



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

STATE OF HAWAII ELECTIONS COMMISSION

MINUTES

REGULAR MEETING OF THE ELECTIONS COMMISSION

JANUARY 16, 2024 @ 1:00 PM

Pursuant to Section 92-3.7, Hawaii Revised Statutes, the Elections Commission (EC) will be meeting remotely using interactive conference technology.

Commissioners in Attendance:

Michael Curtis, Chair
Dylan Andrion
Anita Aquino
Ralph Cushnie
Stafford Kiguchi
Jeffrey Kuwada
Clare McAdam
Kahiolani Papalimu
Cynthia Takenaka

Support Staff in Attendance:

Reese Nakamura, Department of the Attorney General (AG)
Nedielyn Bueno, Office of Elections

PROCEEDINGS

I. Call to Order [1:00 p.m.]

The meeting of the Elections Commission was called to order by Elections Commission (EC) Secretary Nedielyn Bueno at 1:00 p.m.

II. Swearing in of New Elections Commission Chairperson [1:00 p.m.]

Michael Curtis was sworn in as the new Elections Commission Chairperson by Deputy AG Reese Nakamura.

III. Swearing in of New Elections Commission Member [1:01 p.m.]

Ralph Cushnie was sworn in as the new Elections Commission member by Deputy AG Reese Nakamura.

IV. Roll Call and Determination of a Quorum [1:02 p.m.]

EC Secretary Bueno conducted roll call. All members of the Elections Commission were present at the meeting with the exception of Commissioner Papalimu and noting that Commissioner Kiguchi was present, but his audio and video was not on.

V. Official Minutes of last meeting, November 15, 2023 [1:05 p.m.]

Chair Curtis shared that the official minutes for the November 15, 2023, meeting are linked in the meeting packet and asked if there were any comments.

Commissioner Andrion recalled from the last Commission meeting that concerns were raised regarding having written minutes versus a written summary.

Chair Curtis corrected Commissioner Andrion stating that the discussion about minutes was raised during executive session but that the Commission should have the discussion now.

Commissioner Andrion expressed that it would be beneficial for the Commission to reconsider having written minutes instead of written summaries despite having a videorecording. He added that written summaries do not give a full picture of the meeting's transcription. Chair Curtis concurred adding that statute requires written minutes with the option to opt out. He believes that it is under the authority of the Commission to opt out of written minutes and not the chair and until the commission decides to opt out, formal written minutes are required as stated by law.

Commissioner Takenaka requested that if the Commission proceeds with written minutes instead of written summaries that the practice of timestamping each agenda item continue. Chair Curtis agreed.

No further discussion from the commission.

[1:17] Commissioner Papalimu was announced as being present at the meeting.

VI. Public Testimony – Any interested person may submit comments or testimony on any agenda item [1:18 p.m.]

Prior to accepting public testimony, Chair Curtis called on Deputy AG Nakamura to provide the status of the conflict of interest of Ralph Cushnie as commissioner who filed a formal complaint to the Commission.

Before providing his report, Deputy AG Nakamura asked if the previous agenda item relating to minutes was resolved. Commissioner Andrion made a motion to approve the minutes of the November 15, 2023 meeting. The motion was second by Commissioner Takenaka, and approved unanimously by the Commissioners.

Deputy AG Nakamura advised the Commission that prior to the meeting, Commissioner Cushnie submitted public testimony and a formal complaint to the Commission regarding ballot chain of custody, ballot unique identifiers and other issues including post-election audits which were brought before the courts but have since been dismissed. As Commissioner Cushnie is a complainant and is now a commissioner and therefore a member of the fact finding tribunal, there is a conflict pursuant to HRS 11-8(b)(6) which states that each election commission member shall retain the right to participate fully in public affairs except prohibited by law. In a matter which does not materially compromise the elections, commission members efficiency and integrity as an elections commissioner or neutrality, efficiency or integrity of the Elections Commission. Deputy AG Nakamura concluded that since Commissioner Cushnie has filed a formal complaint, he is in direct conflict as he is the complainant on the issues mentioned and therefore cannot be neutral and must recuse himself from participating in deliberations, discussions and voting on these issues.

Commissioner Cushnie called for a point of order and was recognized by Chair Curtis. Commissioner Cushnie expressed that Deputy AG Nakamura is in a conflict of interest as he represents the Office of Elections. Chair Curtis stated that Commissioner Cushnie's comment is not related to the agenda and expressed that he may bring forth his concern at a later time.

Chair Curtis opened up the floor to public testimony.

The first testifier was Jamie Detwiler testifying on chain of custody. Ms. Detwiler expressed concerns about the chain of custody during the 2022 Elections. She

testified that the drop boxes at the Mililani Mauka and Honolulu Hale locations lacked security. Ms. Detwiler also testified that she did not receive a response from the Office of Elections to her inquiry for an audit to be conducted.

Adriel Lam testified on the analysis he did of the cast vote records from the 2022 Elections. Mr. Lam expressed that he felt there were discrepancies in the record keeping of the ballots and raised questions about the security of the election system and is asking the Commission to look into procedures for ballot chain of custody.

Corrine Solomon testified on data collection she observed relating to signature curing process and raised concern that there is no uniform signature curing process across counties. Ms. Solomon expressed that having representatives from the counties in the EC meetings would be helpful in understanding the process.

Tom Stanton testified on ballot chain of custody and State vs. County responsibilities. Mr. Stanton pointed out issues with ballot chain of custody and the signature verification process. He expressed that there is a need for improved procedures and transparency.

Scott Shedko testified on ballot chain of custody. Mr. Shedko expressed that ballot chain of custody should be limited to only the voter and the person counting the ballot. Mr. Shedko raised a question to the Commission inquiring when the Commission last conducted an investigation on complaints.

Doug Pasnik testified on State vs. County responsibilities, voters who are not serviced by regular U.S. Postal Service and voting and ballot metrics. Mr. Pasnik presented data showing a decline in voter turnout and increased costs associated with implementing elections by mail. He expressed that the Commission conduct an investigation on how elections by mail is implemented as he believes that elections by mail has inflated costs and reduced voter turnout.

AnnMarie Hamilton testified on ballot chain of custody. Ms. Hamilton testified that election officials are not following the procedures of ballot chain of custody as mandated by state law.

Lynn Surayan testified on voting and ballot metrics. Ms. Surayan expressed concerns about the transition to all mail because of low voter turnout. She expressed that the Office of Elections should publish costs associated with

previous elections. She also raised concern about the ballot counting process and feels that the system should return to a hand count paper ballot system.

Ana Mo Des testified on election audits. Ms. Mo Des said that audits should be followed according to law. Ms. Mo Des stated that the law requires all races be audited where 10% of precincts are audited.

Andy Crossland testified on State vs. County responsibilities. Mr. Crossland expressed concerns about the voting system and that the voter rolls may be inflated.

Gary Cordery testified about alleged law violations related to the certification of the 2022 General Election. Mr. Cordery testified that at the time of the gubernatorial inauguration, the 2022 General Election was not certified as required by law as it was pending litigation.

Austin Martin testified about security concerns and expressed that components of the computer system used during the 2022 Elections were altered leaving it open for hacking attacks.

Steve Yoder testified that the shift to vote by mail had led to voter confusion and increased costs.

Brett Kulbis testified about county responsibilities. He suggested that the Elections Commission work with the County Elections Divisions on developing administrative rules to standardize the voting process across the state.

Mary Healy testified about ballot chain of custody and expressed concern over the integrity of the election process testifying that there are issues with mail in ballot.

Wendell Elento offered his support to the Office of Elections to organize affidavits submitted for the 2020 and 2022 Elections.

VII. State vs. County Responsibilities [2:08 p.m.]

Commissioner Cushnie called for a point of order and stated that he would like to comment on Deputy AG Nakamura's earlier advisement to the committee regarding the complaint Commissioner Cushnie submitted against the Office of Elections. Chair Curtis denied his point of order explaining that his comment does not relate to the present agenda item. Commissioner Cushnie continued to

express that he rejects Deputy AG Nakamura's statement and requested that there be further discussion on the matter. Chair Curtis stated that he can submit his argument in writing as the matter is not relevant to the present agenda item.

Chair Curtis explained that he requested the County Elections to have representatives to attend the meeting to hear questions from the public and have the opportunity to provide responses at the next meeting. Chair Curtis shared that a document titled State vs. County Responsibilities with links to the appropriate election laws was included in the meeting packet on pages 115 to 118, for the Commission and the public to view.

Commissioner Cushnie asked if the counties certify their elections and pass the certification on to the Office of Elections. Chief Election Officer (CEO) Scott Nago provided a response stating that the Office of Elections certifies the overall election and that the counties certify their county contests, issue their certificate of winners, and certify their charter questions.

Chair Curtis asked if there were any counties present at the meeting. EC Secretary Bueno announced that County of Hawaii and County of Maui were present.

[2:15 p.m.] EC Secretary Bueno announced that Commissioner Kiguchi was present at the meeting.

Commissioner Papalimu noted that there were individuals with their hands raised during public testimony that were not called upon. Chair Curtis asked EC Secretary Bueno to identify the individuals to give them an opportunity to testify. EC Secretary Bueno noted that the individuals with their hands raised were Commissioner Papalimu, Gary Cordery and Laura Nakanelua. EC secretary Bueno explained that Gary Cordery had already provided testimony and Laura Nakanelua was having technical difficulties. EC Secretary Bueno added Rosemarie Jauch as having her hand raised. Chair Curtis recognized Ms. Jauch and permitted her testimony.

Rosemarie Jauch testified on the agenda item relating to State vs. County responsibilities. She testified that she had concerns about signature verification during the 2022 General Election stating that there was a high rate of ballot rejection and requested that the County of Kauai investigate the matter.

Laura Nakanelua testified that she would like to request the Commission to investigate election audit procedures and ballot chain of custody.

VIII. Voters who are not serviced by regular U.S. Postal Service [2:25 p.m.]

Commissioner Papalimu provided comments relating to voters who are not serviced by regular U.S. Postal Service. She commented that there are rural areas in the State that does not receive mail at their home and expressed that these residents are being disenfranchised from voting and would like to see voting at precincts be the primary method of voting.

Chair Curtis called on County of Hawaii representative and asked if they could comment on Commissioner Papalimu's concern. Jon Henricks, County Clerk of the County of Hawaii explained that when completing the voter registration application it is required to include a mailing address and the voter's ballot is mailed to that mailing address. Clerk Henricks clarified that the mailing address can be a P.O. Box. Clerk Henricks shared that their office has not received any concerns regarding mailed ballots.

Chair Curtis called on the County of Maui representative and asked if they would like to provide comments. County Clerk Moana Lutey shared that their office handles mailing of ballots to voters the same way County of Hawaii does.

Commissioner Papalimu asked if there was a count of how many ballots on the Big Island are mailed to general delivery. Clerk Henricks said that he did not have a number at the moment and added that the number of undeliverable ballots changes from election to election.

Chair Curtis shared that he received metrics for registered voters, mailed ballots, returned ballots, counted ballots and ballots returned deficient from the County of Kauai and noted that 233 ballots were returned deficient and most likely returned because of no signature.

Commissioner Cushnie asked if the Commission knows what the total number of undeliverable ballots. CEO Nago provided that they have a number but cannot recall the number at the moment. CEO Nago explained that the number of undeliverable ballots is reported to the federal government. He further explained that undeliverable ballots are part of the list maintenance process explaining that if an undeliverable mail is received, the voter is sent a mailing that is forwardable and the voter remains on the rolls and can only be removed after two general election cycles pursuant to federal law of the National Voter Registration Act.

IX. Ballot Chain of Custody [2:36 p.m.]

Commissioner Cushnie commented that he submitted evidence that election officials were negligent in their documentation of ballot chain of custody. Chair Curtis asked if his comments are related to the complaint that he had filed with the Elections Commission regarding chain of custody. Commissioner Cushnie responded yes. Chair Curtis explained that because he had filed a complaint regarding ballot chain of custody he is in a conflict of interest which raises concerns about his neutrality as a commissioner.

Chair Curtis said that because ballot chain of custody is an issue raised by several testifiers, he will ask the counties to provide responses addressing the topic as well as provide voting metrics that will be discussed at the next meeting.

X. Ballot Unique Identifiers [2:42 p.m.]

Chair Curtis asked staff to mute Commissioner Cushnie.

Chair Curtis commented that a unique ballot identifier placed on the ballot compromises the confidentiality of the vote. He feels that a ballot unique identifier should be limited to functions of the vendor and not associated to the voter. He also expressed that ballot unique identifiers be limited to precincts.

XI. Voting and Ballot Metrics [2:43 p.m.]

Chair Curtis requested voting metrics to be presented at the next meeting. He requested metrics for registered voters, ballots mailed, ballots returned and counted, ballots returned deficient, and ballots returned undeliverable.

With no further discussion from the Commission, Chair Curtis asked for a motion to enter into executive session for the purpose of approving the minutes of the executive session of November 15, 2023 meeting.

Commissioner Andrion made a motion to enter into executive session, which was seconded by Commissioner McAdam.

The Commission went into executive session at 2:44 p.m.

XII. Executive Session – Pursuant to Hawaii Revised Statutes HRS § 92-4, the Commission may, when deemed necessary, hold an Executive Session that is closed to the public on matters exempted by section HRS § 92-5. [insert time]

Approval of Minutes for the Executive Session for the Meeting of November 15, 2023.

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

The Commission reconvened into open meeting at 2:53 p.m.

Chair Curtis stated that there was discussion amongst the commissioners to return to executive session for the purpose of discussing the performance of CEO Nago. Chair Curtis explained that two-thirds vote from the Commission is needed to amend the agenda. As background, the topic of the CEO Nago's performance is not listed as an agenda item. Chair Curtis asked if there is a motion to return to executive session for the purpose of discussing CEO Nago's performance.

Commissioner Papalimu made a motion to enter into executive session for the purpose of discussing CEO Nago's performance, which was seconded by Commissioner Takenaka.

Commissioner Kuwada asked for clarification of the motion. If the motion was to amend the agenda and not a motion to go into executive session. He also wanted to confirm that a majority of six affirmative votes is required in order to amend the agenda. Chair Curtis responded yes.

Commissioner Kuwada felt that the motion is ill-timed. He expressed that the topic is too important and should be placed on the agenda ahead of time so that the public is aware and be given the opportunity to provide testimony. He raised the concern that some members of the public may no longer be present at the meeting to provide testimony. Additionally, he asked if public testimony had to be reopened in order to accept testimony from the public. Commissioner Kuwada suggested that the topic be placed on a future meeting agenda.

Commissioner Andrion agreed with Commissioner Kuwada that the topic be placed on the agenda for future meeting and expressed that the discussion should occur in public rather than in executive session. Commissioner Andrion asked if the Commission would entertain a motion to go into executive session to discuss the metrics of evaluation. Commissioner Takenaka disagreed that the Commission go back into executive session to discuss metrics for evaluation because she felt that the public should be given advance notice on topics that the Commission is to discuss. Commissioner Cushnie expressed that discussion in executive session erodes the public's confidence in the Commission. He expressed that a discussion on the CEO's performance should be conducted in an open meeting.

Commissioner Papalimu clarified that her motion to go into executive session was for the purpose of going over metrics for an evaluation and not to have a discussion about CEO Nago's performance and she agreed that discussion should be in an open meeting and, therefore, withdrew her motion.

Chair Curtis explained that because the motion is already on the floor it belongs to the Commission and will be taking the vote. Chair Curtis made a motion to amend the agenda for the Commission to go into executive session to discuss evaluation of CEO Nago's performance. The motion failed with the Commission unanimously voting NO.

Commissioner Takenaka requested that the commissioners provide their input on metrics ahead of the next meeting so that the Commission can review. Chair Curtis agreed and requested for feedback from the commissioners along with agenda items for subsequent meetings. He shared that his intent is to have monthly meetings. Chair Curtis said that he will ask the secretary to poll the commissioners for their availability. There were no objections from the commissioners about having monthly meetings.

Commissioner Takenaka sought clarification as to who to send their ideas and comments to. Chair Curtis said they may address it to the Commission and noted that any communication addressed to the Commission becomes public record as it involves more than three commissioners. He also offered that they send it to the secretary who will forward it to him or they may submit it as public testimony in which it will be included on the agenda.

Commissioner Kuwada asked if Deputy AG Nakamura could advise the Commission regarding communication among the commissioners. Chair Curtis said that his understanding is when communication is addressed to the body of the Commission that communications become public record because it involves more than three commissioners. Chair Curtis called on Deputy AG Nakamura to comment. Commissioner Cushnie stated that Deputy Attorney General Reese Nakamura stated that he represented the Office of Elections. During the vote on Investigating chain of custody, Deputy AG Reese Nakamura advised the Commission against allowing Commissioner Cushnie to participate in the vote. Commissioner Cushnie stated that he did not recuse himself but was prevented from voting.

Deputy AG Nakamura responded to Chair Curtis' inquiry regarding communications amongst the commissioners stating that he will look into the matter.

Commissioner Andrion commented on method of evaluation recalling that there was a questionnaire provided to the Commission at a previous meeting and asked if that form could be resent to commissioners for their review.

Commissioner Cushnie expressed his concern that the public has been asking for formal investigations relating to agenda items discussed during the meeting. Chair Curtis stated that he can put in the request for an investigation to be voted on by the Commission at the next meeting. Commissioner Andrion asked Chair Curtis if Commissioner Cushnie can make a motion for investigation on any item from today's agenda in which Chair Curtis responded yes.

Commissioner Cushnie made a motion that the Elections Commission investigate chain of custody, which was seconded by Commissioner Andrion. Commissioner Papalimu sought clarification on the duties of the Election Commission. She said that her understanding of the Election Commission's duties is that they are required to investigate when complaints are brought to the Commission. Chair Curtis said that he does not think the Commission is required to investigate a complaint based on a request from a single voter but that the investigation is initiated by a majority of the Commission. Chair Curtis said that before proceeding with an investigation, he would want to hear from all responsible parties first. In the case of chain of custody, he would want to find out from the counties their procedures before proceeding into any formal investigation. Commissioner Andrion asked if a formal investigation were initiated, would the hearings be separate from the Commission's regular meetings in which Chair Curtis said it would be separate hearings. Commissioner Andrion expressed his support for a formal investigation on chain of custody. Commissioners Kiguchi and McAdam shared that they would like to hear from the counties first. Chair Curtis said that he will ask for input from county officials regarding chain of custody.

Commissioner Kuwada commented on county responsibilities. He said that the counties conduct their county elections and they participate in conducting State elections. He does not believe the Commission has the power to promulgate rules relating to chain of custody for the counties to follow as they have their own election apparatus. He recommends that the state and county cooperatively work together to discuss these concerns. Chair Curtis concurred and referred back to the State vs. County document outlining the responsibilities of each body. Commissioner Kuwada asked for a roll call to vote on the motion.

Motion: Motion for the Elections Commission to investigate chain of custody. The motion failed

AYES: Andrion, Papalimu

NOES: Kiguchi, Kuwada, McAdam, Takenaka

EXCUSED: Aquino

ABSTAIN: Curtis

RECUSED: Cushnie

Commissioner Kuwada asked for the final vote to be repeated. Chair Curtis stated that there were four NOES and two AYES and EC secretary Bueno confirmed that the summary of votes stated by Chair Curtis was accurate.

Commissioner Andrion requested that the conflict of interest dispute between Deputy AG Reese Nakamura and Commissioner Cushnie get sorted out before the next meeting. Chair Curtis stated that he will seek a legal opinion from the AG.

Commissioner Kuwada made a motion to adjourn the meeting and seconded by Commissioner Andrion, and approved by the Commission noting the excused absence of Commissioner Aquino.

Elections Commission meeting was adjourned at 3:24 p.m.

Respectfully submitted,



Nedielyn Bueno
Elections Commission Secretary