* its Legislature. The Framers knew how to delegate to, respectively, state legislatures or state executives, or to both acting concurrently. *Compare, e.g., id. with id.* at art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall

protect each of them against Invasion; *and on Application of the Legislature, or of the Executive* (when the Legislature cannot be convened) against domestic Violence.") (emphasis added) *and id*. at XVII amend. ("When vacancies happen in the representation of any State in the Senate, *the executive authority of such State* shall issue writs of election to fill such vacancies: *Provided, That the legislature of any State may empower the executive thereof* to make temporary appointments until the people fill the vacancies by election as the legislature may direct.") (emphases added).

The direct constitutional delegation to state legislatures here operates as a "plenary" power. *See McPherson v. Blecker*, 146 U.S. 1, 35 (1892); *see also Bush v. Gore*, 531 U.S. 98, 104 (2000) ("The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors."). Pursuant to that plenary power, it is true that after 1824 most state legislatures began to delegate, in effect, their plenary power to *a process of popular selection of the presidential electors* carried out under a suite of state law provisions. Yet, as applied here, these delegations and self-imposed statutory processes by the Wisconsin legislature are not irrevocable. An election of presidential electors that violates Wisconsin (or any other state legislature's relevant laws) is both void and voidable.

This Report has documented not just one, but a great collection of Wisconsin election law violations. As a political matter, the actions of state actors certifying electors in any Presidential election can be reconsidered as the Wisconsin Legislature sees fit using its plenary power under Article II of the federal Constitution, as recognized in *McPherson*

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and *Bush v. Gore*. Indeed, *McPherson* noted that "there is no doubt of the right of the legislature to resume the power *at any time*." *McPherson*, 146 U.S. at 35 (emphasis added).

The process of presidential elections can be conceived of as having five steps: (1) certification pursuant to state law; (2) the arrival of the "safe harbor" date specified in the Electoral Count Act ("ECA"), 3 U.S.C. § 5, purporting to make "conclusive" the determination of election contests in the courts "or other methods and procedures" before that date; (3) the date when state-certified electors meet and cast their votes in their respective States; (4) the opening by the Vice President and counting of electoral votes pursuant to the ECA, 3 U.S.C. § 15, on January 6 of the year following a presidential election; and (5) the inauguration of the President on January 20 of that same year at noon, per the Twentieth Amendment to the Constitution. However, that Article II of the U.S. Constitution assigns to Congress only the power to "determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." Hence, the relevance of the ECA should not be overstated. The powers to set the time for choosing electors and the day thereof is not the power for Congress to override the plenary power of state legislators to select the State's electors or to act to correct mistakenly certified electors who were certified only because state law was violated in the process.

Two legal analyses from Legislative Council and the Legislative Reference Bureau argue that various events on that five-step process timeline, coupled with silence or the lack of specificity in various sources of law, means that state legislatures cannot decertify.

This logic of those pieces is defective. They ignore the full logical implications of the "plenary" power of the state legislatures to act "at any time" to determine proper electors. For example, when electors were wrongly certified in Hawaii in the 1960 presidential election for Vice President Nixon, that problem was retroactively corrected and Hawaii's electoral votes were counted for John F. Kennedy.

As to the initial method for selecting the President, it matters what system of state law is put in place to select electors and when, relative to that system, new election laws are adopted. No one would support the Wisconsin Legislature allowing an election to be run using one set of election laws and then, just because a majority of both houses thereof did not like the tally of the people's votes occurring within the proper confines of Wisconsin law, adopting a new set of legislative rules and applying them to an already conducted popular election as if that had always been the law.

But the premise of the use of the method of popularly electing elections is inherently, and unavoidably, that such elections be conducted *without violation* of the relevant State's election laws to the extent that the outcome of the election did or likley could swing based on such violations of state law. If an election were purportedly run using the *ex ante* set of legislative election rules (or some of those rules), but *in reality*, the election was run in flat violation of those laws, then the decision of which set of electors to certify (or decertify) devolves back upon the Wisconsin Legislature, where the plenary power to select electors was initially reposed. This is particularly true when the courts do not reach the merits of election disputes brought to them for resolution of whether the *ex*

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ante rules were actually followed, dismissing challenges, for instance, on grounds of lack of standing, laches, and the like, as is the case in Wisconsin regarding numerous legal challenges.

The ECA is not constitutional law and it cannot be used to strip state legislatures of their Article II plenary power over elector selection, especially when evidence of widespread violations of state election law become clear only late in an election cycle or even after an election cycle is over. At that point, the principle that comes into play is the common law principle that fraud or illegality vitiate results rendered under an illegal or fraudulent process. *See, e.g., United States v. Throckmorton*, 98 U.S. 61, 64 (1878) ("Fraud vitiates even the most solemn contracts, documents, and even judgments."); *see also United States v. Bradley*, 35 U.S. 343, 360 (1836) (citing *Pigot's Case*, 11 Co. Lit. 27b (1614)). To take just one example, the Third Circuit recognized more than a quarter century ago that an illegally certified candidate who was already sitting in the Pennsylvania Legislature and had been sworn in must be stripped of his office based on violations of that State's election laws. *See Marks v. Stinson*, No. Civ. A. 93-6157, 1994 WL 47710, at *15-16 (E.D. Pa. Feb. 18, 1994), *vacated in part*, 19 F.3d 873 (3d Cir.), *aff'd after remand*, 37 F.3d 1487 (3d Cir.). And this occurred where there was no mechanism in the Pennsylvania Constitution for explicitly applying such a remedy. The Legislative Council and Reference Bureau do not take account of this precedent, logic, or history.

Thus it is clear that the Wisconsin Legislature (acting without the concurrence of the Governor, *see supra*), could decertify the certified electors in the 2020 presidential

election. Two steps would be required for it to do so. *First*, the Legislature would need a majority in both houses to pass a resolution concluding that the 2020 election was (a) held in violation of state law, as detailed in this Report (or other sources), in one or more respects; and (b) the degree of violation of state law in place on November 3, 2020 rose to the level that fraud or other illegality under Wisconsin law could have affected the outcome, using any evidentiary test for certainty the Legislature agreed should apply (for instance, a preponderance, etc.). And *second*, the Legislature would need to invoke and then exercise its plenary power to designate the slate of electors it thought best accorded with the outcome of the election, had it been run legally in accord with the state election laws in effect on November 3, 2020. This would lead to decertifying the relevant electors, if the Legislature concluded that they were not the slate of electors that best accorded with the election if run consistent with all relevant Wisconsin laws in effect on election day.

However, this action would not, on its own, have any other legal consequence under state or federal law. It would not, for example, change who the current President is.

March 30, 2022

TO: Elections Commission, elections@hawaii.gov

SUBJ: Written Testimony for Apr 1 Elections Commission Meeting, Agenda Item IV. Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam, Pursuant to HAR §3-170-6 through -9, and Action as Necessary

Aloha,

Thank you again for your consideration of complaints submitted by written and oral testimony from the Jan 12 and Mar 18 Elections Commission meeting. This written testimony summarizes the issues raised, with discussion and current disposition of the questions at hand. I will be submitting additional documentation on Friday to supplement my oral testimony as to the question of systemic problems addressed at the Mar 18 meeting.

The attached slide set, **Attachment A Slides for Agenda Item IV**, provides a summary of the 5 key issues raised on Jan 12 and the additional 4 issues from Mar 18.

- Election Inquiry #1 UUID
  - Discussion: An issue was raised regarding a noticeable pattern in the Universal Unique Identifier (UUID) codes used for the ListID in the statewide voter registration system. The Office of Elections (OE) responded in a letter (File# OE-22-006) dated 1/20/2022 that the ListID is created in compliance with Internet Engineering Task Forces (IETF) Standards-Track RFC4122, does not use personal identifiable information (PII), cannot be used to access the statewide voter registration system, and is not comparable to sensitive personal information. While these statements from the OE are factual, the question at hand was whether the detectable pattern in the ListID created a security vulnerability. Could information contained in the ListID field external to the database fields be used for unauthorized purposes? I reference **Attachment B RFC4122 UUID URN Namespace** for further in-depth discussion.
  - Disposition: Has the security vulnerability with the encoded information in the ListID been adequately addressed?

- Election Inquiry #2 State vs County ballot count
  - Discussion: The publicly reported number of ballots recorded by the OE for the City and County of Honolulu **Attachment C General Election 2020 City and County of Honolulu** differs from the publicly reported numbers of ballots reported by the City and County of Honolulu Elections Office **Attachment D Honolulu Elections By The Numbers**. The OE provided a *Summary of Reconciliation*

> **Attachment E Voted Ballots Summary Honolulu** to explain the discrepancy, but the numbers still don't correlate to the Honolulu report. With such finite details in the reported numbers, which is the correct count? In discussions with the OE on Jan 27, a visual check of the automated reports was conducted but no physical count was conducted. No documentation on a physical count of the ballots was provided.

- o Disposition: Request physical count of all ballots and ballot envelopes, or documentation of a physical count of all ballots and ballot envelopes.

- Election Inquiry #3 Precinct 39-5
  - o Discussion: Precinct 39-5 had 9 registered voters and 12 ballots recorded in the 2020 General Election. A simple physical check of the ballots from Precinct 39-5 could easily determine the accuracy of the election report from Precinct 39-5. A simple physical check of the ballots, however, could not be done as the ballots from Precinct 39-5 are mixed in boxes with ballots from other precincts. Instead, a check of the automated voter rolls that produced the automated election report was provided as justification for the accuracy of the report.
  - o Disposition: No physical count of Precinct 39-5 was provided, request complete audit of Precinct 39-5.

- Election inquiry #4 Manual Audit Certification
  - o Discussion: Procedures for conducting the manual audit to certify the 2020 General Elections were provided in the Counting Center Manual, see **Attachment F Hawaii Votes Auditing the Results**. Upon request and receipt from the OE of documentation from the audit, it does not appear the audit was conducted in accordance with the Counting Center Manual or as required by law, see **Attachment G Manual Audit Certification**. Apart from gaps of information on the paperwork, the procedure to randomly select precincts was not clear, nor were there tally numbers provided to verify *"the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts"* **HRS §16-42.b.3** Further discussion on Jan 27 confirmed that the audit was conducted by Districts and not by precinct. Requests for further audit documentation, such as the Results of Votes Cast forms, audit methodology, or precinct selection procedures were not answered prior to this date.
  - o Disposition: Request a Manual Audit Certification be conducted by precinct as required by law.

- Election Inquiry #5 Early Voter File
  - o Discussion: The Early Voter File distributed on 10/27/2020 for Honolulu County provided a historical record of how many ballots were received as of that date. In compiling the data by date, the daily tallies differ significantly from the daily tallies

provided in **Attachment D Honolulu Elections By The Numbers**. Even if adjusted by one day to account for delay in Ballot Deposit Box pickups, the daily tallies still deviated from the Early Voter File, see **Attachment H – Early Voter File v Honolulu By The Numbers**. Neither OE nor the Honolulu Elections Office have provided a response to this inquiry.

- o Disposition: Request complete review of the 11/3/2020 Honolulu Voter File with Ballot Receipt Dates.

- Election Inquiry #6 Ballots Cast by other than Lawful or Fictitious Names
  - o Discussion: On Jan 12, the Elections Commission was provided two names of 2020 General Election Voters that did not appear to be the name of the person casting the ballots. Two additional names were provided on in written testimony on 3/14/2022. The OE responded in their 3/16/2022 letter (File# OE-22-044) that a "quick review" of one of those names was in fact a legal single name. No comment was provided for the other three names, nor explanation of database conventions for blank fields where data is required. A quick review should also answer the disposition of the other three names.
  - o Disposition: Request review and response on all four names in question, UNITED STATES HAWAII, MICHAEL *, VENUS ., and PIANTA -.

- Election inquiry #7 Backdated Voter Records
  - o Discussion: As comparison of voter records in the Honolulu Voter Files between 4/30/2020 and 9/22/2021 shows voter registrations and transactions that appear to be retroactive or backdated. The 3/16/2022 OE letter (File# OE-22-044) explains these discrepancies as pre-registered under-18 voters who are added to the file when they turn 18, or previously cancelled registrations that were reactivated. Another explanation in the 3/16/2022 OE letter faulted an ongoing adjustment of administrative upkeep in the counties but did not consider this a systemic problem.
  - o Disposition: This is a systemic problem; inconsistencies in data management is a systemic problem.

- Election Inquiry #8 One Quarter of Voter Registration in Five Years
  - o Discussion: During the Jan 27 meeting with the OE, the Chief Elections Officer discounted the claim that one quarter of all voter registrations in the State of Hawaii were within the last 5 years. The 3/14/2022 written testimony included an attachment of 212,272 voter records (25.17% of all voter records) with Registration Dates within the five years between 1/1/2017 and 12/31/2021. The 3/16/2022 OE letter does not dispute this claim but also stipulates that more detail is required to provide further comment.
  - o Disposition: Further oral testimony will be provided regarding the new voter registrations and updates in the last five years

DATE: March 30, 2022
SUBJ: Written Testimony for Apr 1 Elections Commission Meeting, Agenda Item IV.
Consideration of Investigation Regarding Written Complaints Submitted by Adriel Lam,
Pursuant to HAR §3-170-6 through -9, and Action as Necessary

- Election Inquiry #9 Kauai Special Election
  - Discussion: The 2022 Kauai Special Election concluded with 25.74% voter participation, a significant drop from the 72.1% voter participation in the 2020 General Election. In addition, the OE will spend $1.7 million more for Elections By Mail in 2022 than the precinct elections in 2018.
  - Disposition: Will there be a review of the Kauai Special Election and evaluation of Elections by Mail?

I express my appreciation again to the Elections Commission, the Office of Elections, and the County Clerks, for the care and concern in responding to my election inquiries. While many issues remain open-ended, the efforts to make improvements and ensure the integrity of our elections is fully appreciated. I understand the motion by Commissioner Curtis (Agenda Item V) has the same intent to improve the operations, procedures and to satisfy legal requirements for future elections. An audit of randomly selected precincts in each District would address many of the issues above with:

- Physical count of ballots and envelopes
- Audit of Precinct 39-5
- Manual Audit Certification by precincts in accordance with **HRS §16-42.b.3**
- Voter File maintenance
- Records review of prior election year files.

I commend all who work in the elections community in all their efforts to do what is right, and I trust that all parties involved will uphold the highest standards of honesty and integrity.

Aloha,

Adriel C. Lam
Kaneohe, HI

Election Inquiry #1

12/21/21 Issue: UUID codes for ListID

12/28/21 Response: Not disclosed to safeguard critical infrastructure

12/28/21 Follow-up: Tequest Election Commission review

1/20/22 Response: OE Letter to Election Commission addresses the function of the ListID, but does not fully address security issue

Who provides oversight of security protocols?
Is Commission aware of security vulnerabilities?

Election Inquiry #2

12/23/21 Issue: County envelope vs State ballot counts

12/30/21 Response: *Summary of Reconciliation* worked with County

1/3/22 Follow-up: numbers still don't match

**Request physical count of all envelopes.
Request physical count of all ballots.**

52 USC 20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Election Inquiry #3

12/27/21 Issue: Precinct 39-5, 9 registered voters, 12 ballots counted

1/27/22 Response: A check of automated reports was conducted. No physical check of ballots was conducted.

Request complete audit of Precinct 39-5.

Election Inquiry #4

12/30/21 Issue: Manual Audit Certification

1/3/22 Response: Procedures done by Districts

1/4/22 Follow up: documentation of manual audit by Precincts

1/27/22 Confirmed: Manual Audit was not done by Precinct as required by law.

Request manual audit conducted by Precincts as required by law.
Request supporting documentation.

HRS 16-42.b.3 The chief election officer conducts a post-election, pre-certification audit of a random sample of not less than ten per cent of the precincts employing the electronic voting system, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts;

Election Inquiry #5

1/5/22 Issue: Early Voter File vs Honolulu Report

No response as of 1/11/22

No response as of 3/18/22

Why are tallies of ballot received prior to 10/27/20 changing after a 10/27/20 report?
Why are the ballot receipt dates between 10/27/20 and 11/3/20 not available?

Election Inquiry #6

3/14/22 Issue: Four unusual names of signature verified votes in the 2020 General Election

3/16/22 Response: One registered voter has legal single name

Were all four names checked for valid documentation to register to vote?
Were all four ballots checked for matching signatures on ballot envelope?

Election Inquiry #7

3/14/22 Issue: Inconsistencies appear in voter registration database.

- Backdated transactions appear in later updates
- Backdated registrations appear in later updates

3/16/22 Response: Ongoing adjustments to administrative upkeep for recording Last Transaction and Registration Dates

- 16-year-old pre-registrations are not uploaded until they turn 18.
- Previously cancelled registration are reactivated

This is a systemic problem, and still does not explain how registrations with Registration Date and Last Transaction Date more than 2 years prior to 4/30/2020 are also appearing in the 9/22/2021 data file. Who is authorized access to make and update changes to the voter registrations?

Election Inquiry #8

3/14/22 Issue: One quarter of all registration are new registrations in last 5 years

3/16/22 Response: Cancelled registration may appear as new registrations

This is a systemic problem. Some older cancelled registrations are reappearing with old registrations dates. Some older cancelled registrations are reappearing with new registration dates. Who is authorized access to make and update changes to the voter registrations?

Election Inquiry #9

3/14/22 Request review of Kauai Special Elections

	2018 Vote By Precinct	2020 Elections By Mail	2022 Elections By Mail
Kauai Voter Participation	58.1%	72.1%	25.74%
State Elections Expense/Budget	$6.5 million	$8.4 million	$8.2 million

No discussion or report as of 3/18/22

Did Elections By Mail increase voter participation? Is Elections By Mail cost effective?

            A Universally Unique IDentifier (UUID) URN Namespace

Status of This Memo

   This document specifies an Internet standards track protocol for the
   Internet community, and requests discussion and suggestions for
   improvements. Please refer to the current edition of the "Internet
   Official Protocol Standards" (STD 1) for the standardization state
   and status of this protocol. Distribution of this memo is unlimited.

Copyright Notice

Abstract

   This specification defines a Uniform Resource Name namespace for
   UUIDs (Universally Unique IDentifier), also known as GUIDs (Globally
   Unique IDentifier). A UUID is 128 bits long, and can guarantee
   uniqueness across space and time. UUIDs were originally used in the
   Apollo Network Computing System and later in the Open Software
   Foundation's (OSF) Distributed Computing Environment (DCE), and then
   in Microsoft Windows platforms.

   This specification is derived from the DCE specification with the
   kind permission of the OSF (now known as The Open Group).
   Information from earlier versions of the DCE specification have been
   incorporated into this document.

Table of Contents

1. Introduction

   This specification defines a Uniform Resource Name namespace for
   UUIDs (Universally Unique IDentifier), also known as GUIDs (Globally
   Unique IDentifier). A UUID is 128 bits long, and requires no central
   registration process.

   The information here is meant to be a concise guide for those wishing
   to implement services using UUIDs as URNs. Nothing in this document
   should be construed to override the DCE standards that defined UUIDs.

   There is an ITU-T Recommendation and ISO/IEC Standard [3] that are
   derived from earlier versions of this document. Both sets of
   specifications have been aligned, and are fully technically
   compatible. In addition, a global registration function is being
   provided by the Telecommunications Standardisation Bureau of ITU-T;
   for details see <http://www.itu.int/ITU-T/asn1/uuid.html>.

2. Motivation

One of the main reasons for using UUIDs is that no centralized
authority is required to administer them (although one format uses
IEEE 802 node identifiers, others do not). As a result, generation
on demand can be completely automated, and used for a variety of
purposes. The UUID generation algorithm described here supports very
high allocation rates of up to 10 million per second per machine if
necessary, so that they could even be used as transaction IDs.

UUIDs are of a fixed size (128 bits) which is reasonably small
compared to other alternatives. This lends itself well to sorting,
ordering, and hashing of all sorts, storing in databases, simple
allocation, and ease of programming in general.

Since UUIDs are unique and persistent, they make excellent Uniform
Resource Names. The unique ability to generate a new UUID without a
registration process allows for UUIDs to be one of the URNs with the
lowest minting cost.

3. Namespace Registration Template

Namespace ID: UUID
Registration Information:
   Registration date: 2003-10-01

Declared registrant of the namespace:
   JTC 1/SC6 (ASN.1 Rapporteur Group)

Declaration of syntactic structure:
   A UUID is an identifier that is unique across both space and time,
   with respect to the space of all UUIDs. Since a UUID is a fixed
   size and contains a time field, it is possible for values to
   rollover (around A.D. 3400, depending on the specific algorithm
   used). A UUID can be used for multiple purposes, from tagging
   objects with an extremely short lifetime, to reliably identifying
   very persistent objects across a network.

   The internal representation of a UUID is a specific sequence of
   bits in memory, as described in Section 4. To accurately
   represent a UUID as a URN, it is necessary to convert the bit
   sequence to a string representation.

   Each field is treated as an integer and has its value printed as a
   zero-filled hexadecimal digit string with the most significant
   digit first. The hexadecimal values "a" through "f" are output as
   lower case characters and are case insensitive on input.

The formal definition of the UUID string representation is
provided by the following ABNF [7]:

```
UUID                   = time-low "-" time-mid "-"
                         time-high-and-version "-"
                         clock-seq-and-reserved
                         clock-seq-low "-" node
time-low               = 4hexOctet
time-mid               = 2hexOctet
time-high-and-version  = 2hexOctet
clock-seq-and-reserved = hexOctet
clock-seq-low          = hexOctet
node                   = 6hexOctet
hexOctet               = hexDigit hexDigit
hexDigit =
      "0" / "1" / "2" / "3" / "4" / "5" / "6" / "7" / "8" / "9" /
      "a" / "b" / "c" / "d" / "e" / "f" /
      "A" / "B" / "C" / "D" / "E" / "F"
```

The following is an example of the string representation of a UUID as
a URN:

urn:uuid:f81d4fae-7dec-11d0-a765-00a0c91e6bf6

Relevant ancillary documentation:
   [1][2]
Identifier uniqueness considerations:
   This document specifies three algorithms to generate UUIDs: the
   first leverages the unique values of 802 MAC addresses to
   guarantee uniqueness, the second uses pseudo-random number
   generators, and the third uses cryptographic hashing and
   application-provided text strings. As a result, the UUIDs
   generated according to the mechanisms here will be unique from all
   other UUIDs that have been or will be assigned.

Identifier persistence considerations:
   UUIDs are inherently very difficult to resolve in a global sense.
   This, coupled with the fact that UUIDs are temporally unique
   within their spatial context, ensures that UUIDs will remain as
   persistent as possible.

Process of identifier assignment:
   Generating a UUID does not require that a registration authority
   be contacted. One algorithm requires a unique value over space
   for each generator. This value is typically an IEEE 802 MAC
   address, usually already available on network-connected hosts.
   The address can be assigned from an address block obtained from
   the IEEE registration authority. If no such address is available,

      or privacy concerns make its use undesirable, Section 4.5
      specifies two alternatives. Another approach is to use version 3
      or version 4 UUIDs as defined below.

   Process for identifier resolution:
      Since UUIDs are not globally resolvable, this is not applicable.

   Rules for Lexical Equivalence:
      Consider each field of the UUID to be an unsigned integer as shown
      in the table in section Section 4.1.2. Then, to compare a pair of
      UUIDs, arithmetically compare the corresponding fields from each
      UUID in order of significance and according to their data type.
      Two UUIDs are equal if and only if all the corresponding fields
      are equal.

      As an implementation note, equality comparison can be performed on
      many systems by doing the appropriate byte-order canonicalization,
      and then treating the two UUIDs as 128-bit unsigned integers.

      UUIDs, as defined in this document, can also be ordered
      lexicographically. For a pair of UUIDs, the first one follows the
      second if the most significant field in which the UUIDs differ is
      greater for the first UUID. The second precedes the first if the
      most significant field in which the UUIDs differ is greater for
      the second UUID.

   Conformance with URN Syntax:
      The string representation of a UUID is fully compatible with the
      URN syntax. When converting from a bit-oriented, in-memory
      representation of a UUID into a URN, care must be taken to
      strictly adhere to the byte order issues mentioned in the string
      representation section.

   Validation mechanism:
      Apart from determining whether the timestamp portion of the UUID
      is in the future and therefore not yet assignable, there is no
      mechanism for determining whether a UUID is 'valid'.

   Scope:
      UUIDs are global in scope.

4. Specification

4.1. Format

   The UUID format is 16 octets; some bits of the eight octet variant
   field specified below determine finer structure.

4.1.1. Variant

The variant field determines the layout of the UUID. That is, the interpretation of all other bits in the UUID depends on the setting of the bits in the variant field. As such, it could more accurately be called a type field; we retain the original term for compatibility. The variant field consists of a variable number of the most significant bits of octet 8 of the UUID.

The following table lists the contents of the variant field, where the letter "x" indicates a "don't-care" value.

Msb0	Msb1	Msb2	Description
0	x	x	Reserved, NCS backward compatibility.
1	0	x	The variant specified in this document.
1	1	0	Reserved, Microsoft Corporation backward compatibility
1	1	1	Reserved for future definition.

Interoperability, in any form, with variants other than the one defined here is not guaranteed, and is not likely to be an issue in practice.

4.1.2. Layout and Byte Order

To minimize confusion about bit assignments within octets, the UUID record definition is defined only in terms of fields that are integral numbers of octets. The fields are presented with the most significant one first.

Field	Data Type	Octet #	Note
time_low	unsigned 32 bit integer	0-3	The low field of the timestamp
time_mid	unsigned 16 bit integer	4-5	The middle field of the timestamp
time_hi_and_version	unsigned 16 bit integer	6-7	The high field of the timestamp multiplexed with the version number

clock_seq_hi_and_rese rved	unsigned 8 bit integer	8	The high field of the clock sequence multiplexed with the variant
clock_seq_low	unsigned 8 bit integer	9	The low field of the clock sequence
node	unsigned 48 bit integer	10-15	The spatially unique node identifier

In the absence of explicit application or presentation protocol
specification to the contrary, a UUID is encoded as a 128-bit object,
as follows:

The fields are encoded as 16 octets, with the sizes and order of the
fields defined above, and with each field encoded with the Most
Significant Byte first (known as network byte order). Note that the
field names, particularly for multiplexed fields, follow historical
practice.

```
 0                   1                   2                   3
 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1
+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+
|                          time_low                             |
+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+
|       time_mid                |         time_hi_and_version    |
+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+
|clk_seq_hi_res |  clk_seq_low  |         node (0-1)            |
+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+
|                         node (2-5)                            |
+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+-+
```
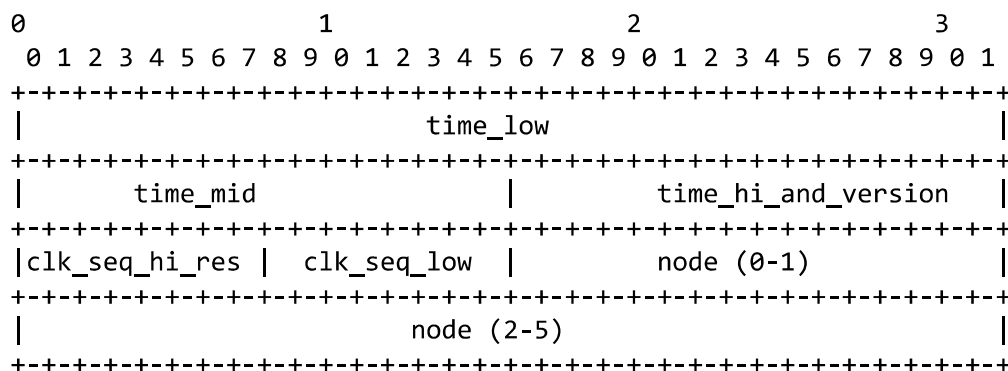
4.1.3. Version

The version number is in the most significant 4 bits of the time
stamp (bits 4 through 7 of the time_hi_and_version field).

The following table lists the currently-defined versions for this
UUID variant.

Msb0	Msb1	Msb2	Msb3	Version	Description
0	0	0	1	1	The time-based version specified in this document.
0	0	1	0	2	DCE Security version, with embedded POSIX UIDs.

```
0     0     1     1        3     The name-based version
                                 specified in this document
                                 that uses MD5 hashing.

0     1     0     0        4     The randomly or pseudo-
                                 randomly generated version
                                 specified in this document.

0     1     0     1        5     The name-based version
                                 specified in this document
                                 that uses SHA-1 hashing.
```

   The version is more accurately a sub-type; again, we retain the term
   for compatibility.

4.1.4. Timestamp

   The timestamp is a 60-bit value. For UUID version 1, this is
   represented by Coordinated Universal Time (UTC) as a count of 100-
   nanosecond intervals since 00:00:00.00, 15 October 1582 (the date of
   Gregorian reform to the Christian calendar).

   For systems that do not have UTC available, but do have the local
   time, they may use that instead of UTC, as long as they do so
   consistently throughout the system. However, this is not recommended
   since generating the UTC from local time only needs a time zone
   offset.

   For UUID version 3 or 5, the timestamp is a 60-bit value constructed
   from a name as described in Section 4.3.

   For UUID version 4, the timestamp is a randomly or pseudo-randomly
   generated 60-bit value, as described in Section 4.4.

4.1.5. Clock Sequence

   For UUID version 1, the clock sequence is used to help avoid
   duplicates that could arise when the clock is set backwards in time
   or if the node ID changes.

   If the clock is set backwards, or might have been set backwards
   (e.g., while the system was powered off), and the UUID generator can
   not be sure that no UUIDs were generated with timestamps larger than
   the value to which the clock was set, then the clock sequence has to
   be changed. If the previous value of the clock sequence is known, it
   can just be incremented; otherwise it should be set to a random or
   high-quality pseudo-random value.

Similarly, if the node ID changes (e.g., because a network card has
been moved between machines), setting the clock sequence to a random
number minimizes the probability of a duplicate due to slight
differences in the clock settings of the machines. If the value of
clock sequence associated with the changed node ID were known, then
the clock sequence could just be incremented, but that is unlikely.

The clock sequence MUST be originally (i.e., once in the lifetime of
a system) initialized to a random number to minimize the correlation
across systems. This provides maximum protection against node
identifiers that may move or switch from system to system rapidly.
The initial value MUST NOT be correlated to the node identifier.

For UUID version 3 or 5, the clock sequence is a 14-bit value
constructed from a name as described in Section 4.3.

For UUID version 4, clock sequence is a randomly or pseudo-randomly
generated 14-bit value as described in Section 4.4.

4.1.6. Node

For UUID version 1, the node field consists of an IEEE 802 MAC
address, usually the host address. For systems with multiple IEEE
802 addresses, any available one can be used. The lowest addressed
octet (octet number 10) contains the global/local bit and the
unicast/multicast bit, and is the first octet of the address
transmitted on an 802.3 LAN.

For systems with no IEEE address, a randomly or pseudo-randomly
generated value may be used; see Section 4.5. The multicast bit must
be set in such addresses, in order that they will never conflict with
addresses obtained from network cards.

For UUID version 3 or 5, the node field is a 48-bit value constructed
from a name as described in Section 4.3.

For UUID version 4, the node field is a randomly or pseudo-randomly
generated 48-bit value as described in Section 4.4.

4.1.7. Nil UUID

The nil UUID is special form of UUID that is specified to have all
128 bits set to zero.

4.2. Algorithms for Creating a Time-Based UUID

Various aspects of the algorithm for creating a version 1 UUID are
discussed in the following sections.

4.2.1. Basic Algorithm

   The following algorithm is simple, correct, and inefficient:

   o Obtain a system-wide global lock

   o From a system-wide shared stable store (e.g., a file), read the
      UUID generator state: the values of the timestamp, clock sequence,
      and node ID used to generate the last UUID.

   o Get the current time as a 60-bit count of 100-nanosecond intervals
      since 00:00:00.00, 15 October 1582.

   o Get the current node ID.

   o If the state was unavailable (e.g., non-existent or corrupted), or
      the saved node ID is different than the current node ID, generate
      a random clock sequence value.

   o If the state was available, but the saved timestamp is later than
      the current timestamp, increment the clock sequence value.

   o Save the state (current timestamp, clock sequence, and node ID)
      back to the stable store.

   o Release the global lock.

   o Format a UUID from the current timestamp, clock sequence, and node
      ID values according to the steps in Section 4.2.2.

   If UUIDs do not need to be frequently generated, the above algorithm
   may be perfectly adequate. For higher performance requirements,
   however, issues with the basic algorithm include:

   o Reading the state from stable storage each time is inefficient.

   o The resolution of the system clock may not be 100-nanoseconds.

   o Writing the state to stable storage each time is inefficient.

   o Sharing the state across process boundaries may be inefficient.

   Each of these issues can be addressed in a modular fashion by local
   improvements in the functions that read and write the state and read
   the clock. We address each of them in turn in the following
   sections.

4.2.1.1. Reading Stable Storage

The state only needs to be read from stable storage once at boot
time, if it is read into a system-wide shared volatile store (and
updated whenever the stable store is updated).

If an implementation does not have any stable store available, then
it can always say that the values were unavailable. This is the
least desirable implementation because it will increase the frequency
of creation of new clock sequence numbers, which increases the
probability of duplicates.

If the node ID can never change (e.g., the net card is inseparable
from the system), or if any change also reinitializes the clock
sequence to a random value, then instead of keeping it in stable
store, the current node ID may be returned.

4.2.1.2. System Clock Resolution

The timestamp is generated from the system time, whose resolution may
be less than the resolution of the UUID timestamp.

If UUIDs do not need to be frequently generated, the timestamp can
simply be the system time multiplied by the number of 100-nanosecond
intervals per system time interval.

If a system overruns the generator by requesting too many UUIDs
within a single system time interval, the UUID service MUST either
return an error, or stall the UUID generator until the system clock
catches up.

A high resolution timestamp can be simulated by keeping a count of
the number of UUIDs that have been generated with the same value of
the system time, and using it to construct the low order bits of the
timestamp. The count will range between zero and the number of
100-nanosecond intervals per system time interval.

Note: If the processors overrun the UUID generation frequently,
additional node identifiers can be allocated to the system, which
will permit higher speed allocation by making multiple UUIDs
potentially available for each time stamp value.

4.2.1.3. Writing Stable Storage

The state does not always need to be written to stable store every
time a UUID is generated. The timestamp in the stable store can be
periodically set to a value larger than any yet used in a UUID. As
long as the generated UUIDs have timestamps less than that value, and

the clock sequence and node ID remain unchanged, only the shared
volatile copy of the state needs to be updated. Furthermore, if the
timestamp value in stable store is in the future by less than the
typical time it takes the system to reboot, a crash will not cause a
reinitialization of the clock sequence.

4.2.1.4. Sharing State Across Processes

If it is too expensive to access shared state each time a UUID is
generated, then the system-wide generator can be implemented to
allocate a block of time stamps each time it is called; a per-
process generator can allocate from that block until it is exhausted.

4.2.2. Generation Details

Version 1 UUIDs are generated according to the following algorithm:

o Determine the values for the UTC-based timestamp and clock
   sequence to be used in the UUID, as described in Section 4.2.1.

o For the purposes of this algorithm, consider the timestamp to be a
   60-bit unsigned integer and the clock sequence to be a 14-bit
   unsigned integer. Sequentially number the bits in a field,
   starting with zero for the least significant bit.

o Set the time_low field equal to the least significant 32 bits
   (bits zero through 31) of the timestamp in the same order of
   significance.

o Set the time_mid field equal to bits 32 through 47 from the
   timestamp in the same order of significance.

o Set the 12 least significant bits (bits zero through 11) of the
   time_hi_and_version field equal to bits 48 through 59 from the
   timestamp in the same order of significance.

o Set the four most significant bits (bits 12 through 15) of the
   time_hi_and_version field to the 4-bit version number
   corresponding to the UUID version being created, as shown in the
   table above.

o Set the clock_seq_low field to the eight least significant bits
   (bits zero through 7) of the clock sequence in the same order of
   significance.

    o Set the 6 least significant bits (bits zero through 5) of the
       clock_seq_hi_and_reserved field to the 6 most significant bits
       (bits 8 through 13) of the clock sequence in the same order of
       significance.

    o Set the two most significant bits (bits 6 and 7) of the
       clock_seq_hi_and_reserved to zero and one, respectively.

    o Set the node field to the 48-bit IEEE address in the same order of
       significance as the address.

4.3. Algorithm for Creating a Name-Based UUID

    The version 3 or 5 UUID is meant for generating UUIDs from "names"
    that are drawn from, and unique within, some "name space". The
    concept of name and name space should be broadly construed, and not
    limited to textual names. For example, some name spaces are the
    domain name system, URLs, ISO Object IDs (OIDs), X.500 Distinguished
    Names (DNs), and reserved words in a programming language. The
    mechanisms or conventions used for allocating names and ensuring
    their uniqueness within their name spaces are beyond the scope of
    this specification.

    The requirements for these types of UUIDs are as follows:

    o The UUIDs generated at different times from the same name in the
       same namespace MUST be equal.

    o The UUIDs generated from two different names in the same namespace
       should be different (with very high probability).

    o The UUIDs generated from the same name in two different namespaces
       should be different with (very high probability).

    o If two UUIDs that were generated from names are equal, then they
       were generated from the same name in the same namespace (with very
       high probability).

    The algorithm for generating a UUID from a name and a name space are
    as follows:

    o Allocate a UUID to use as a "name space ID" for all UUIDs
       generated from names in that name space; see Appendix C for some
       pre-defined values.

    o Choose either MD5 [4] or SHA-1 [8] as the hash algorithm; If
       backward compatibility is not an issue, SHA-1 is preferred.

o Convert the name to a canonical sequence of octets (as defined by
   the standards or conventions of its name space); put the name
   space ID in network byte order.

o Compute the hash of the name space ID concatenated with the name.

o Set octets zero through 3 of the time_low field to octets zero
   through 3 of the hash.

o Set octets zero and one of the time_mid field to octets 4 and 5 of
   the hash.

o Set octets zero and one of the time_hi_and_version field to octets
   6 and 7 of the hash.

o Set the four most significant bits (bits 12 through 15) of the
   time_hi_and_version field to the appropriate 4-bit version number
   from Section 4.1.3.

o Set the clock_seq_hi_and_reserved field to octet 8 of the hash.

o Set the two most significant bits (bits 6 and 7) of the
   clock_seq_hi_and_reserved to zero and one, respectively.

o Set the clock_seq_low field to octet 9 of the hash.

o Set octets zero through five of the node field to octets 10
   through 15 of the hash.

o Convert the resulting UUID to local byte order.

4.4. Algorithms for Creating a UUID from Truly Random or Pseudo-Random Numbers

The version 4 UUID is meant for generating UUIDs from truly-random or
pseudo-random numbers.

The algorithm is as follows:

o Set the two most significant bits (bits 6 and 7) of the
   clock_seq_hi_and_reserved to zero and one, respectively.

o Set the four most significant bits (bits 12 through 15) of the
   time_hi_and_version field to the 4-bit version number from
   Section 4.1.3.

o Set all the other bits to randomly (or pseudo-randomly) chosen
   values.

   See Section 4.5 for a discussion on random numbers.

4.5. Node IDs that Do Not Identify the Host

   This section describes how to generate a version 1 UUID if an IEEE
   802 address is not available, or its use is not desired.

   One approach is to contact the IEEE and get a separate block of
   addresses. At the time of writing, the application could be found at
   <http://standards.ieee.org/regauth/oui/pilot-ind.html>, and the cost
   was US$550.

   A better solution is to obtain a 47-bit cryptographic quality random
   number and use it as the low 47 bits of the node ID, with the least
   significant bit of the first octet of the node ID set to one. This
   bit is the unicast/multicast bit, which will never be set in IEEE 802
   addresses obtained from network cards. Hence, there can never be a
   conflict between UUIDs generated by machines with and without network
   cards. (Recall that the IEEE 802 spec talks about transmission
   order, which is the opposite of the in-memory representation that is
   discussed in this document.)

   For compatibility with earlier specifications, note that this
   document uses the unicast/multicast bit, instead of the arguably more
   correct local/global bit.

   Advice on generating cryptographic-quality random numbers can be
   found in RFC1750 [5].

   In addition, items such as the computer's name and the name of the
   operating system, while not strictly speaking random, will help
   differentiate the results from those obtained by other systems.

   The exact algorithm to generate a node ID using these data is system
   specific, because both the data available and the functions to obtain
   them are often very system specific. A generic approach, however, is
   to accumulate as many sources as possible into a buffer, use a
   message digest such as MD5 [4] or SHA-1 [8], take an arbitrary 6
   bytes from the hash value, and set the multicast bit as described
   above.

5. Community Considerations

   The use of UUIDs is extremely pervasive in computing. They comprise
   the core identifier infrastructure for many operating systems
   (Microsoft Windows) and applications (the Mozilla browser) and in
   many cases, become exposed to the Web in many non-standard ways.

This specification attempts to standardize that practice as openly as possible and in a way that attempts to benefit the entire Internet.

6. Security Considerations

Do not assume that UUIDs are hard to guess; they should not be used as security capabilities (identifiers whose mere possession grants access), for example. A predictable random number source will exacerbate the situation.

Do not assume that it is easy to determine if a UUID has been slightly transposed in order to redirect a reference to another object. Humans do not have the ability to easily check the integrity of a UUID by simply glancing at it.

Distributed applications generating UUIDs at a variety of hosts must be willing to rely on the random number source at all hosts. If this is not feasible, the namespace variant should be used.

7. Acknowledgments

This document draws heavily on the OSF DCE specification for UUIDs. Ted Ts'o provided helpful comments, especially on the byte ordering section which we mostly plagiarized from a proposed wording he supplied (all errors in that section are our responsibility, however).

We are also grateful to the careful reading and bit-twiddling of Ralf S. Engelschall, John Larmouth, and Paul Thorpe. Professor Larmouth was also invaluable in achieving coordination with ISO/IEC.

8. Normative References

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[3]   ISO/IEC 9834-8:2004 Information Technology, "Procedures for the operation of OSI Registration Authorities: Generation and registration of Universally Unique Identifiers (UUIDs) and their use as ASN.1 Object Identifier components" ITU-T Rec. X.667, 2004.

[4]   Rivest, R., "The MD5 Message-Digest Algorithm ", RFC 1321, April 1992.

   [5]   Eastlake, D., 3rd, Schiller, J., and S. Crocker, "Randomness
         Requirements for Security", BCP 106, RFC 4086, June 2005.

   [6]   Moats, R., "URN Syntax", RFC 2141, May 1997.

   [7]   Crocker, D. and P. Overell, "Augmented BNF for Syntax
         Specifications: ABNF", RFC 2234, November 1997.

   [8]   National Institute of Standards and Technology, "Secure Hash
         Standard", FIPS PUB 180-1, April 1995,
         <http://www.itl.nist.gov/fipspubs/fip180-1.htm>.

Appendix A. Appendix A - Sample Implementation

   This implementation consists of 5 files: uuid.h, uuid.c, sysdep.h,
   sysdep.c and utest.c. The uuid.* files are the system independent
   implementation of the UUID generation algorithms described above,
   with all the optimizations described above except efficient state
   sharing across processes included. The code has been tested on Linux
   (Red Hat 4.0) with GCC (2.7.2), and Windows NT 4.0 with VC++ 5.0.
   The code assumes 64-bit integer support, which makes it much clearer.

   All the following source files should have the following copyright
   notice included:

copyrt.h

```
/*
** Copyright (c) 1990- 1993, 1996 Open Software Foundation, Inc.
** Copyright (c) 1989 by Hewlett-Packard Company, Palo Alto, Ca. &
** Digital Equipment Corporation, Maynard, Mass.
** Copyright (c) 1998 Microsoft.
** To anyone who acknowledges that this file is provided "AS IS"
** without any express or implied warranty: permission to use, copy,
** modify, and distribute this file for any purpose is hereby
** granted without fee, provided that the above copyright notices and
** this notice appears in all source code copies, and that none of
** the names of Open Software Foundation, Inc., Hewlett-Packard
** Company, Microsoft, or Digital Equipment Corporation be used in
** advertising or publicity pertaining to distribution of the software
** without specific, written prior permission. Neither Open Software
** Foundation, Inc., Hewlett-Packard Company, Microsoft, nor Digital
** Equipment Corporation makes any representations about the
** suitability of this software for any purpose.
*/
```

uuid.h

```
#include "copyrt.h"
#undef uuid_t
typedef struct {
    unsigned32  time_low;
    unsigned16  time_mid;
    unsigned16  time_hi_and_version;
    unsigned8   clock_seq_hi_and_reserved;
    unsigned8   clock_seq_low;
    byte        node[6];
} uuid_t;
```

```
/* uuid_create -- generate a UUID */
int uuid_create(uuid_t * uuid);

/* uuid_create_md5_from_name -- create a version 3 (MD5) UUID using a
   "name" from a "name space" */
void uuid_create_md5_from_name(
    uuid_t *uuid,          /* resulting UUID */
    uuid_t nsid,           /* UUID of the namespace */
    void *name,            /* the name from which to generate a UUID */
    int namelen            /* the length of the name */
);

/* uuid_create_sha1_from_name -- create a version 5 (SHA-1) UUID
   using a "name" from a "name space" */
void uuid_create_sha1_from_name(

    uuid_t *uuid,          /* resulting UUID */
    uuid_t nsid,           /* UUID of the namespace */
    void *name,            /* the name from which to generate a UUID */
    int namelen            /* the length of the name */
);

/* uuid_compare --  Compare two UUID's "lexically" and return
        -1   u1 is lexically before u2
         0   u1 is equal to u2
         1   u1 is lexically after u2
   Note that lexical ordering is not temporal ordering!
*/
int uuid_compare(uuid_t *u1, uuid_t *u2);


uuid.c

#include "copyrt.h"
#include <string.h>
#include <stdio.h>
#include <stdlib.h>
#include <time.h>
#include "sysdep.h"
#include "uuid.h"

/* various forward declarations */
static int read_state(unsigned16 *clockseq, uuid_time_t *timestamp,
    uuid_node_t *node);
static void write_state(unsigned16 clockseq, uuid_time_t timestamp,
    uuid_node_t node);
static void format_uuid_v1(uuid_t *uuid, unsigned16 clockseq,
    uuid_time_t timestamp, uuid_node_t node);
```

```
static void format_uuid_v3or5(uuid_t *uuid, unsigned char hash[16],
     int v);
static void get_current_time(uuid_time_t *timestamp);
static unsigned16 true_random(void);

/* uuid_create -- generator a UUID */
int uuid_create(uuid_t *uuid)
{
     uuid_time_t timestamp, last_time;
     unsigned16 clockseq;
     uuid_node_t node;
     uuid_node_t last_node;
     int f;

     /* acquire system-wide lock so we're alone */
     LOCK;
     /* get time, node ID, saved state from non-volatile storage */
     get_current_time(&timestamp);
     get_ieee_node_identifier(&node);
     f = read_state(&clockseq, &last_time, &last_node);

     /* if no NV state, or if clock went backwards, or node ID
        changed (e.g., new network card) change clockseq */
     if (!f || memcmp(&node, &last_node, sizeof node))
         clockseq = true_random();
     else if (timestamp < last_time)
         clockseq++;

     /* save the state for next time */
     write_state(clockseq, timestamp, node);

     UNLOCK;

     /* stuff fields into the UUID */
     format_uuid_v1(uuid, clockseq, timestamp, node);
     return 1;
}

/* format_uuid_v1 -- make a UUID from the timestamp, clockseq,
                     and node ID */
void format_uuid_v1(uuid_t* uuid, unsigned16 clock_seq,
                  uuid_time_t timestamp, uuid_node_t node)
{
    /* Construct a version 1 uuid with the information we've gathered
       plus a few constants. */
    uuid->time_low = (unsigned long)(timestamp & 0xFFFFFFFF);
    uuid->time_mid = (unsigned short)((timestamp >> 32) & 0xFFFF);
    uuid->time_hi_and_version =
```

```
        (unsigned short)((timestamp >> 48) & 0x0FFF);
    uuid->time_hi_and_version |= (1 << 12);
    uuid->clock_seq_low = clock_seq & 0xFF;
    uuid->clock_seq_hi_and_reserved = (clock_seq & 0x3F00) >> 8;
    uuid->clock_seq_hi_and_reserved |= 0x80;
    memcpy(&uuid->node, &node, sizeof uuid->node);
}

/* data type for UUID generator persistent state */
typedef struct {
    uuid_time_t  ts;       /* saved timestamp */
    uuid_node_t  node;     /* saved node ID */
    unsigned16   cs;       /* saved clock sequence */
} uuid_state;

static uuid_state st;

/* read_state -- read UUID generator state from non-volatile store */
int read_state(unsigned16 *clockseq, uuid_time_t *timestamp,
               uuid_node_t *node)
{
    static int inited = 0;
    FILE *fp;

    /* only need to read state once per boot */
    if (!inited) {
        fp = fopen("state", "rb");
        if (fp == NULL)
            return 0;
        fread(&st, sizeof st, 1, fp);
        fclose(fp);
        inited = 1;
    }
    *clockseq = st.cs;
    *timestamp = st.ts;
    *node = st.node;
    return 1;
}

/* write_state -- save UUID generator state back to non-volatile
   storage */
void write_state(unsigned16 clockseq, uuid_time_t timestamp,
                 uuid_node_t node)
{
    static int inited = 0;
    static uuid_time_t next_save;
    FILE* fp;
```

```
    if (!inited) {
        next_save = timestamp;
        inited = 1;
    }

    /* always save state to volatile shared state */
    st.cs = clockseq;
    st.ts = timestamp;
    st.node = node;
    if (timestamp >= next_save) {
        fp = fopen("state", "wb");
        fwrite(&st, sizeof st, 1, fp);
        fclose(fp);
        /* schedule next save for 10 seconds from now */
        next_save = timestamp + (10 * 10 * 1000 * 1000);
    }
}

/* get-current_time -- get time as 60-bit 100ns ticks since UUID epoch.
   Compensate for the fact that real clock resolution is
   less than 100ns. */
void get_current_time(uuid_time_t *timestamp)
{
    static int inited = 0;
    static uuid_time_t time_last;
    static unsigned16 uuids_this_tick;
    uuid_time_t time_now;

    if (!inited) {
        get_system_time(&time_now);
        uuids_this_tick = UUIDS_PER_TICK;
        inited = 1;
    }

    for ( ; ; ) {
        get_system_time(&time_now);

        /* if clock reading changed since last UUID generated, */
        if (time_last != time_now) {
            /* reset count of uuids gen'd with this clock reading */
            uuids_this_tick = 0;
            time_last = time_now;
            break;
        }
        if (uuids_this_tick < UUIDS_PER_TICK) {
            uuids_this_tick++;
            break;
        }
```

```
        /* going too fast for our clock; spin */
    }
    /* add the count of uuids to low order bits of the clock reading */
    *timestamp = time_now + uuids_this_tick;
}

/* true_random -- generate a crypto-quality random number.
   **This sample doesn't do that.** */
static unsigned16 true_random(void)
{
    static int inited = 0;
    uuid_time_t time_now;

    if (!inited) {
        get_system_time(&time_now);
        time_now = time_now / UUIDS_PER_TICK;
        srand((unsigned int)
                (((time_now >> 32) ^ time_now) & 0xffffffff));
        inited = 1;
    }

    return rand();
}

/* uuid_create_md5_from_name -- create a version 3 (MD5) UUID using a
   "name" from a "name space" */
void uuid_create_md5_from_name(uuid_t *uuid, uuid_t nsid, void *name,
                               int namelen)
{
    MD5_CTX c;
    unsigned char hash[16];
    uuid_t net_nsid;

    /* put name space ID in network byte order so it hashes the same
       no matter what endian machine we're on */
    net_nsid = nsid;
    net_nsid.time_low = htonl(net_nsid.time_low);
    net_nsid.time_mid = htons(net_nsid.time_mid);
    net_nsid.time_hi_and_version = htons(net_nsid.time_hi_and_version);

    MD5Init(&c);
    MD5Update(&c, &net_nsid, sizeof net_nsid);
    MD5Update(&c, name, namelen);
    MD5Final(hash, &c);

    /* the hash is in network byte order at this point */
    format_uuid_v3or5(uuid, hash, 3);
}
```

```
void uuid_create_sha1_from_name(uuid_t *uuid, uuid_t nsid, void *name,
                                int namelen)
{
    SHA_CTX c;
    unsigned char hash[20];
    uuid_t net_nsid;

    /* put name space ID in network byte order so it hashes the same
       no matter what endian machine we're on */
    net_nsid = nsid;
    net_nsid.time_low = htonl(net_nsid.time_low);
    net_nsid.time_mid = htons(net_nsid.time_mid);
    net_nsid.time_hi_and_version = htons(net_nsid.time_hi_and_version);

    SHA1_Init(&c);
    SHA1_Update(&c, &net_nsid, sizeof net_nsid);
    SHA1_Update(&c, name, namelen);
    SHA1_Final(hash, &c);

    /* the hash is in network byte order at this point */
    format_uuid_v3or5(uuid, hash, 5);
}

/* format_uuid_v3or5 -- make a UUID from a (pseudo)random 128-bit
   number */
void format_uuid_v3or5(uuid_t *uuid, unsigned char hash[16], int v)
{
    /* convert UUID to local byte order */
    memcpy(uuid, hash, sizeof *uuid);
    uuid->time_low = ntohl(uuid->time_low);
    uuid->time_mid = ntohs(uuid->time_mid);
    uuid->time_hi_and_version = ntohs(uuid->time_hi_and_version);

    /* put in the variant and version bits */
    uuid->time_hi_and_version &= 0x0FFF;
    uuid->time_hi_and_version |= (v << 12);
    uuid->clock_seq_hi_and_reserved &= 0x3F;
    uuid->clock_seq_hi_and_reserved |= 0x80;
}

/* uuid_compare --  Compare two UUID's "lexically" and return */
#define CHECK(f1, f2) if (f1 != f2) return f1 < f2 ? -1 : 1;
int uuid_compare(uuid_t *u1, uuid_t *u2)
{
    int i;

    CHECK(u1->time_low, u2->time_low);
    CHECK(u1->time_mid, u2->time_mid);
```

```
    CHECK(u1->time_hi_and_version, u2->time_hi_and_version);
    CHECK(u1->clock_seq_hi_and_reserved, u2->clock_seq_hi_and_reserved);
    CHECK(u1->clock_seq_low, u2->clock_seq_low)
    for (i = 0; i < 6; i++) {
        if (u1->node[i] < u2->node[i])
            return -1;
        if (u1->node[i] > u2->node[i])
            return 1;
    }
    return 0;
}
#undef CHECK


sysdep.h

#include "copyrt.h"
/* remove the following define if you aren't running WIN32 */
#define WININC 0

#ifdef WININC
#include <windows.h>
#else
#include <sys/types.h>
#include <sys/time.h>
#include <sys/sysinfo.h>
#endif

#include "global.h"
/* change to point to where MD5 .h's live; RFC 1321 has sample
   implementation */
#include "md5.h"

/* set the following to the number of 100ns ticks of the actual
   resolution of your system's clock */
#define UUIDS_PER_TICK 1024

/* Set the following to a calls to get and release a global lock */
#define LOCK
#define UNLOCK

typedef unsigned long    unsigned32;
typedef unsigned short   unsigned16;
typedef unsigned char    unsigned8;
typedef unsigned char    byte;

/* Set this to what your compiler uses for 64-bit data type */
#ifdef WININC
```

```
#define unsigned64_t unsigned __int64
#define I64(C) C
#else
#define unsigned64_t unsigned long long
#define I64(C) C##LL
#endif

typedef unsigned64_t uuid_time_t;
typedef struct {
    char nodeID[6];
} uuid_node_t;

void get_ieee_node_identifier(uuid_node_t *node);
void get_system_time(uuid_time_t *uuid_time);
void get_random_info(char seed[16]);


sysdep.c

#include "copyrt.h"
#include <stdio.h>
#include "sysdep.h"

/* system dependent call to get IEEE node ID.
   This sample implementation generates a random node ID. */
void get_ieee_node_identifier(uuid_node_t *node)
{
    static inited = 0;
    static uuid_node_t saved_node;
    char seed[16];
    FILE *fp;

    if (!inited) {
        fp = fopen("nodeid", "rb");
        if (fp) {
            fread(&saved_node, sizeof saved_node, 1, fp);
            fclose(fp);
        }
        else {
            get_random_info(seed);
            seed[0] |= 0x01;
            memcpy(&saved_node, seed, sizeof saved_node);
            fp = fopen("nodeid", "wb");
            if (fp) {
                fwrite(&saved_node, sizeof saved_node, 1, fp);
                fclose(fp);
            }
        }
```

```
        inited = 1;
    }

    *node = saved_node;
}

/* system dependent call to get the current system time. Returned as
   100ns ticks since UUID epoch, but resolution may be less than
   100ns. */
#ifdef _WINDOWS_

void get_system_time(uuid_time_t *uuid_time)
{
    ULARGE_INTEGER time;

    /* NT keeps time in FILETIME format which is 100ns ticks since
       Jan 1, 1601. UUIDs use time in 100ns ticks since Oct 15, 1582.
       The difference is 17 Days in Oct + 30 (Nov) + 31 (Dec)
       + 18 years and 5 leap days. */
    GetSystemTimeAsFileTime((FILETIME *)&time);
    time.QuadPart +=

          (unsigned __int64) (1000*1000*10)       // seconds
        * (unsigned __int64) (60 * 60 * 24)       // days
        * (unsigned __int64) (17+30+31+365*18+5); // # of days
    *uuid_time = time.QuadPart;
}

/* Sample code, not for use in production; see RFC 1750 */
void get_random_info(char seed[16])
{
    MD5_CTX c;
    struct {
        MEMORYSTATUS m;
        SYSTEM_INFO s;
        FILETIME t;
        LARGE_INTEGER pc;
        DWORD tc;
        DWORD l;
        char hostname[MAX_COMPUTERNAME_LENGTH + 1];
    } r;

    MD5Init(&c);
    GlobalMemoryStatus(&r.m);
    GetSystemInfo(&r.s);
    GetSystemTimeAsFileTime(&r.t);
    QueryPerformanceCounter(&r.pc);
    r.tc = GetTickCount();
```

```
    r.l = MAX_COMPUTERNAME_LENGTH + 1;
    GetComputerName(r.hostname, &r.l);
    MD5Update(&c, &r, sizeof r);
    MD5Final(seed, &c);
}

#else

void get_system_time(uuid_time_t *uuid_time)
{
    struct timeval tp;

    gettimeofday(&tp, (struct timezone *)0);

    /* Offset between UUID formatted times and Unix formatted times.
       UUID UTC base time is October 15, 1582.
       Unix base time is January 1, 1970.*/
    *uuid_time = ((unsigned64)tp.tv_sec * 10000000)
        + ((unsigned64)tp.tv_usec * 10)
        + I64(0x01B21DD213814000);
}

/* Sample code, not for use in production; see RFC 1750 */
void get_random_info(char seed[16])
{
    MD5_CTX c;
    struct {
        struct sysinfo s;
        struct timeval t;
        char hostname[257];
    } r;

    MD5Init(&c);
    sysinfo(&r.s);
    gettimeofday(&r.t, (struct timezone *)0);
    gethostname(r.hostname, 256);
    MD5Update(&c, &r, sizeof r);
    MD5Final(seed, &c);
}

#endif

utest.c

#include "copyrt.h"
#include "sysdep.h"
#include <stdio.h>
#include "uuid.h"
```

```
uuid_t NameSpace_DNS = { /* 6ba7b810-9dad-11d1-80b4-00c04fd430c8 */
    0x6ba7b810,
    0x9dad,
    0x11d1,
    0x80, 0xb4, 0x00, 0xc0, 0x4f, 0xd4, 0x30, 0xc8
};

/* puid -- print a UUID */
void puid(uuid_t u)
{
    int i;

    printf("%8.8x-%4.4x-%4.4x-%2.2x%2.2x-", u.time_low, u.time_mid,
    u.time_hi_and_version, u.clock_seq_hi_and_reserved,
    u.clock_seq_low);
    for (i = 0; i < 6; i++)
        printf("%2.2x", u.node[i]);
    printf("\n");
}


/* Simple driver for UUID generator */
void main(int argc, char **argv)
{
    uuid_t u;
    int f;

    uuid_create(&u);
    printf("uuid_create(): "); puid(u);

    f = uuid_compare(&u, &u);
    printf("uuid_compare(u,u): %d\n", f);      /* should be 0 */
    f = uuid_compare(&u, &NameSpace_DNS);
    printf("uuid_compare(u, NameSpace_DNS): %d\n", f); /* s.b. 1 */
    f = uuid_compare(&NameSpace_DNS, &u);
    printf("uuid_compare(NameSpace_DNS, u): %d\n", f); /* s.b. -1 */
    uuid_create_md5_from_name(&u, NameSpace_DNS, "www.widgets.com", 15);
    printf("uuid_create_md5_from_name(): "); puid(u);
}
```

Appendix B.   Appendix B - Sample Output of utest

```
    uuid_create(): 7d444840-9dc0-11d1-b245-5ffdce74fad2
    uuid_compare(u,u): 0
    uuid_compare(u, NameSpace_DNS): 1
    uuid_compare(NameSpace_DNS, u): -1
    uuid_create_md5_from_name(): e902893a-9d22-3c7e-a7b8-d6e313b71d9f
```

Appendix C. Appendix C - Some Name Space IDs

   This appendix lists the name space IDs for some potentially
   interesting name spaces, as initialized C structures and in the
   string representation defined above.

   /* Name string is a fully-qualified domain name */
   uuid_t NameSpace_DNS = { /* 6ba7b810-9dad-11d1-80b4-00c04fd430c8 */
       0x6ba7b810,
       0x9dad,
       0x11d1,
       0x80, 0xb4, 0x00, 0xc0, 0x4f, 0xd4, 0x30, 0xc8
   };

   /* Name string is a URL */
   uuid_t NameSpace_URL = { /* 6ba7b811-9dad-11d1-80b4-00c04fd430c8 */
       0x6ba7b811,
       0x9dad,
       0x11d1,
       0x80, 0xb4, 0x00, 0xc0, 0x4f, 0xd4, 0x30, 0xc8
   };

   /* Name string is an ISO OID */
   uuid_t NameSpace_OID = { /* 6ba7b812-9dad-11d1-80b4-00c04fd430c8 */
       0x6ba7b812,
       0x9dad,
       0x11d1,
       0x80, 0xb4, 0x00, 0xc0, 0x4f, 0xd4, 0x30, 0xc8
   };

   /* Name string is an X.500 DN (in DER or a text output format) */
   uuid_t NameSpace_X500 = { /* 6ba7b814-9dad-11d1-80b4-00c04fd430c8 */
       0x6ba7b814,
       0x9dad,
       0x11d1,
       0x80, 0xb4, 0x00, 0xc0, 0x4f, 0xd4, 0x30, 0xc8
   };

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November 3, 2020
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President and Vice President

(D) BIDEN / HARRIS	238,869	62.0%
(R) TRUMP / PENCE	136,259	35.4%
(L) JORGENSEN / COHEN	3,437	0.9%
(G) HAWKINS / WALKER	2,178	0.6%
(AS) PIERCE / BALLARD	741	0.2%
(C) BLANKENSHIP / MOHR	630	0.2%
Blank Votes:	3,072	0.8%
Over Votes:	256	0.1%

U.S. Representative, Dist I

(D) CASE, Ed	183,245	64.7%
(R) CURTIS, Ron	71,188	25.1%
Blank Votes:	28,907	10.2%
Over Votes:	68	0.0%

U.S. Representative, Dist II

(D) KAHELE, Kaiali'i (Kai)	53,723	52.7%
(R) AKANA, Joe	35,777	35.1%
(A) HOOMANAWANUI, Jonathan	2,421	2.4%
(L) TIPPENS, Michelle Rose	2,181	2.1%
(N) BURRUS, Ron	918	0.9%
(AS) GIUFFRE, John (Raghu)	219	0.2%
Blank Votes:	6,732	6.6%
Over Votes:	63	0.1%

State Senator, Dist 9

(D) CHANG, Stanley	19,109	58.8%
(R) SLOM, Sam M.	11,762	36.2%
Blank Votes:	1,623	5.0%
Over Votes:	4	0.0%

State Senator, Dist 16 Vacancy

(D) MISALUCHA, Bennette	11,508	48.4%
(R) KITASHIMA, Kelly Puamailani	10,335	43.4%
Blank Votes:	1,944	8.2%
Over Votes:	8	0.0%

State Senator, Dist 19

(R) FEVELLA, Kurt	12,345	56.3%
(D) CABANILLA ARAKAWA, Rida	8,813	40.2%
Blank Votes:	744	3.4%
Over Votes:	8	0.0%

State Senator, Dist 20

(D) GABBARD, Mike	13,967	63.9%
(L) BONOAN, Feena M.	6,172	28.2%
Blank Votes:	1,705	7.8%
Over Votes:	10	0.0%

State Senator, Dist 22

(D) DELA CRUZ, Donovan	13,612	67.3%
(R) MILLER, John E.	5,755	28.5%
Blank Votes:	848	4.2%
Over Votes:	5	0.0%

State Senator, Dist 25

(D) LEE, Chris	17,733	61.5%
(R) KIM-MARSHALL, Kristina	9,567	33.2%
Blank Votes:	1,529	5.3%
Over Votes:	6	0.0%

State Representative, Dist 17

(R) WARD, Gene	9,284	61.1%
(D) KOGACHI, Keith	5,054	33.3%
Blank Votes:	857	5.6%
Over Votes:	5	0.0%

State Representative, Dist 18

(D) HASHEM, Mark Jun	9,349	61.6%
(R) FORD, Lori	4,432	29.2%
Blank Votes:	1,399	9.2%
Over Votes:	4	0.0%

State Representative, Dist 19

(D) KOBAYASHI, Bertrand (Bert)	8,344	64.9%
(N) PARRISH, Michael L. (Mike)	1,964	15.3%
(AS) CHEN, Wayne	573	4.5%
Blank Votes:	1,968	15.3%
Over Votes:	4	0.0%

State Representative, Dist 20

(D) SAYAMA, Jackson	9,235	70.6%
(R) ALLEN, Julia E.	3,138	24.0%
Blank Votes:	694	5.3%
Over Votes:	6	0.0%

State Representative, Dist 22

(D) TAM, Adrian	6,080	63.0%
(R) OCHS, Nicholas R.	2,869	29.7%
Blank Votes:	702	7.3%
Over Votes:	4	0.0%

State Representative, Dist 24

(D) BELATTI, Della Au	7,189	66.6%
(A) SEXTON, Andy, Jr. (Umi)	2,121	19.7%
Blank Votes:	1,475	13.7%
Over Votes:	2	0.0%

State Representative, Dist 30

(D) GANADEN, Ernesto M. (Sonny)	3,443	64.4%
(R) QUILINGKING, Tess Abalos	1,617	30.3%
Blank Votes:	281	5.3%
Over Votes:	4	0.1%

State Representative, Dist 33

(D) KONG, Sam Satoru	9,010	69.2%
(R) BOYETTE, Jennifer (Jenny)	3,084	23.7%
Blank Votes:	920	7.1%
Over Votes:	2	0.0%

State Representative, Dist 34

(D) TAKAYAMA, Gregg	7,671	60.6%
(R) SIMON, Keone F.	4,420	34.9%
Blank Votes:	574	4.5%
Over Votes:	3	0.0%

State Representative, Dist 35

(D) TAKUMI, Roy M.	5,303	61.4%
(R) HOOD, Carl E.	2,155	24.9%
(A) KAHAU, Keline-Kameyo	611	7.1%
Blank Votes:	571	6.6%
Over Votes:	2	0.0%

State Representative, Dist 36

(R) OKIMOTO, Val	6,949	50.2%
(D) LA CHICA, Trish	6,337	45.8%
Blank Votes:	549	4.0%
Over Votes:	5	0.0%

State Representative, Dist 37

(D) YAMANE, Ryan I.	10,049	70.6%
(R) SVRCINA, Emil	3,442	24.2%
Blank Votes:	734	5.2%
Over Votes:	9	0.1%

State Representative, Dist 39

(D) CULLEN, Ty J.K.	7,420	61.8%
(R) MAGLINTI, Austin L.S.	3,849	32.1%
Blank Votes:	731	6.1%
Over Votes:	0	0.0%

State Representative, Dist 40

(R) MCDERMOTT, Bob	5,365	55.7%
(D) MARTINEZ, Rose	3,886	40.4%
Blank Votes:	373	3.9%
Over Votes:	2	0.0%

State Representative, Dist 41

(D) LOPRESTI, Matthew S. (Matt)	6,522	48.4%
(R) ALCOS, David (Bradda)	6,319	46.8%
Blank Votes:	642	4.8%
Over Votes:	6	0.0%

State Representative, Dist 43

(D) ELI, Stacelynn Kehaulani	4,089	47.7%
(R) GARCIA, Diamond	3,658	42.6%
(A) HOOHULI, Shaena Dela Cruz	613	7.1%
Blank Votes:	215	2.5%
Over Votes:	4	0.0%

State Representative, Dist 44

(D) GATES, Cedric Asuega	4,518	60.6%
(R) ALDEGUER, Maysana Akahai	2,036	27.3%
(A) SIMPLICIANO, Joseph K., Jr.	721	9.7%
Blank Votes:	180	2.4%
Over Votes:	4	0.1%

State Representative, Dist 45

(R) CHEAPE MATSUMOTO, Lauren	4,616	63.5%
(D) CHAPMAN, Michael	2,359	32.4%
Blank Votes:	296	4.1%
Over Votes:	2	0.0%

State Representative, Dist 47

(D) QUINLAN, Sean	5,425	55.4%
(R) READY, Boyd	4,007	41.0%
Blank Votes:	346	3.5%
Over Votes:	6	0.1%

State Representative, Dist 49

(D) MATAYOSHI, Scot	10,275	72.9%
(R) DANNER, Kilomana	3,031	21.5%
Blank Votes:	786	5.6%
Over Votes:	2	0.0%

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State Representative, Dist 50

(D) BRANCO, Patrick Pihana	7,592	57.1%
(R) SOUZA, Kanani	4,790	36.0%
Blank Votes:	919	6.9%
Over Votes:	4	0.0%

State Representative, Dist 51

(D) MARTEN, Lisa	6,857	52.5%
(R) KAMA-TOTH, Kukana K.K.	5,082	38.9%
(A) HO, Erik K.	522	4.0%
Blank Votes:	605	4.6%
Over Votes:	4	0.0%

Hawaii Resident Trustee

LINDSEY, Keola	153,643	39.9%
MANGAUIL, Lanakila	95,518	24.8%
Blank Votes:	136,165	35.3%
Over Votes:	116	0.0%

Molokai Resident Trustee

ALAPA, Luana	136,111	35.3%
MACHADO, Colette (Piipii)	104,556	27.1%
Blank Votes:	144,658	37.5%
Over Votes:	117	0.0%

At-Large Trustee

AKINA, Keli'i	134,509	34.9%
SOUZA, Keoni	131,926	34.2%
Blank Votes:	118,881	30.8%
Over Votes:	126	0.0%

Mayor, City and County of Honolulu

BLANGIARDI, Rick	224,474	58.2%
AMEMIYA, Keith	149,735	38.8%
Blank Votes:	11,097	2.9%
Over Votes:	136	0.0%

Prosecuting Attorney, City and County of Honolulu

ALM, Steve	199,399	51.7%
KAU, Megan	159,745	41.4%
Blank Votes:	26,192	6.8%
Over Votes:	106	0.0%

Councilmember, Dist III, City and County of Honolulu

KIAAINA, Esther	27,895	53.9%
THIELEN, Greg	19,143	37.0%
Blank Votes:	4,732	9.1%
Over Votes:	11	0.0%

Councilmember, Dist VII, City and County of Honolulu

CORDERO, Radiant	12,730	48.5%
AKI, Jacob	11,342	43.2%
Blank Votes:	2,147	8.2%
Over Votes:	7	0.0%

Councilmember, Dist IX, City and County of Honolulu

TULBA, Augusto E. (AugieT)	21,265	49.2%
ESPERO, Will	19,702	45.6%
Blank Votes:	2,223	5.1%
Over Votes:	10	0.0%

HONOLULU: Term Limits for Prosecuting Attorney

YES	294,387	76.4%
NO	59,589	15.5%
Blank Votes:	31,293	8.1%
Over Votes:	173	0.0%

HONOLULU: Youth Commission

YES	208,732	54.2%
NO	129,707	33.7%
Blank Votes:	46,861	12.2%
Over Votes:	142	0.0%

HONOLULU: Ethics Commission Budget

YES	184,405	47.8%
NO	155,421	40.3%
Blank Votes:	45,463	11.8%
Over Votes:	153	0.0%

HONOLULU: Ethics Commission Staff

YES	200,814	52.1%
NO	134,125	34.8%
Blank Votes:	50,407	13.1%
Over Votes:	96	0.0%

REGISTRATION AND TURNOUT

```
*****************************************
GENERAL
*****************************************
```

TOTAL REGISTRATION	549,935	
TOTAL TURNOUT	385,442	70.1%
MAIL TURNOUT	368,238	67.0%
IN-PERSON TURNOUT	17,204	3.1%

HONOLULU ELECTIONS BY THE NUMBERS

2020 ELECTIONS
CITY & COUNTY OF HONOLULU

HNL

MARK MAIL
MATTER
ELECTIONS DIVISION

Table of Contents

INTRODUCTION

Aloha,

Passed by the legislature as House Bill 1248 HD1 SD2 CD1 and signed into law on June 25, 2019 by Governor David Ige, Act 136 transitioned Hawaii elections to universal vote-by-mail.

In just its first year of implementation, the City saw the highest number of voters participating in an election cycle. Turnout percentages against voter registration reversed a trend of overall declining participation that reached back to the mid-1990s.

Contained in these pages are metrics from the 2020 Elections showing receipt of votes cast by mail through the postal system, votes received through the network of regional ballot drop boxes, and votes cast at Voter Service Centers.

We trust that this information is useful to psephologists, as well as for the edification of future Honolulu election administrators.

We highlight that the City & County of Honolulu is responsible for voter registration, mailing, receipt and validation of ballot mail. The data presented herein represents a look at returned envelopes that were unopened throughout the Elections Division's processing operations.

While this compilation of data, percentages and charts convey a successful election, we hope it also provides a sense of the effort put forth by Office of the City Clerk, Honolulu Elections Division and the various City departments that provided their assistance to ensure the success of the 2020 Elections. We hope that universal vote-by-mail sets a positive trajectory for elections in Hawaii.

MARK • MAIL • MATTER
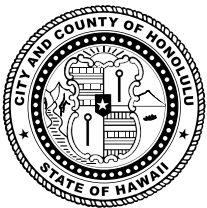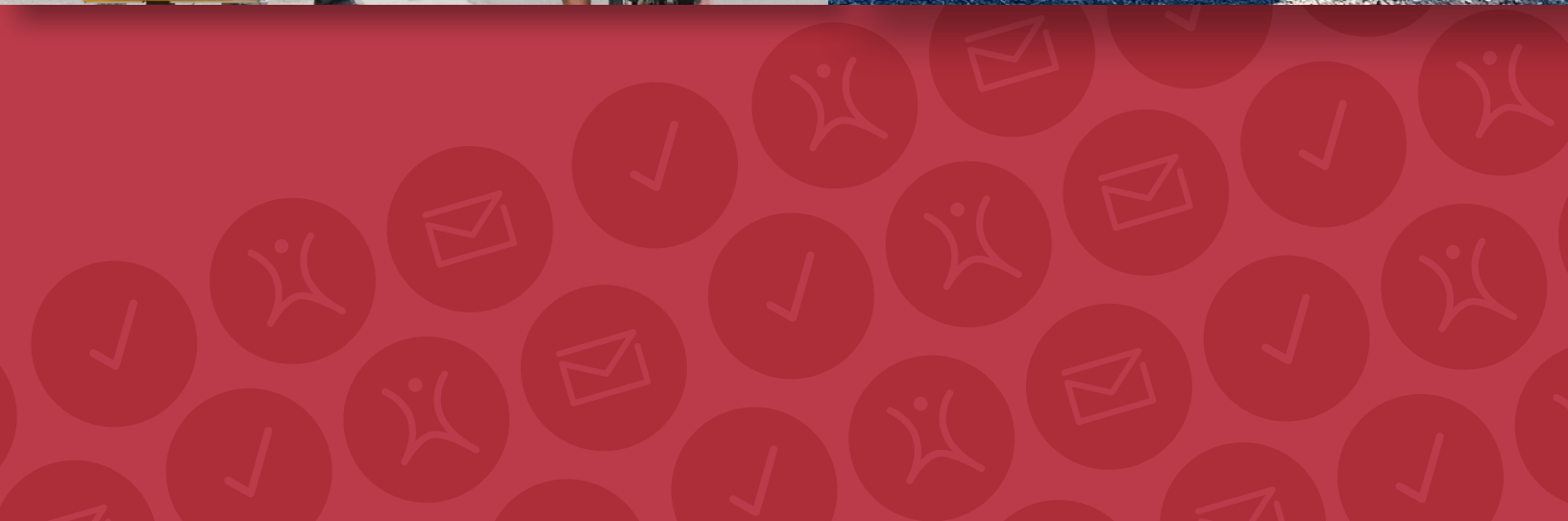
SUMMARY

Summary

Registered Voters
These totals reflect active and inactive voters. Inactive voter records are those in which an address issue has been identified. While these individuals remain technically registered to vote, an update to their voter registration record is required.

Primary 525,153
General 549,935

Ballots Sent to Voters
Primary 460,217
General 492,584

Initial Ballot Packet Mail Dates
Primary July 15-17, 2020
General October 5-6, 2020

Ballots/Envelopes Received and Accepted
The total number of ballots/envelopes received and accepted reflects validated ballot envelopes received through the postal system and ballot envelope drop boxes, and in-person voting totals.

Primary 275,852
General 385,756

Places of Deposit

The Honolulu Elections Division established Places of Deposit (POD) per Act 136, SLH 2019, providing voters with an alternate option to the United States Postal Service (USPS). There were eight Places of Deposit in the Primary Election. Four additional Places of Deposit were added for the General Election.

Ballot envelopes were collected daily during the voting period, excluding Sundays. Two to three teams, comprised of at least two staff members, conducted the daily collection of ballot envelopes. These teams adhered to procedures for the collection, security, and transportation of ballot envelopes. Collected ballot envelopes were returned to the Honolulu Elections Division's secure airport location for sorting and verification.

Places of Deposit Locations
- Waianae District Park
- Kapolei Hale
- Mililani Park & Ride
- Neal Blaisdell Park
- Kahuku District/Community Park
- Kaneohe District Park
- Hawaii Kai Park & Ride
- Honolulu Hale

Locations added for the General Election
- Bill Balfour Jr. Waipahu District Park
- Kalihi Valley District Park
- Kailua District Park
- Kanewai Community Park

Voter Service Centers

Voter Service Centers (VSC) were established at Honolulu Hale and Kapolei Hale from the 10th business day preceding the day of the election for both the Primary and General. VSCs were open to the public from Monday to Saturday, 8:00 a.m. to 4:30 p.m. and on Election Day from 7:00 a.m. to 7:00 p.m. The Honolulu Hale and Kapolei Hale sites were equipped with 24 and 25 accessible voting machines, respectively. Voting machines at both locations were cleaned after every use and spaced apart to prevent the spread of COVID-19.

In addition to accessible voting, services offered at both locations included the ability to register for the first time if voters missed the 30-day voter registration deadline, update voters' (name and address) information on their record and receive replacement ballots. (HRS§11-1)

Voter Service Center Turnout
Primary 3,169   (1.15% of voter turnout)
General 17,198   (4.46% of voter turnout)

Same-Day Registration
Individuals who are not registered to vote are able to register to vote and vote on the same day (HRS§11-15.2).

Primary 391
General 4,106

BALLOT SUBMISSIONS BY VOTING METHOD

Ballot Submissions by Voting Method

Ballot Submissions,
by Method – Primary and General Elections

	Primary	General
*USPS	225,901	266,685
*Places of Deposit	48,214	101,186
Voter Service Centers	3,169	17,198
**HTML	403	2,261

■ Primary ■ General
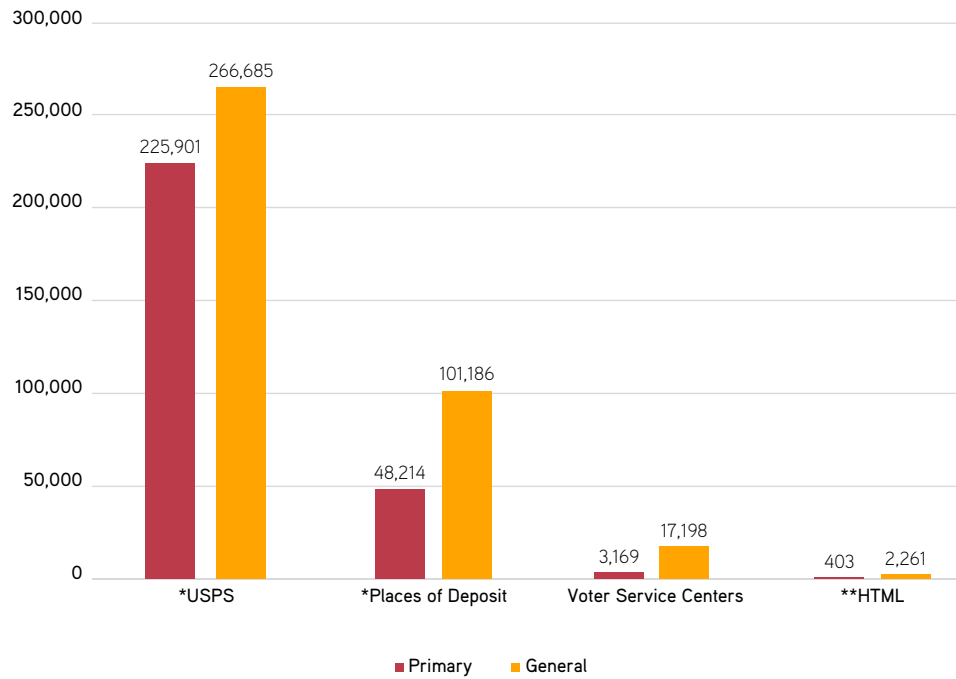
*Values here reflect receipt of ballot submissions prior to validation
**HTML voting, also referred to as electronic ballot delivery, is available to uniformed and overseas voters, voters with special needs and voters who request a replacement ballot within five days of the election.

United States Postal System

Ballot Envelopes Received from Postal System, Daily Totals – Primary Election

Bar chart showing daily totals from 7/20 to 8/8:
- 7/20: 7,392
- 7/21: 11,166
- 7/22: 15,680
- 7/23: 8,326
- 7/24: 16,876
- 7/25: 10,221
- 7/28: 15,260
- 7/29: 14,533
- 7/30: 14,353
- 7/31: 8,494
- 8/1: 12,342
- 8/3: 8,409
- 8/4: 23,324
- 8/5: 26,159
- 8/6: 18,415
- 8/7: 7,455
- 8/8: 7,496
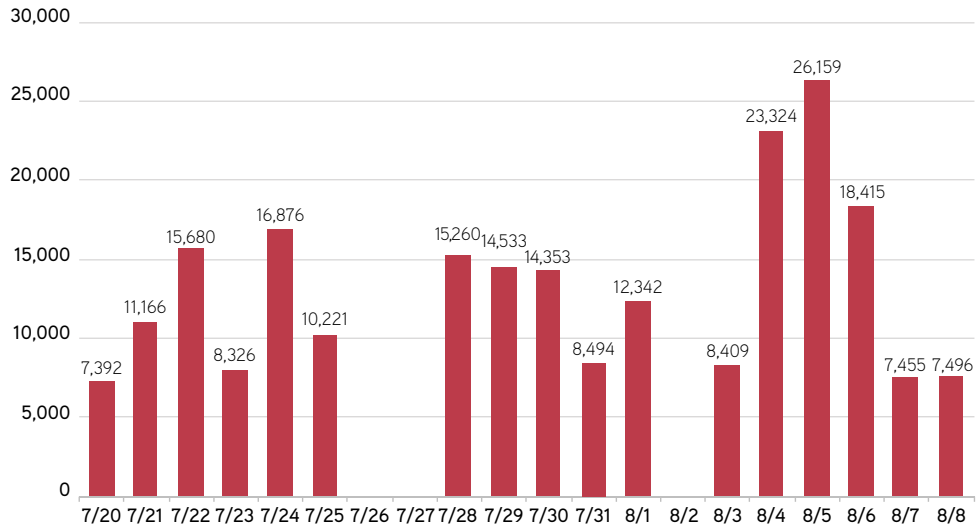
7/27 – Hurricane Douglas

Note: Except when noted, blank values for this and all subsequent daily charts reflect elections office closures.

Ballot Envelopes Received from Postal System, Daily Totals – General Election

Bar chart showing daily totals from 10/7 to 11/3:
- 10/7: 373
- 10/8: 7,924
- 10/9: 686
- 10/10: 20,523
- 10/13: 37,178
- 10/14: 39,710
- 10/15: 20,862
- 10/16: 14,725
- 10/17: 12,754
- 10/18: 9,619
- 10/19: 16,456
- 10/20: 12,939
- 10/21: 9,788
- 10/22: 8,237
- 10/23: 7,470
- 10/26: 6,245
- 10/27: 13,794
- 10/28: 13,579
- 10/29: 5,959
- 10/30: 2,681
- 10/31: 2,186
- 11/2: 1,418
- 11/3: 1,577
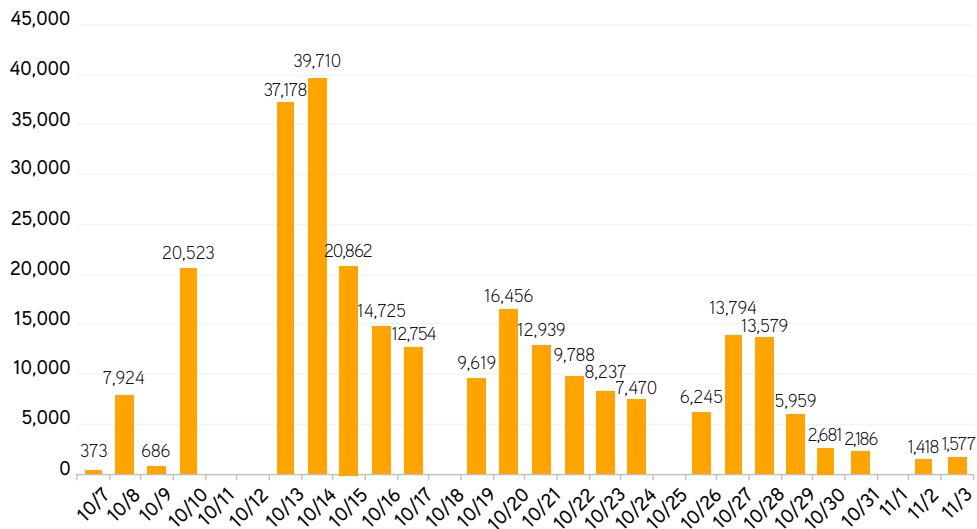
10/12 - USPS closed (Columbus Day holiday)

Places of Deposit

Ballot Envelopes Received from Places of Deposit, Daily Totals – Primary Election

Date	Value
7/18	7
7/19	44
7/20	49
7/21	358
7/22	578
7/23	627
7/24	301
7/28	1,118
7/29	1,232
7/30	920
7/31	1,193
8/1	1,555
8/3	4,059
8/4	4,699
8/5	4,329
8/6	3,880
8/7	5,542
8/8 AM	8,354
8/8 PM	9,369
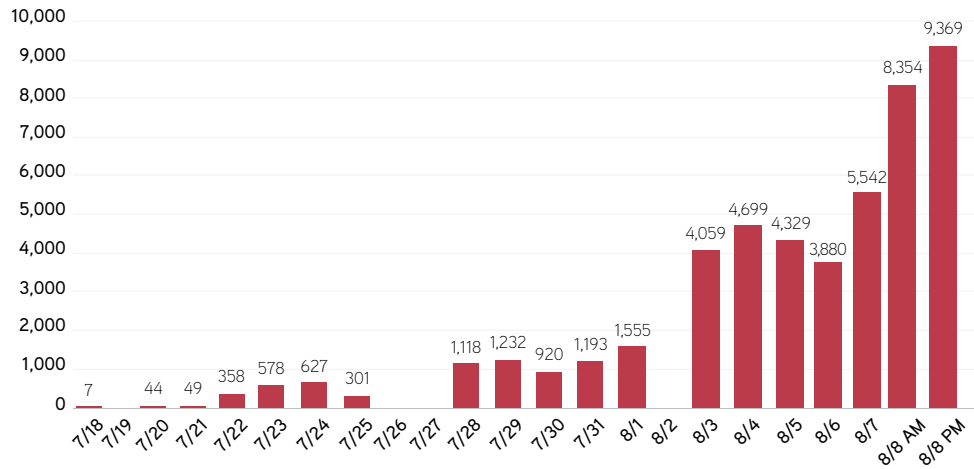
Ballot Envelopes Received from Places of Deposit, Totals by Location – Primary Election

Location	Value
Waianae District Park	1,173
Kapolei Hale	6,901
Mililani Park & Ride	5,908
Neal Blaisdell Park	5,233
Kahuku District Park	831
Kaneohe District Park	7,622
Hawaii Kai Park & Ride	6,539
Honolulu Hale	14,007

Ballot Envelopes Received from Places of Deposit, Daily Totals – General Election

Date	Value
10/7	424
10/8	1,261
10/9	2,483
10/10	2,131
10/11	3,534
10/12	3,165
10/13	2,897
10/14	2,871
10/15	2,641
10/16	2,432
10/17	
10/18	4,417
10/19	3,110
10/20	3,090
10/21	3,129
10/22	2,453
10/23	2,774
10/24	
10/25	5,663
10/26	4,700
10/27	5,694
10/28	4,228
10/29	4,246
10/30	3,988
10/31	
11/1	7,346
11/2 AM	475
11/2 PM	10,210
11/3 AM	11,824
11/3 PM	
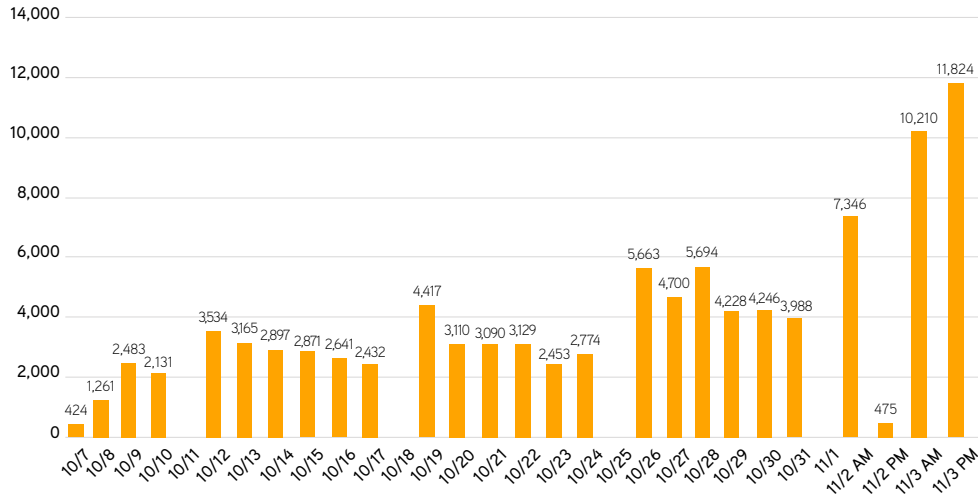
Ballot Envelopes Received from Places of Deposit, Totals by Location – General Election

Location	Value
Waianae District Park	1,837
Kapolei Hale	13,637
Mililani Park & Ride	10,853
Waipahu District Park	3,830
Neal Blaisdell Park	7,147
Kalihi Valley District Park	2,685
Kahuku District Park	1,551
Kaneohe District Park	8,888
Kailua District Park	8,821
Hawaii Kai Park & Ride	10,617
Kanewai Comm. Park	6,206
Honolulu Hale	25,114

Voter Service Centers

Voter Service Centers,
Daily Totals per Location – Primary Election

Chart: Daily totals per location, Honolulu and Kapolei

Date	Honolulu	Kapolei
7/27		
7/28	58	40
7/29	59	44
7/30	66	37
7/31	83	47
8/1	77	45
8/2		
8/3	169	105
8/4	173	83
8/5	190	114
8/6	199	127
8/7	299	126
8/8	547	481

Voter Registraton Updates at Voter Service Centers,
Daily Totals per Location – Primary Election

Chart: Voter registration updates daily totals per location, Honolulu and Kapolei

Date	Honolulu	Kapolei
7/27		
7/28	12	3
7/29	9	7
7/30	15	9
7/31	18	6
8/1	13	9
8/2		
8/3	44	20
8/4	41	23
8/5	44	22
8/6	49	26
8/7	74	31
8/8	140	118

Same-Day Voter Registration at Voter Service Centers, Daily Totals per Location – Primary Election

Bar chart showing daily totals of same-day voter registration at Honolulu and Kapolei voter service centers.

Date	Honolulu	Kapolei
7/27		
7/28	10	6
7/29	11	2
7/30	11	5
7/31	8	5
8/1	7	1
8/2		
8/3	14	6
8/4	22	15
8/5	23	13
8/6	18	16
8/7	46	14
8/8	82	56

Honolulu   Kapolei

Voter Service Centers,
Daily Totals per Location – General Election

	Honolulu	Kapolei
10/20	454	471
10/21	406	400
10/22	371	334
10/23	434	368
10/24	526	566
10/26	464	494
10/27	534	477
10/28	527	454
10/29	499	461
10/30	660	510
10/31	599	617
11/2	1,143	907
11/3	2,515	2,007

Voter Registraton Updates at Voter Service Centers,
Daily Totals per Location – General Election

	Honolulu	Kapolei
10/20	57	49
10/21	45	38
10/22	49	36
10/23	53	48
10/24	77	55
10/26	61	64
10/27	61	53
10/28	78	65
10/29	77	67
10/30	93	81
10/31	91	71
11/2	194	180
11/3	456	313

Same-Day Voter Registration at Voter Service Centers, Daily Totals per Location - General Election

Legend: ■ Honolulu ■ Kapolei

Date	Honolulu	Kapolei
10/20	61	64
10/21	65	27
10/22	64	28
10/23	75	31
10/24	76	48
10/25		
10/26	76	55
10/27	97	58
10/28	105	63
10/29	123	71
10/30	146	86
10/31	132	106
11/1		
11/2	414	231
11/3	1,027	777

ADDITIONAL PROCESSING AND SERVICES

Invalidated Ballot Envelopes

Invalidated Ballot Envelopes, by Type – Primary and General Elections
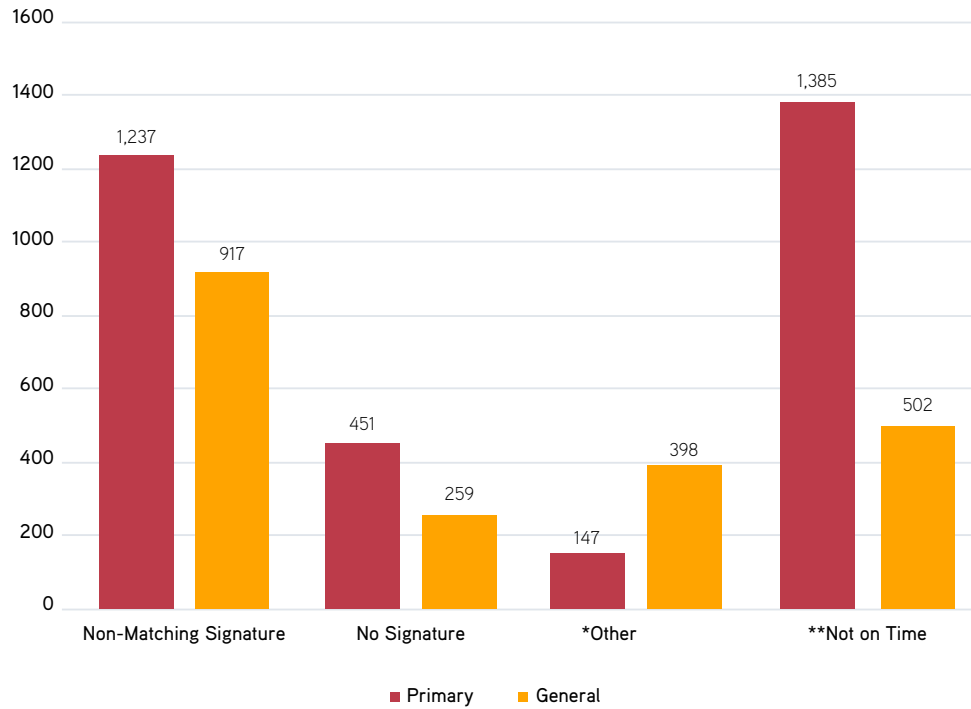
*This category covers ballots cancelled or cured by HTML or VSC

**Not on Time reflects ballot envelopes collected up to the 10th business day following Election Day.

Ballot Envelope Signature Curing

Voters whose ballot envelopes were received without a signature or a signature that was determined not to match the voter's signatures on file were contacted and allowed to provide information to remedy the invalid ballot envelope status. As provided by State Law, voters are allowed to cure an invalid ballot envelope up to five business days following the election. The online curing option was available for non-matching signature curing only.

Ballot Envelope Signature Curing by Type and Method, Primary Election
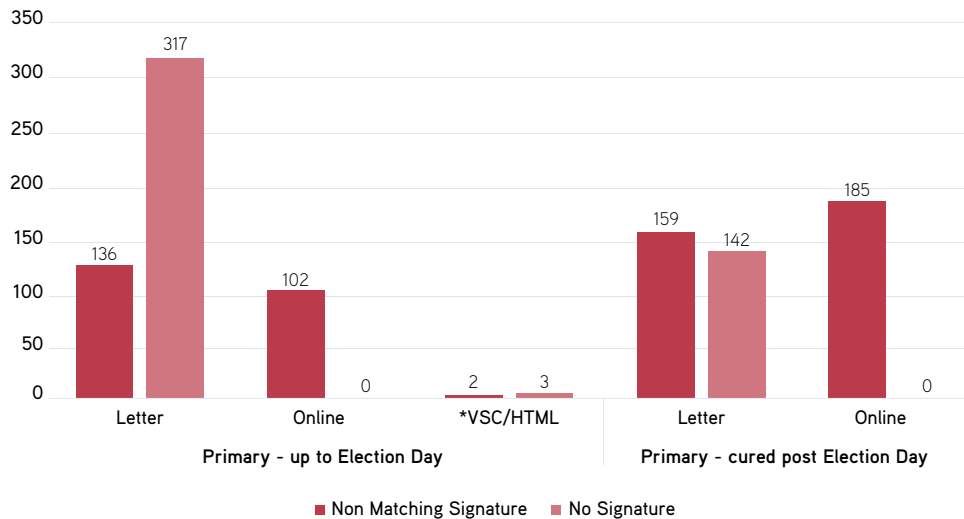
Bar chart showing values for Primary – up to Election Day: Letter – Non Matching Signature 136, No Signature 317; Online – Non Matching Signature 102, No Signature 0; *VSC/HTML – Non Matching Signature 2, No Signature 3. Primary – cured post Election Day: Letter – Non Matching Signature 159, No Signature 142; Online – Non Matching Signature 185, No Signature 0.

Legend: ■ Non Matching Signature ■ No Signature

*Values under this category were individuals who received a cure letter but chose to vote at a Voter Service Center or with an HTML replacement ballot.

Ballot Envelope Curing by Type and Method, General Election
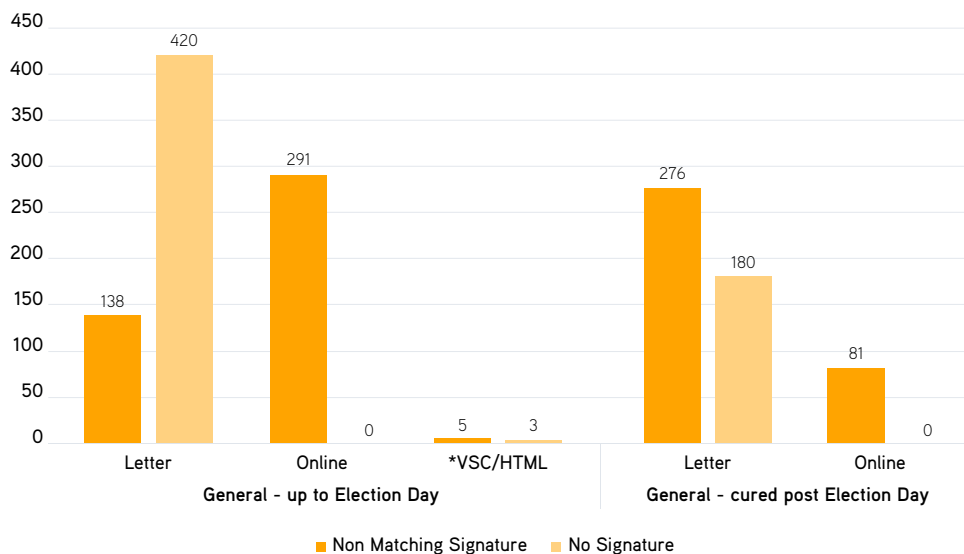
Bar chart showing values for General – up to Election Day: Letter – Non Matching Signature 138, No Signature 420; Online – Non Matching Signature 291, No Signature 0; *VSC/HTML – Non Matching Signature 5, No Signature 3. General – cured post Election Day: Letter – Non Matching Signature 276, No Signature 180; Online – Non Matching Signature 81, No Signature 0.

Legend: ■ Non Matching Signature ■ No Signature

*Values under this category were individuals who received a cure letter but chose to vote at a Voter Service Center or with an HTML replacement ballot.

Replacement Ballots

Voters were provided replacements ballots if they spoiled or did not receive their ballot. Voters were able to request a replacement ballot by phone, in-person or online. Due to mail transit times, voters who requested physical (paper) replacement ballots within the last five days of the election were required to pick up the replacement or vote in-person at a Voter Service Center.

**Replacement Ballot Requests,
Primary Election Daily Totals**

Date	Value
7/16	16
7/17	45
7/18	
7/19	
7/20	225
7/21	84
7/22	79
7/23	82
7/24	72
7/25	
7/26	
7/27	
7/28	134
7/29	111
7/30	84
7/31	71
8/1	35
8/2	
8/3	124
8/4	73
8/5	58
8/6	30
8/7	23
8/8	29
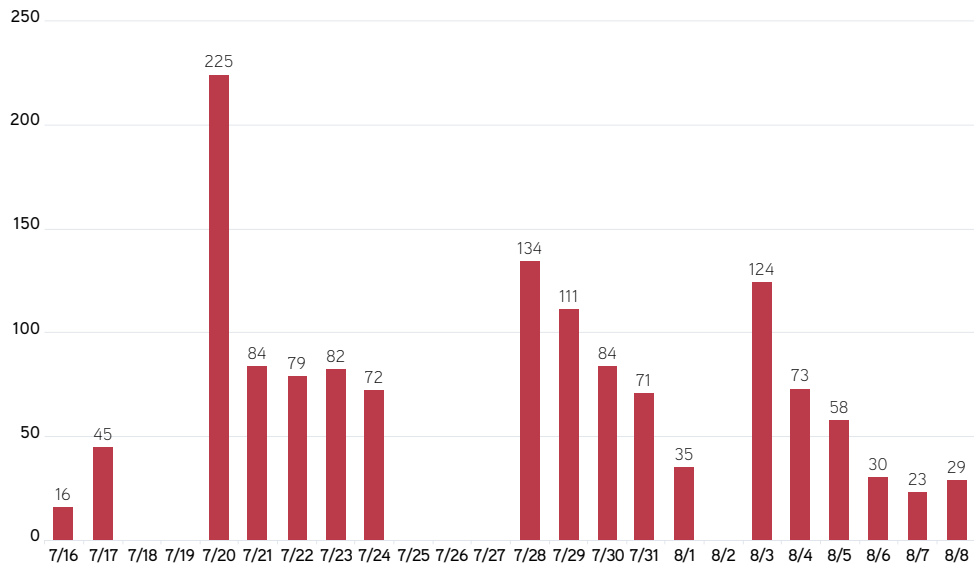
**Replacement Ballot Requests,
General Election Daily Totals**

Date	Value
10/7	22
10/8	67
10/9	106
10/10	80
10/11	159
10/12	131
10/13	126
10/14	111
10/15	102
10/16	83
10/17	
10/18	235
10/19	225
10/20	224
10/21	119
10/22	71
10/23	77
10/24	
10/25	79
10/26	74
10/27	63
10/28	64
10/29	13
10/30	7
10/31	
11/1	14
11/2	25
11/3	
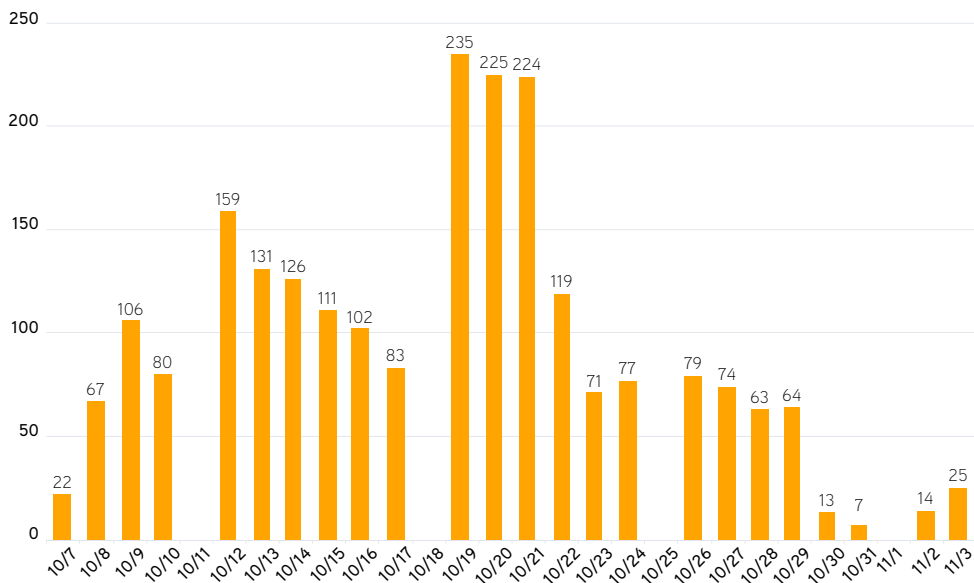
Undeliverable Mail

Undeliverable mail falls generally into the following broad categories:
- Address Issues (No Such Number, No Such Street, Insufficient Address)
- Moved / Not at this Address
- Forwarding Address (pursuant to State Law, ballots cannot be forwarded)
- Not Deliverable (Not Deliverable as Addressed, Unable to Forward, Address Not Known, Vacant, No Mail Receptacle, Refused)

In the case of undeliverable mail, voters are registered but unable to vote until they provide an updated resident or mailing address.

Undeliverable Mail by Type, Primary Election

Category	Count
Address Issue	265
Moved/Not at this address	314
Forwarding Address	3,778
Not Deliverable	2,668

Undeliverable Mail by Type, General Election

Category	Count
Address Issue	402
Moved/Not at this address	1,224
Forwarding Address	5,330
Not Deliverable	4,033
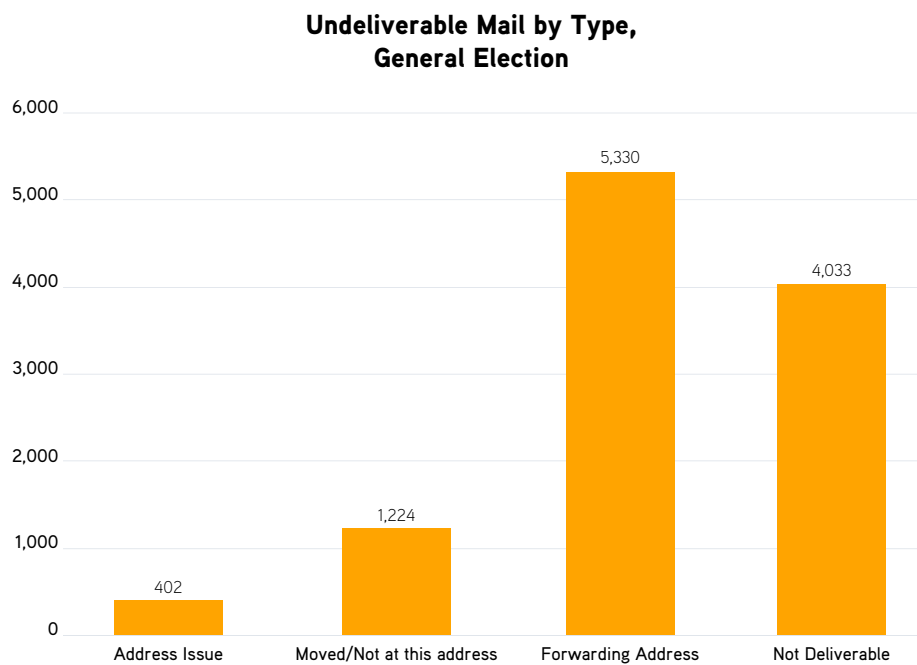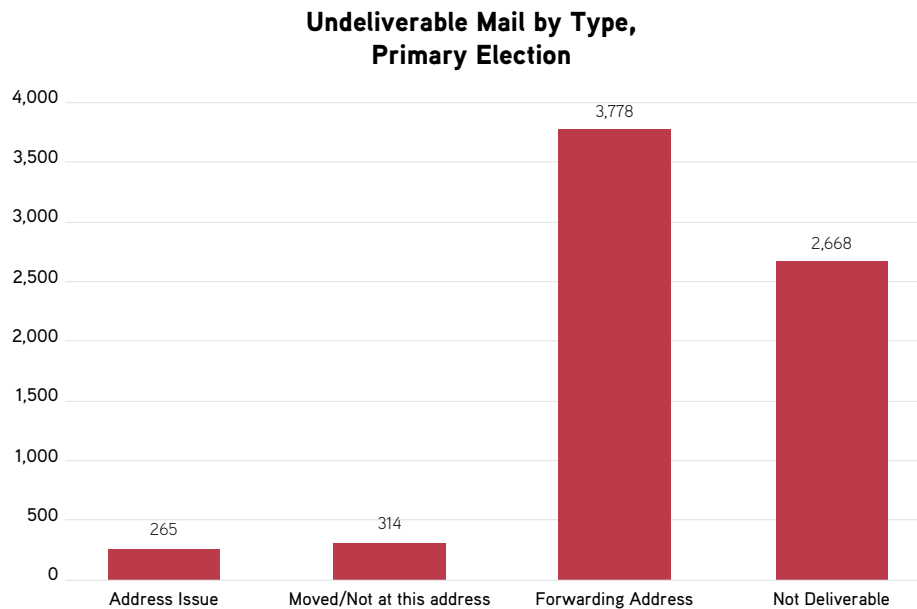
Accessibility / HTML Ballots

UOCAVA Voters

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) allows members of the armed forces, their eligible family members and U.S. citizens residing outside the United States to register to vote and receive their ballots 45 days prior to Election Day and electronically (HTML), if so desired.

Primary:
Applications   1,396 (1,078 HTML ballot requests)
Validated   520

General:
Applications   3,544 (2,881 HTML ballot requests)
Validated   2,719

Language Ballots Issued

Section 203 of the Voting Rights Act requires election materials, such as ballots, to be available in the language of applicable minority groups as determined by the Census Bureau and a set formula. The most recent (2016) determinations of covered languages for the City & County of Honolulu consist of Chinese and Ilocano.

Primary:
Chinese language ballots issued   936
Ilocano language ballots issued   617

General:
Chinese language ballots issued   1,101
Ilocano language ballots issued   683

Special Needs

Pursuant to HRS§11-107, a voter with special needs may request a ballot be forwarded by electronic transmission. Voters who requested an HTML ballot for the Primary Election were not required to resubmit a request for the General Election.

Primary   10 voter requests
General   2 additional voter requests

Voted Ballots Summary

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
17-01	69	69	0	0	3,532	3,532	0	0
17-02	97	96	0	(1)	2,644	2,644	0	0
17-03	138	139	1	0	5,612	5,610	0	(2)
17-04	87	87	0	0	3,025	3,023	0	(2)
18-01	157	158	1	0	4,679	4,675	0	(4)
18-02	33	33	0	0	1,536	1,535	0	(1)
18-03	88	88	0	0	3,736	3,734	0	(2)
18-04	88	88	0	0	4,878	4,873	0	(5)
19-01	100	98	0	(2)	4,196	4,197	1	0
19-02	32	34	2	0	942	942	0	0
19-03	82	83	1	0	3,102	3,101	0	(1)
19-04	103	104	1	0	2,692	2,690	0	(2)
19-05	47	47	0	0	1,557	1,557	0	0
20-01	146	149	3	0	4,231	4,225	0	(6)
20-02	113	117	4	0	2,863	2,860	0	(3)
20-03	107	106	0	(1)	2,981	2,978	0	(3)
20-04	78	77	0	(1)	2,563	2,561	0	(2)
21-01	26	26	0	0	518	517	0	(1)
21-02	82	82	0	0	1,938	1,938	0	0
21-03	236	236	0	0	4,787	4,788	1	0
21-04	75	74	0	(1)	1,628	1,627	0	(1)
22-01	372	368	0	(4)	3,775	3,763	0	(12)
22-02	329	324	0	(5)	3,965	3,961	0	(4)
22-03	39	39	0	0	1,200	1,200	0	0

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
23-01	14	14	0	0	208	208	0	0
23-02	152	152	0	0	3,228	3,226	0	(2)
23-03	27	27	0	0	445	445	0	0
23-04	80	78	0	(2)	3,152	3,150	0	(2)
23-05	91	89	0	(2)	4,418	4,413	0	(5)
24-01	84	85	1	0	1,967	1,966	0	(1)
24-02	170	170	0	0	3,645	3,645	0	0
24-03	115	115	0	0	2,746	2,746	0	0
24-04	93	97	4	0	1,963	1,963	0	0
25-01	14	15	1	0	332	332	0	0
25-02	189	189	0	0	4,006	4,004	0	(2)
25-03	15	17	2	0	323	322	0	(1)
25-04	176	170	0	(6)	4,404	4,398	0	(6)
25-05	62	64	2	0	2,043	2,039	0	(4)
26-01	191	195	4	0	3,036	3,036	0	0
26-02	24	26	2	0	468	467	0	(1)
26-03	137	137	0	0	2,777	2,774	0	(3)
26-04	12	13	1	0	286	286	0	0
26-05	10	10	0	0	235	235	0	0
26-06	216	214	0	(2)	4,260	4,253	0	(7)
26-07	103	101	0	(2)	1,596	1,595	0	(1)
27-01	9	11	2	0	284	285	1	0
27-02	90	92	2	0	2,345	2,341	0	(4)
27-03	149	149	0	0	5,235	5,223	0	(12)

Voted Ballots Summary

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
27-04	69	69	0	0	1,905	1,899	0	(6)
27-05	8	8	0	0	193	193	0	0
28-01	52	52	0	0	1,598	1,597	0	(1)
28-02	45	45	0	0	1,164	1,165	1	0
28-03	145	143	0	(2)	3,292	3,292	0	0
28-04	44	43	0	(1)	742	741	0	(1)
29-01	144	145	1	0	2,242	2,240	0	(2)
29-02	132	130	0	(2)	1,588	1,584	0	(4)
29-03	57	58	1	0	1,435	1,434	0	(1)
29-04	19	19	0	0	605	606	1	0
30-01	50	52	2	0	1,335	1,333	0	(2)
30-02	87	90	3	0	2,106	2,105	0	(1)
30-03	125	125	0	0	741	741	0	0
30-04	44	44	0	0	856	855	0	(1)
31-01	40	41	1	0	1,680	1,680	0	0
31-02	95	95	0	0	394	394	0	0
31-03	221	222	1	0	3,255	3,252	0	(3)
31-04	46	47	1	0	561	561	0	0
31-05	101	99	0	(2)	2,527	2,527	0	0
32-01	44	45	1	0	1,595	1,595	0	0
32-02	193	191	0	(2)	4,175	4,177	2	0
32-03	148	146	0	(2)	4,292	4,290	0	(2)
33-01	72	71	0	(1)	2,402	2,402	0	0
33-02	10	10	0	0	134	134	0	0

Voted Ballots Summary

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
33-03	0	1	1	0	114	113	0	(1)
33-04	94	95	1	0	2,995	2,994	0	(1)
33-05	88	88	0	0	2,850	2,849	0	(1)
33-06	79	79	0	0	4,182	4,180	0	(2)
34-01	199	199	0	0	4,584	4,582	0	(2)
34-02	110	110	0	0	4,300	4,300	0	0
34-03	102	102	0	0	3,378	3,375	0	(3)
35-01	42	43	1	0	639	637	0	(2)
35-02	140	139	0	(1)	3,740	3,742	2	0
35-03	32	34	2	0	454	454	0	0
35-04	58	57	0	(1)	1,701	1,701	0	0
35-05	6	7	1	0	552	551	0	(1)
35-06	47	46	0	(1)	1,232	1,231	0	(1)
36-01	145	144	0	(1)	5,205	5,203	0	(2)
36-02	155	154	0	(1)	5,150	5,147	0	(3)
36-03	129	129	0	0	3,066	3,063	0	(3)
37-01	133	133	0	0	3,378	3,373	0	(5)
37-02	137	137	0	0	3,967	3,964	0	(3)
37-03	135	135	0	0	3,627	3,624	0	(3)
37-04	104	104	0	0	2,764	2,764	0	0
38-01	90	91	1	0	2,980	2,981	1	0
38-02	86	88	2	0	2,741	2,739	0	(2)
38-03	61	61	0	0	1,394	1,393	0	(1)
38-04	32	32	0	0	473	473	0	0

Voted Ballots Summary

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
39-01	29	29	0	0	576	575	0	(1)
39-02	263	265	2	0	5,565	5,560	0	(5)
39-03	350	346	0	(4)	2,817	2,816	0	(1)
39-04	216	216	0	0	2,182	2,181	0	(1)
39-05	5	5	0	0	7	7	0	0
40-01	46	49	3	0	653	653	0	0
40-02	289	292	3	0	4,014	4,012	0	(2)
40-03	365	365	0	0	4,137	4,129	0	(8)
40-04	7	7	0	0	119	119	0	0
41-01	14	15	1	0	84	84	0	0
41-02	528	522	0	(6)	5,329	5,324	0	(5)
41-03	182	185	3	0	3,216	3,215	0	(1)
41-04	28	29	1	0	475	474	0	(1)
41-05	224	223	0	(1)	3,419	3,418	0	(1)
42-01	371	368	0	(3)	4,266	4,265	0	(1)
42-02	131	135	4	0	1,906	1,906	0	0
42-03	292	292	0	0	3,113	3,112	0	(1)
42-04	239	237	0	(2)	3,126	3,126	0	0
43-01	16	17	1	0	205	205	0	0
43-02	47	46	0	(1)	376	376	0	0
43-03	137	136	0	(1)	1,161	1,161	0	0
43-04	238	238	0	0	3,487	3,483	0	(4)
43-05	231	229	0	(2)	2,688	2,688	0	0
44-01	265	264	0	(1)	4,312	4,308	0	(4)

Voted Ballots Summary

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
44-02	189	190	1	0	2,695	2,697	2	0
45-01	144	144	0	0	3,245	3,242	0	(3)
45-02	89	89	0	0	1,200	1,195	0	(5)
45-03	19	20	1	0	29	29	0	0
45-04	285	285	0	0	2,226	2,219	0	(7)
45-05	0	3	3	0	46	47	1	0
46-01	52	52	0	0	604	605	1	0
46-02	141	137	0	(4)	2,711	2,705	0	(6)
46-03	127	126	0	(1)	3,262	3,260	0	(2)
46-04	89	89	0	0	1,267	1,265	0	(2)
47-01	107	108	1	0	2,155	2,150	0	(5)
47-02	155	160	5	0	1,984	1,980	0	(4)
47-03	192	191	0	(1)	2,065	2,059	0	(6)
47-04	205	205	0	0	2,933	2,931	0	(2)
48-01	68	70	2	0	2,438	2,438	0	0
48-02	29	31	2	0	959	959	0	0
48-03	65	67	2	0	2,644	2,641	0	(3)
48-04	29	27	0	(2)	899	900	1	0
48-05	96	96	0	0	3,481	3,479	0	(2)
48-06	118	117	0	(1)	2,996	2,995	0	(1)
49-01	142	142	0	0	3,659	3,653	0	(6)
49-02	63	65	2	0	1,970	1,970	0	0
49-03	95	94	0	(1)	3,295	3,290	0	(5)
49-04	65	65	0	0	2,770	2,766	0	(4)

Voted Ballots Summary

General Election
November 3, 2020

D/P	Voter Service Center				Mail			
	Walk Turnout	Prec. Report	Over (+)	Under (-)	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)
49-05	16	14	0	(2)	648	647	0	(1)
49-06	27	26	0	(1)	1,362	1,362	0	0
50-01	208	208	0	0	3,114	3,116	2	0
50-02	164	164	0	0	4,525	4,522	0	(3)
50-03	186	185	0	(1)	4,922	4,920	0	(2)
50-04	6	6	0	0	184	184	0	0
51-01	40	41	1	0	1,715	1,714	0	(1)
51-02	65	65	0	0	2,332	2,330	0	(2)
51-03	47	47	0	0	1,196	1,195	0	(1)
51-04	94	93	0	(1)	3,399	3,398	0	(1)
51-05	77	77	0	0	1,992	1,991	0	(1)
51-06	45	45	0	0	2,075	2,074	0	(1)
Unknown	0	0	0	0	0	0	0	0
TOTAL	17,194	17,204	92	(82)	368,495	368,238	17	(274)

AUDITING THE RESULTS

A manual audit is a hand-count of the paper ballots and VBO rolls to ensure the accuracy and integrity of the vote counting system. The audit checks for occurrences of tampering or fraud by randomly selecting ballots and precincts. Auditing may also identify discrepancies, like uncounted voted ballots. Overall, the audit ensures public confidence in the electoral process.

A Mail VBC Audit of a sample of counted ballots is conducted on Election Day. After Election Day, an audit is conducted on at least 10% of precincts. The audit may also be expanded by the Chief Election Officer in the event a discrepancy is found. Additionally, a particular contest may be audited to confirm the results.

MAIL VBC AUDIT

A Mail VBC Audit is conducted on Election Day on designated voted ballot containers (VBC). Contest(s) are hand-counted to compare to the computer-generated Tally Report. This is similar to how Official Observers reconcile their results for the Logic and Accuracy Tests.

PRECINCT AUDIT

An audit of 10% of precincts is counted after Election Day. The following number of precincts must be audited:

Hawaii 5
Maui 4
Kauai 2
Honolulu 16

In preparation for the precinct audit, mail ballots are sorted by district before they are opened and counted. The audit is randomly selected in the presence of Official Observers. The audit must meet the following conditions:

- At least one from a small precinct of 2,000 or less registered voters

- At least one from a medium precinct of 2,001 to 3,999 registered voters

- At least one from a large precinct of 4,000 or more registered voters

- At least one from an "urban" precinct

- At least one from a "rural" precinct

- At least half of the audit precincts are randomly selected

SELECT AUDIT PRECINCTS
1. Randomly select districts, using the D/P cards.

2. Indicate the audit precincts on the D/P Checklist.

3. Retrieve VBC from the VBC Processing.
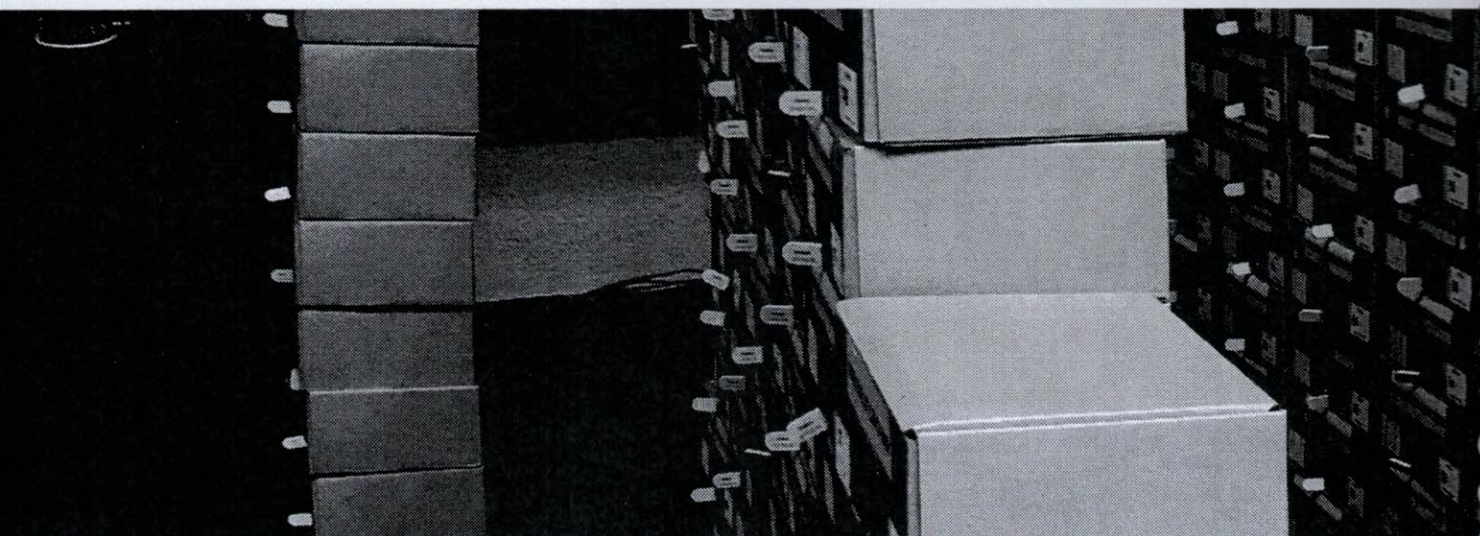
AUDITING

Counting Center Officials work in groups to audit 1 VBC at a time. The ballots must be kept in the original VBC.

The Audit Tally worksheet tracks the ballots counted. Additionally, accumulating the counted ballots in batches of 10 assists with reconciliation.

1. Record the container and contest.

   a. Record the names of the candidates for the contest being audited.

   b. Tally votes by type – candidate, blank, or over in batches of 10.

2. Record the total number of ballots audited for the container (VBC).

METHOD 1

- Call Clerk: Call out the vote cast (candidate, blank, over, or multi-party).

- Verification Clerk: Verify the information by the Call Clerk.

- Tally Clerk: Record votes cast on the Audit Tally (candidate, blank, over, or multi-party).

- Reconcile the number of ballots counted (Call Verification Clerk) with the number of ballots tallied (Tally Clerk).
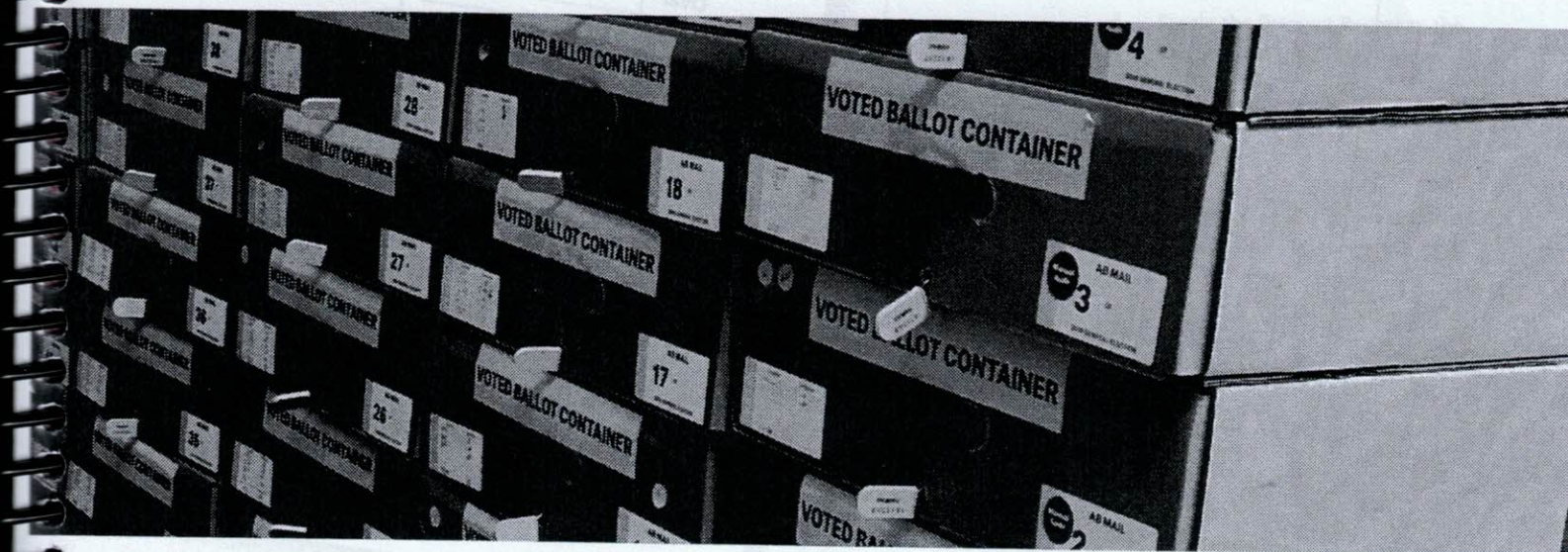
METHOD 2

1. Segregate the ballots by votes cast into the following stacks, in batches of 10:

   - Candidates
   - Blank votes
   - Over votes
   - Multi-party voting

2. Record the votes cast on the Audit Tally.

3. Reconcile the number of ballots and the number of ballots tallied.

VBO ROLLS

VBO rolls will not be separated by D/P, as the eSlates at the voter service centers are not assigned to a specific precinct. Use the laptops and barcode readers from the Duplication work area to conduct the VBO roll audit.

1. Follow Seal Certification procedures to unseal the VBO VBC.

2. Scan each VBO barcode, using the VBO spooler to scroll through each record.

3. Record VBO totals on the Results of Votes Cast.

Results of Votes Cast

County: _____
Work Area: _____
Election: _____

D/P	Container No.	No. of Ballots	Contest

Candidate — **No. of Votes**

Candidate	No. of Votes
Blank	
Over	
Multi-Party Voting	

Audit Members (Print)

County: _____
Work Area: _____
Election: _____

Pursuant to the rules and
certify to have conducted
the same as being correct

1		2
7		8
13		14

Audit Members

Manual Audit Certification

governing election, we, the undersigned,
audit at the date an time stated and approve

Date & Time

3

4

5

6

9

10

11

12

15

16

17

18

(Sign)

RECONCILING THE AUDIT

1. Sign and complete the Results of Votes Cast using the Audit Tally.

   a. Record the containers and contest.

   b. Record each candidate and the number of votes received.

   c. Record the number of blank and over votes.

   d. Record the number of ballots audited.

   e. Primary Election: Record the number of multi-party voting ballots.

2. Verify the number of candidates, blank and over votes, and multi-party voting on Precinct Report match the Results of Votes Cast.

   a. Reconcile any discrepancies.

   b. Alert the Counting Center Manager of any discrepancy greater than 3.

   c. Certify by signing the Results of Votes Cast.

   d. Staple the Precinct Report to the Results of Votes Cast.

3. Repack ballots into the corresponding VBC.

4. Sign and complete the Manual Audit Certification.

5. Return VBC to VBC Processing.

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

11/03/2020 @ 9:15pm

1 03-04	**2** 07-04	**3** AUDIT 1
4 AUDIT 2	**5** ~~RES~~	**6** ~~IH COUNTY CHARTER AMENDMENT #13~~
7	**8**	**9**
10	**11**	**12**
13	**14**	**15**
16	**17**	**18**

Audit Members (Print and Sign)

Print	Sign
Mark Tomori	Merle Tomori
ReginaMarie Ching	Regine Marie
Richard Miyamoto	Richard Miyamoto
Jean Sanborn-Miyamoto	Jean Sanborn Miyamoto
Greer McKeen	
Robyn Riedel	Robyn Riedel
DOUGLASS CAPOGROSSI	Douglas Capogrossi
RoxAnne H. Lawson	RoxAnne M Lawson
Lennart Lundstrom	Lennart K. Lundstrom
Susan I Weber	Susan I Weber
SHELLEY ISHIMOTO	Shelley Ishimoto
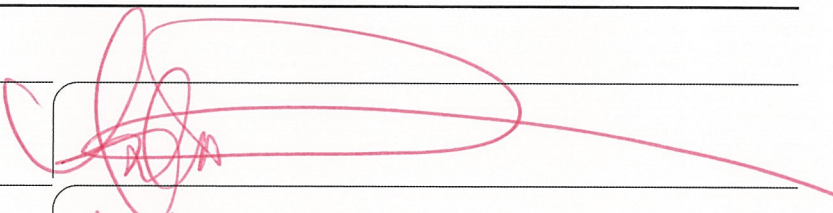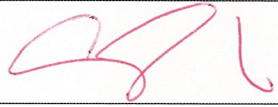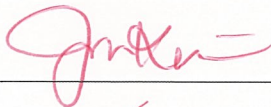
Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

11/17/20 9:28a

1 01-09 HD1	2 03-03 CD2	3 05-04 mayor	4 07-01 Q11	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

AULII TENN	
Susan I Wiber	S Weber
SCOTT NAGW	
Jaime Kataoka	
Keenan Kinimaka	
Annie Boyd	Aw Boyd
Ruthie AhHee	

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

10:56a 11/13/20

1 District 12	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

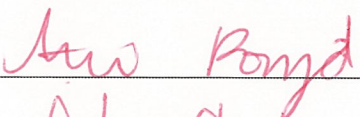| Print	Sign
Helen Tabaco	Helen Tabaco
MARIE McCABE	Marie McCabe
Gracey Gomes	Gracey Gomes
Doreen Kepaa	
Scott Nazro	
AULII TENN	
Raymond d Vey	
Keevan Lainimaka	
Annie Boyd	Ann Boyd
Ruthie Ah Hee	

County: _____
Work Area: _____
Election: _____

Pursuant to the rules and regulations governing election, we, the undersigned, certify to have conducted a manual audit at the date an time stated and approve the same as being correct.

Date & Time

11/3

1 Dist 14 State Rep. Nadine Nakamura	**2** Dist 16 council addison Bulosan	**3**	**4**	**5**	**6**
7	**8**	**9**	**10**	**11**	**12**
13	**14**	**15**	**16**	**17**	**18**

Audit Members (Print and Sign)

Print	Sign
JOYE IRWIN	Joye Irwin
LINDA GASPAR	Linda Gaspar
BLAINE AKAGI	Blaine Akagi
Diane Kam	Diane Kam
Erleen Spears	Erleen Spears

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

9:56a 4/19/20

1 HD14	**2**	**3**	**4**	**5**	**6**
7	**8**	**9**	**10**	**11**	**12**
13	**14**	**15**	**16**	**17**	**18**

Audit Members (Print and Sign)

Print	Sign
AULII TENN	
SCOTT NAGO	
Raymund de Vega	
Keenan Kinimaka	
Annie Boyd	Ann Boyd
Ruthie Ah Hee	

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

Name	No.	Signature
Kenyon Wong	50	Kenyon Wong
Marcie McWayne	51	
Sarah Murakami	51	
Kevin Wilson	51	
DEBORAH ARGUELLO	51	
LELAND RIBAC	51	
Celeste Imamura	51	
Louise Cayetano	50	Louise Cayetano
Barbara J. Service	50	Barbara Service
ALBERT Way	50	

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

Print	Sign
NANCY HILDWEIN 50	*Nancy Hildwein*
Liane Wong 50	*Liane Wong*
Gisele G Ferreira 50	*Gisele G*
Janet Mason (49)	*Janet J Mason*
Michael Golojuch Jr (49)	*Michael*
Vernon P. Ford 49	*Vernon P. Ford*
Anna Misako Hudson (26)	*Anna Misako Hudson*
Blesilda Battiato (26)	*Blesilda Battiato*
Robbie Dingeman (26)	*Robbie D*
Amy Monk (26)	*Amy Monk*

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

René Morgan (18)	GRMorgan
Gwen Kurashima (18)	GKurashima
Laurie Tomchak (17)	Laurie Tomchak

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

11/12/2020   12:35 pm

1	25	2	33	3	49	4		5		6	
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

Print	Sign
Alice Adele Deming Chong / Alice Adele Chong	Alice Adele Chong
Scott Nago	_(signature)_
Krista Uyeda	_(signature)_
Jasmine Ko	_(signature)_
Jaime Kataoka	_(signature)_
Keenan Kinimaka	_(signature)_
Annie Boyd	Annie Boyd
Kimberly Yamada	_(signature)_
Ruthie AhHee	_(signature)_

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

11/12/2020   12:35 pm

1	25	2	33	3	49	4	5	6
7		8		9		10	11	12
13		14		15		16	17	18

Audit Members (Print and Sign)

Manual Audit Certification

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

Date & Time

11/12/2020   12:35

1	25	2	33	3	49	4	5	6
7		8		9		10	11	12
13		14		15		16	17	18

Audit Members (Print and Sign)

Print	Sign
Anna Hudson	Anna Hudson
Maxine Haun	Maxine Haun
Ellen Schroeder	Ellen Schroeder
Katherine Kiyabu	Katherine Kiyabu
Connie Kalima	Connie Kalima
Susan Tustin	Susan Tustin
John F. DeVirgilio	John F. DeVirgilio
MluLau Oman	M. Oman
AMY JAMPEL	Amy Jampel
WILLIAM METZGER	William Metzger

	Early Voter File 10/27/2020	Honolulu By the Numbers				Honolulu By the Numbers (Deposit Box adjusted)				
		USPS	Deposit Box	Walk-In	Total	Δ	USPS	Deposit Box	Walk-In	Total	Δ
7-Oct	373	373	424		797	424	373			373	0
8-Oct	8346	7924	1261		9185	839	7924	424		8348	-2
9-Oct	1947	686	2483		3169	1222	686	1261		1947	0
10-Oct	22994	20523	2131		22654	-340	20523	2483		23006	-12
11-Oct					0	0				0	0
12-Oct	2131		3534		3534	1403		2131		2131	0
13-Oct	40682	37178	3165		40343	-339	37178	3534		40712	-30
14-Oct	42831	39710	2897		42607	-224	39710	3165		42875	-44
15-Oct	23733	20862	2871		23733	0	20862	2897		23759	-26
16-Oct	17567	14725	2641		17366	-201	14725	2871		17596	-29
17-Oct	15370	12754	2432		15186	-184	12754	2641		15395	-25
18-Oct					0	0				0	0
19-Oct	12037	9619	4417		14036	1999	9619	2432		12051	-14
20-Oct	21774	16456	3110	925	20491	-1283	16456	4417	925	21798	-24
21-Oct	17212	12939	3090	806	16835	-377	12939	3110	806	16855	357
22-Oct	13747	9788	3129	705	13622	-125	9788	3090	705	13583	164
23-Oct	12154	8237	2453	802	11492	-662	8237	3129	802	12168	-14
24-Oct	11974	7470	2774	1092	11336	-638	7470	2453	1092	11015	959
25-Oct					0	0				0	0
26-Oct	9990	6245	5663	958	12866	2876	6245	2774	958	9977	13

STATE OF HAWAII
OFFICE OF ELECTIONS
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
elections.hawaii.gov

SCOTT T. NAGO
CHIEF ELECTION OFFICER

January 20, 2022

TO: Elections Commission

FROM: Scott T. Nago
            Chief Elections Officer

RE: January 12, 2022 Elections Commission Meeting

This is in response to the issues raised at the January 12, 2022 meeting of the Elections Commission. Before we get into the specifics of the issues raised, we need to first provide the Commission with some background and context.

The Hawaii State Constitution provides that "[t]he legislature shall provide for a chief election officer of the State, whose responsibilities shall be as provided by law and shall include the supervision of state elections." Article IV, Section 3. In effectuating this, the Legislature has passed a variety of laws outlining how elections are to be conducted and the roles and responsibilities of the chief election officer (Office of Elections) and county clerks (County Elections Divisions). Specifically, the Office of Elections is responsible for voter education, and the printing and counting ballots, while the County Elections Divisions are responsible for voter registration, the mailing and receipt of ballots, and voter service centers. Specifically, Hawaii Revised Statutes (HRS) § 11-110 outlines election expenses and responsibilities between the State and County Elections Divisions and voter registration is identified as a separate duty. This is further supported by HRS § 11-11 which provides that "[t]he county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and precinct lists within the county."

Having said that, it is important to note that under the Help America Vote Act (HAVA), the Office of Elections houses and maintains the statewide voter registration system. However, the actual contents of the voter registration data are the duty and responsibility of the County Elections Divisions, consistent with the previously noted state statutes.

At the January 12, 2022 Elections Commission meeting, there was discussion regarding voter registration. As our office does not handle day-to-day voter registration transactions, we could only provide an overview of the processes of the County Election Divisions. Following the meeting, we reached out to the Honolulu Elections Division and they confirmed they answered inquiries from Mr. Adriel Lam by phone from April 2021 through August 2021. They stated that these discussions with Mr. Lam occurred on multiple occasions and their conversations accurately reflected the operations of their office.

Also at the January 12, 2022 meeting, Mr. Adriel Lam inquired about universal unique identifiers (UUIDs). Our understanding is that he is referring to the ListID on the Elections Purpose List disseminated by the County Elections Divisions. Our office manages the statewide voter registration system including the fields that appear on this list. We have consulted with the statewide voter registration system vendor and confirmed that the ListID assigned to a voter:

- Is created in compliance with Internet Engineering Task Force's (IETF) Standards-Track RFC4122;

- Does not use personal identifiable information (PII);

- Cannot be used to access the statewide voter registration system; and

- Is not comparable to sensitive personal information.

The purpose of the ListID is to address requests by users of the voter lists to include a distinguishing field in the instance of two or more people who have non-unique fields (i.e., people with the same or similar names and/or addresses). Since no instance of PII is used in the creation of ListIDs, it would be impossible to get sensitive voter data like IP addresses or last 4 SSN from decrypting the ListID. Additionally, when displayed on the voter lists, the ListIDs do not include hyphens normally seen in unique identifiers. We will remain vigilant regarding the security of the statewide voter registration system with vendors and offices involved.

We also want to restate an overview of voter registration and list maintenance. Voter registration applications may be completed online or by submitting a paper application. There are also government agencies, like the Department of Motor Vehicles, that include registering to vote as part of their applications (e.g., driver licensing), pursuant to the National Voter Registration Act (NVRA) of 1993. Applicants complete by self-subscribing affidavit that the information is true and correct. As stated on the voter registration applications, falsifying information is a Class C felony. Transactions completed through the

online voter registration system are automatically updated. Paper voter registration applications are entered by the County Elections Divisions. Neither method is fool proof and data entry errors may occur by the voter or the clerk. However, there is a transaction log for each record, images of the applications are retained, and the records may be updated for corrections. If a voter moves or changes their name or mailing address, they will need to update their voter registration record. Once registered, voters will automatically be sent a ballot for each election.

Maintenance of the voter registration rolls, including updates, cancellations, and flagging is ongoing. The County Elections Divisions regularly receive information from the Department of Health regarding deaths and Department of Public Safety regarding voters disqualified due to a felony charge. Registrations for these voters are cancelled and they will not be sent election materials or a ballot.

Additionally, before each election, the County Elections Divisions run a National Change of Address (NCOA) check to update and identify voters with an outdated mailing address. Voters whose records are flagged as having moved to a different county or out of state are sent a notice to update their voter registration record. The County Elections Divisions mail a non-forwardable notice of voter registration, also known as a "yellow card." Delivery and acceptance of the "yellow card" confirms the voter record is current and a ballot will be sent to the voter. We advise that if the voter no longer lives or receives mail at the address, the current resident should return the card to the County Elections Division through USPS and record "no longer at this address" on the mailer. Cards that are undeliverable and identified as "no longer at this address" are returned to the County Elections Divisions and the voter records are flagged. These voters are sent a separate forwardable mailing requesting they update their voter registration. They will not be sent a ballot until the voter record is updated.

The process for maintaining the voter rolls is not perfect and we err on the side of the voter. We must rely on voters to include themselves in the process. Additionally, the County Elections Divisions conduct their own audits of the data to ensure there are no systemic issues or indicators of fraud. We have inquired with the County Elections Divisions and are assured that there are currently no indicators of fraud. All offices acknowledge that data entry errors by voters or clerks are likely to continue but we will continue to work cooperatively to mitigate potential systemic issues. These isolated instances should not detract from the overall conduct of the elections. As a community of election officials, we are committed to providing secure, accessible, and convenient elections for the citizens of our State.

Lastly, we want to note, pursuant to federal law, voters cannot be removed for failing to vote. State law cannot undermine the requirements of federal law. As such, the Hawaii State Legislature amended the statutes to comply with the provisions of the federal law in 2021.

If you have any questions or concerns, please feel free to contact me at (808) 453-VOTE (8683) or 1-800-442-VOTE (8683).

STN:AT:jk
OE-22-006

c: Lori Tanigawa, Deputy Attorney General
        County Clerks

STATE OF HAWAII

OFFICE OF ELECTIONS

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

SCOTT T. NAGO
CHIEF ELECTION OFFICER

March 16, 2022

TO: Elections Commission

FROM: Scott T. Nago
        Chief Election Officer

        Jon Henricks
        County Clerk, County of Hawaii

        Kathy Kaohu
        County Clerk, County of Maui

        Jade Fountain-Tanigawa
        County Clerk, County of Kauai

        Glen Takahashi
        City Clerk, City & County of Honolulu

SUBJECT: Hawaii's Voter Registration Roll

This is in response to agenda item V, "Consideration of Investigation Regarding Written Complaints submitted by Adriel Lam, Pursuant to HAR §§ 3-170-6 through -9, and Action as Necessary" and testimony received from Mr. Adriel Lam on March 14, 2022 for the Election Commission Meeting.

The accuracy and integrity of the voter registration roll are essential to the conduct of the elections. The voter registration roll is a compilation of hundreds of thousands of eligible individuals who choose to participate in the electoral process. As a voter, you are responsible for deciding to register to vote as well as keeping your voter registration up to date. This includes registering by submitting a paper application, through the online voter registration system, or at the DMV when you get a license or state ID; updating your voter record when you move or change your name or mailing address; or alerting election officials when there is an issue with your information incorrect on an election mailing or ballot packet.

As election administrators, we are responsible for securely housing voter registration data and entering and maintaining voter records. While we may have different statutory duties between the State and Counties, we all have responsibilities related to the voter registration system. Given this, we would like to take this opportunity to provide some background related to the care and maintenance of the voter registration roll.

BACKGROUND

State Constitution & Statutory Provisions

The Hawaii State Constitution provides that "[t]he legislature shall provide for a chief election officer of the State, whose responsibilities shall be as provided by law and shall include the supervision of state elections." Article IV, Section 3. In effectuating this, the Legislature has passed various laws outlining how elections are to be conducted and the roles and responsibilities of the chief election officer (Office of Elections) and county clerks (County Elections Divisions). Specifically, the Office of Elections is responsible for voter education and the printing and counting of ballots, while the County Elections Divisions are responsible for voter registration, the mailing and receipt of ballots, and voter service centers. Specifically, Hawaii Revised Statutes (HRS) § 11-110 outlines election expenses and responsibilities between the State and County Elections Divisions, and voter registration is identified as a separate duty.

This is further supported by HRS § 11-11, which provides that "[t]he county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and precinct lists within the county." This responsibility and manner in which it is accomplished are elaborated on in HRS §§ 11-12 to 11-54 (e.g., age of registration, determination of residency, general county register, confidential residence address, application to register, same day in-person registration, electronic registration, automatic voter registration, applications not made in person, removal of names, transfer of registration, registration from one county to another, name changes, correcting errors, striking disqualified voters, voter challenges, and board of registration appeals).

The initial statewide voter registration system (Mainframe SVRS) was developed in 1981 as a result of a cooperative agreement between the City and County of Honolulu (City) and the neighbor island counties to include the voter registration rolls of the neighbor island counties. This was consistent with state law that provided "[v]oter registration information that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and

for the compilation of election reports." HRS § 11-14(c). The Mainframe SVRS was housed and administered by the City on behalf of the four counties. As with any system, additional modules to address changing statutory requirements were made. This included the use of specific terminology and procedures unique to the system. Separate from the Mainframe SVRS, the counties had procedures to archive images of voter registration documents and capture signatures for purposes of comparing them against the signatures on absentee ballot return envelopes using their own respective county systems.

National Voter Registration Act of 1993

The National Voter Registration Act of 1993 (NVRA) has had a significant impact on statewide voter registration systems by requiring driver licensing officials to register drivers and to implement various procedures related to list maintenance.

For example, the NVRA generally provides that removal comes down to a determination that a voter is no longer eligible to be a registered voter, death of the voter, or the voter chooses to cancel their registration. However, the NVRA makes it clear that it does not permit an otherwise qualified voter to be removed due to solely not exercising their right to vote. 52 USC § 20507(b)(2).

Essentially, all voters have the right to choose to vote or not vote in a particular election without being concerned that they will be penalized with removal from the voter registration rolls if they do not vote. As such, the prior version of HRS § 11-17 concerning removal solely due to not voting conflicted with NVRA and could not serve as a basis to remove a voter.

Additionally, unlike state law that allowed a voter to be removed due solely to a returned election mailing, the NVRA sets out a detailed process to essentially obtain sufficient evidence that a voter is no longer in the jurisdiction and as such is not eligible to vote and can be removed. 52 USC § 20507.

Specifically, election officials flag in the statewide voter registration system voters whose election mail has been returned by the United States Postal Service (USPS) or who USPS through its National Change of Address service has indicated moved or otherwise has an issue with their mailing address. These individuals are then mailed a confirmation notice by forwardable mail. The notice indicates that the voter needs to contact election officials to resolve the situation. If the voter does not contact election officials or attempts to vote within two general election cycles of the mailing, then they will be removed. 52 USC § 20507(c).

During this time period, they are placed on inactive status and cannot vote unless they fill out the appropriate paperwork with election officials to resolve the matter. Additionally, with the subsequent move to elections by mail, a provision was included that no voter will be mailed a ballot if they are "identified as having an outdated or non-deliverable mailing address." HRS § 11-102(b). The end result of this is that only voters whose voter registration record is in proper order will be able to vote in an election.

Help America Vote Act of 2002 & Online Voter Registration

The Help America Vote Act of 2002 (HAVA) required each state to develop a comprehensive plan for implementing various mandates related to improving the conduct of elections, including the creation of a statewide voter registration system and authorized grant money to implement these mandates. However, the Mainframe SVRS complied with the requirements of HAVA. Given this, it was determined between the State and the counties that the portion of the federal funds earmarked for a new statewide voter registration system would not be immediately expended and would continue to collect interest in a federally required trust fund until a determination was made that there was a need to migrate to a new system, due to a significant change in technology or something similar that would improve the administration of elections.

This change occurred when the 2012 Legislature amended voter registration laws to permit individuals, starting with the 2016 Primary Election, who had a valid government-issued identification that is capable of electronic confirmation to be able to register electronically. Act 225, SLH 2012 (codified as HRS § 11-15.3).

The use of an electronic application "constitute[d] consent for election officials to obtain confirmatory information regarding the applicant from government databases associated with government-issued identification, including the applicant's signature." HRS § 11-15.3(c). The relevant government-issued identification databases were the driver license and state identification card databases that the City and County of Honolulu managed as part of the statewide traffic record system on behalf of DOT.

After consulting with the four counties, it was decided that various technical matters supported the appropriateness of migrating to a new system that would be housed with the State, and that would include an online voter registration component. This migration is an important point in time that must be kept in mind when reviewing the statewide voter registration database. Namely, with the ability to redesign the system from the bottom up, election officials were able to revisit terminology and procedures.

As such, voters with records prior to the transitions may have certain vagaries that must be taken into consideration when comparing them to records generated entirely within the new system. Similarly, a decision was made to have the new statewide voter registration system have the ability to store images of voter registration applications and similar documents. Yet again, depending on the age of a voter registration record, the images may be in a legacy system or in the new system.

In terms of timeline, the online voter registration component was launched on August 3, 2015. For purposes of the 2016 election cycle, the online voter registration component of the new system and the Mainframe SVRS worked in tandem. After that election cycle, the counties migrated entirely to using the new statewide voter registration system for the 2018 election cycle going forward.

The move to online voter registration and the use of the new voter registration system introduced two paradigm shifts. It has changed voters' expectations from single notification prior to an election to real-time access to their registration record. This paradigm shift has had a significant impact on how voter registration is conducted. While paper applications are internally reviewed, issues and anomalies resolved, and records are entered into the system by the counties, an applicant registering online can check the status of their application at their convenience.

Similarly, the expectations of election administrators have evolved to automate previously manual review processes. The previous procedures were nuanced by vagaries of applicants not providing information on their application in conformance with the operational rules of the system. For example, in the past, election officials would manually review each application and resolve issues before entering it into the system and assigning it a precinct. Online voter registration emulates that process by creating an electronic queue in which each application made online would be placed for election officials to review before it was accepted by them into the system.

In developing online voter registration and the new system, election officials established rules and criteria for online applications to meet to automate the process. As such, the majority of online transactions are accepted with an automated review that checks records against the statewide traffic records system (i.e., the official database of driver licenses and state identification cards). In regard to paper applications, those are scanned and entered into the system and follow a similar process. However, the paper application does allow applicants without a driver license or state identification card to provide the last four digits of their social security number. If this occurs, we are able to electronically check the Social Security Administration's database for a corresponding record with the same name, last four digits of the number, and

date of birth. To the extent a registration does not match electronically, it goes into a separate queue for manual review.

Documentation

Every voter registration record has a source document associated with it. This consists of either a paper application or an electronic application. HRS §§ 11-15, 11-15.2, and 11-15.3, and National Voter Registration Act of 1993. In both, the voter attests to the truth of the statements made in the application under penalty of law. The clerk is authorized by statute to accept an application as prima facie evidence the allegations of the applicant. HRS § 11-15. These applications require the provision of driver license numbers, state identification card numbers, or the last four digits of the voter's social security number. These are all electronically checked, as noted above, against the corresponding databases. Those that do not match are followed up on. The system retains images of all applications. Additionally, the system retains images of the signature of each voter. This includes the signature of those who register electronically as those are authorized to be transferred from the voter.

As it relates to errors to data entry issues by either the applicant as part of an online voter registration transaction or a staff member in manually typing in a paper application, the system has an audit log. Also, as previously mentioned, the source document is maintained. In the case of a paper application, it is the scanned image of the application and the audit log showing who entered the record. For an online transaction, the login information from the voter is maintained and we have access to the driver license and state identification card information, if necessary, in following up on an issue.

Finally, the law retains voter challenge provisions in which fellow voters can challenge the registration of a voter (e.g., allegations that someone is not who they claim to be or that they do not live where they claim to live). HRS §§ 11-25 to 11-54.

DISCUSSION

As it relates to testimony received from Adriel Lam on March 14, 2022, he notes the following:

- Voter registration names
- Last transaction date
- New Voter Registration Records with Prior Audit Trails
- Amount of Voter Registration Record Updates

Voter Registration Names

The testimony appears to allege that some of the names in the voter registration system are questionable. As previously noted, there are paper records for each voter in the voter registration system and they are checked against other systems. A quick review of one of the names pointed out by Mr. Lam includes documentation that the voter in fact uses a single name and they have identification with that sole name. We also do not know of any federal or state law that requires an individual, let alone a voter, to have a first and last name. For the reasons stated above, this issue is not indicative of a systemic problem with the voter registration system nor indicative of voter fraud.

Last Transaction Date

The testimony expresses a concern regarding the 46 registrations that reflect a change in the "Last Transaction Date." As previously noted, the statewide voter registration system migrated from a county mainframe system to a new system housed by the State. With that migration came some adjustments in the terminology and procedures related to records. The counties as part of their administrative upkeep of the records have and are continuing to make appropriate adjustments to the "Last Transaction Date" field to reflect the date stated on the form instead of the system migration date.

New Voter Registration Records with Prior Audit Trails

The testimony also takes issue with the number of new voter registrations it sees within what it sees as a short time frame and that the system appears to indicate they were already in the system before becoming active voters. To the extent we understand his concern, it should be noted that the system, pursuant to HRS § 11-12 (b), permits applicants to pre-register when they are at least sixteen years of age. This results in them being in the system as non-active voters and then automatically converted to active voters upon turning eighteen years of age. Additionally, there are voters whose records are canceled due to various reasons who subsequently apply again to register to voter. When a record was changed from canceled to active, the date of registration was not updated to reflect the new registration date. The procedures for processing canceled records have since changed preventing the continuance of the date error.

Amount of Voter Registration Record Updates

Finally, the testimony refers to what it sees as a significant amount of voter registration records involving transactions over the last five years. However, the testimony does not refer to the basis for this statement. As previously noted,

the final transition to the new voter registration system occurred approximately five years ago. Additionally, ongoing maintenance has been occurring to the file. Voters now have access to online voter registration and voter registration through the driver license and state identification card process. Without more details, we cannot conclude that the number of updates is unreasonable or a sign of any issues with the integrity of the statewide voter registration system.

Finally, while we appreciate the review of the voter registration roll and the questions presented by Mr. Lam, election integrity is not something we take lightly. We would be the first to acknowledge that the voter registration roll is fluid and imperfect. It is constantly changing, modified, and corrected. We can always improve our internal processes to review and audit the system. However, this is not indicative of a systemic problem or voter fraud. As election administrators, we have dedicated our time and effort to ensure the security, accuracy, and integrity of the elections.

STN:jk
OE-22-044

Election Commission, March 18, 2022

The duties of the Elections Commission provided under Hawaii Revised Statutes §11-7.5 include: Investigate and hold hearings for receiving evidence of any violations and complaints;

The Election Commission has the duty to initiate investigations. Prompted by Mr. Lam's information, **I move to Initiate an Investigation into the 2020 Hawaii Election operations of each County's Office of Elections.**

RATIONALE:

Mr. Lam's assertions provide information that challenges the integrity of the 2020 election.

Kauai was originally determined to be Hawaii's initial foray into Mail In Voting. The reason for this is that Kauai Office of Elections is very competent. I know this from experience.   And, according to Mr. Lam, every precinct in Kauai District's 14 & 16 was audited.

Keener minds determined that the whole state should participate in this "experiment." I say "experiment" as Mail-In Voting hadn't been experienced in Hawaii previously.

The 2020 Mail-In election in Hawaii was enlightening. Mr. Lam's observations have offered information that point to several areas for improvement. The lack of "random" precinct auditing was pointed out. Also mentioned was the Audits' documentation lacked required signatures. The requirement for Observers of different parties to attend each ballot transfer was not accomplished.

The Investigation could include an audit of one "randomly chosen" precinct in each Representative District, performed by Election personnel from different Counties. In addition to revealing process inefficiencies and inaccuracies, Election staff would learn from other County's operating practices.

An Audit can reveal the errors of procedure and documentation of Elections Standard Operating Procedures, and legal requirements. The Intent of this Investigation is to increase the integrity of future Elections.

Our mutual goal of "Every Vote Counts" is advanced with this endeavor.

Michael Curtis

Election Commissioner