



MICHAEL CURTIS  
ELECTIONS COMMISSION CHAIR

## STATE OF HAWAII ELECTIONS COMMISSION

### MINUTES

#### REGULAR MEETING OF THE ELECTIONS COMMISSION

March 19, 2025 @ 10:00 AM

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  
Jeffrey Kuwada  
Clare McAdam  
Jeffrey Osterkamp  
Kahiolani Papalimu

#### Support Staff in Attendance:

Jordan Ching, Department of the Attorney General (AG)  
Jazelle Aolahiko, Office of Elections  
Scott Nago, Office of Elections  
Aaron Schulaner, Office of Elections  
Aulii Tenn, Office of Elections

### PROCEEDINGS

#### I. Call to Order [10:00 a.m.]

The regular meeting of the Elections Commission was called to order by Chair Curtis.

II. Roll Call and Determination of a Quorum [10:00 a.m.]

All members of the Elections Commission were present at the meeting with the exception of Commissioner Young.

Commissioner Osterkamp entered the meeting at 10:01 a.m. and Commissioner Kuwada entered the meeting at 10:07 a.m.

III. Approval of the Written Minutes from the January 15, 2025 meeting [10:00 a.m.]

Commissioner McAdam moved to approve the minutes. The motion was seconded by Commissioner Cushnie. [10:00 a.m.]

Commissioner Cushnie moved to amend the minutes to add Scott Nago, Aaron Schulaner, and Aulii Tenn to the list of attendees. The motion was seconded by Commissioner Andrion and **carried** unanimously noting the excused absence of Commissioner Kuwada and Commissioner Young. [10:01 a.m.]

Commissioner Aquino moved to amend the minutes to include “composed of members of the legislature and elections commission” to Commissioner Young’s motion made at 1:29 pm regarding the creation of the bipartisan task force. The motion was seconded by Commissioner Cushnie and **carried** unanimously noting the excused absence of Commissioner Kuwada and Commissioner Young. [10:03 a.m.]

IV. Communications & Correspondence, Received for the Record [10:05 a.m.]

Commissioner McAdam moved to receive Communications & Correspondence for the record. The motion was seconded by Commissioner Kuwada and **failed** noting the excused absence of Commissioner Young. [10:09 a.m.]

YES: Kuwada, McAdam, Osterkamp, Curtis

NO: Andrion, Aquino, Cushnie, Papalimu

Commissioner Cushnie moved to amend the motion to receive and discuss the written Communications. The motion was seconded by Commissioner Andrion and **failed** noting the excused absence of Commissioner Young. [10:11 a.m.]

YES: Andrion, Aquino, Cushnie, Papalimu

NO: Kuwada, McAdam, Osterkamp, Curtis

V. Matters of Public Record [10:15 a.m.]

VI. Records Request; Refer to OIP [10:15 a.m.]

VII. Results of the Audit of HD 37 from the 2022 General Election [10:17 a.m.]

Andy Crossland provided testimony urging the Commission to vote on investigating official complaints regarding election issues like chain of custody and discrepancies in ballot counts between the counties and the state.

Jamie Detwiler provided testimony expressing concerns about delays in the audit process for District 37 and the lack of communication from the Office of Elections, as well as inconsistencies in the chain of custody procedures during the transportation and handling of ballots, urging the Commission to improve communication and oversight in future elections.

Tara Rojas provided testimony criticizing the Commission for silencing public input and failing to address formal complaints, calling for immediate intervention, an independent review, and the restoration of public trust and transparency.

Karl Dicks provided testimony presenting footage and evidence, criticizing the use of plastic bins for ballot storage, claiming it compromised election security, and stated that his formal complaints have been ignored, asserting that the elections are fraudulent.

Shelby Billionaire provided testimony expressing frustration over the lack of progress on election bills, criticized the influence of party control on the legislative process, and announced the creation of a new political party, the Ohana Unity Party, to challenge the current system.

AnnMarie Hamilton provided testimony criticizing the weaknesses in Hawaii's election chain of custody, highlighted a case of ballot discrepancies in Kauai, and called on the Commission to investigate and address potential fraud and vulnerabilities in the system.

Doug Paskin testified about the failure to reconcile election records and procedural errors in the 2024 general election, urging the Commission to investigate and enforce compliance with election laws.

Nolan Chang testified about issues with the chain of custody, signature verification, and the lack of transparency and accountability in Hawaii's election process, offering several recommendations for improvement.

Jenn Hunt provided testimony expressing frustration over the lack of action on her formal complaint regarding chain of custody violations, missing official observers, and the disregard for election laws, particularly in Maui County.

Keone Payton provided testimony reiterating concerns about the broken chain of custody in elections, calling for an investigation and criticizing those who support the current system.

Lindsay Kamm provided testimony sharing concerns about the lack of chain of custody documentation for election envelopes, urging an investigation and improvements to the system for better transparency.

Kellyna Campbell provided testimony expressing frustration that the people's concerns are not being addressed, highlighting a breach of trust by public officials and urging accountability.

Jaerick Medeiros provided testimony expressing frustration that complaints about chain of custody and election procedures are being ignored, warned that officials will be held personally accountable, and criticized the current political system in Hawaii.

Marcin Wyszogrodzki provided testimony questioning how the elections were certified without proper chain of custody and criticized public officials for not listening to the public's concerns.

Wallyn Christian provided testimony raising concerns about a violation of the Hawaii Constitution regarding party identification on ballots and the broken chain of custody, calling for accountability and investigation.

Haunani Kahea provided testimony expressing concerns about election integrity, called for a recount with honest people, criticized the board for ignoring public testimony, and demanded accountability for Scott Nago.

Jenn Hunt provided additional testimony requesting that her official complaint be moved to the correct category, as it is not a records request but concerns her efforts to obtain chain of custody information from the Maui County Clerk's office.

Victoria provided testimony raising concerns about the failure to follow proper election processes, questioned the Elections Commission's competence, and stated she would file charges for fraud and theft.

Mary Healy provided testimony calling for election system reforms, including firing Scott Nago, implementing watermarked ballots, removing drop boxes, and securing elections in Hawaii ahead of the 2026 elections.

Jennifer Cabjuan testified about a chain of custody issue involving her father's vote in 2020, requesting an investigation into the ballot envelope and supporting reforms like one-day voting, paper ballots, and voter ID.

Robyn McCreary provided testimony supporting the idea of watermarking ballots, suggested one-day voting with no internet access, and offered to help run a voting location.

Commissioner Cushnie moved to subpoena all ballot batch reports for the 2022 General Election. The motion was seconded by Commissioner Andrion and **failed** noting the excused absence of Commissioner Young. [11:37 a.m.]

YES: Andrion, Aquino, Cushnie, Papalimu

NO: Kuwada, McAdam, Osterkamp, Curtis

VIII. HAR 3-170-7 Official Complaints, Assign Task Force to Determine Validity & Recommend Formal Investigation [11:42 a.m.]

Commissioner Cushnie moved to form a permitted interaction group (PIG) to investigate chain of custody complaints on Kauai and elections results discrepancies on the Big Island. The motion was seconded by Commissioner Papalimu and **carried** noting the excused absence of Commissioner Young. [11:44 a.m.]

YES: Andrion, Aquino, Cushnie, McAdam, Osterkamp, Papalimu, Curtis

NO: Kuwada

Deputy AG Jordan Ching explained the process of forming a PIG under the Sunshine Law. The PIG allows board members to investigate and present findings, but it must be defined, voted on, and have a clear scope and authority. When a PIG concludes its investigation, it presents findings and recommendations at a subsequent meeting, and the Commission would not be able to vote or comment until a subsequent meeting follows that.

Ching clarified that the PIG does not have separate subpoena powers. Any subpoena requests made by the PIG would need to be presented to the Commission for approval, in compliance with the Commission's existing subpoena powers. This means the PIG cannot unilaterally subpoena documents or responses. Subpoena decisions must be made at an agenda-approved meeting.

Additionally, Ching noted that while non-Commission members can participate in a PIG, they would not have special authority. The Commission must define the scope of each member's authority, including non-Commission participants, for the PIG.

Commissioner Papalimu made a motion to limit the membership of the PIG to only Election Commissioners. The motion was seconded by Commissioner Aquino and **failed** noting the excused absence of Commissioner Young. [12:08 p.m.]

YES: Andrion, Aquino, Cushnie, Kuwada, McAdam, Osterkamp, Curtis

NO: Papalimu

Commissioner Cushnie moved to appoint Commissioners Osterkamp, McAdam, and Papalimu to the PIG, investigating election results discrepancies on the Big Island. The motion was seconded by Commissioner Papalimu and **carried** unanimously noting the excused absence of Commissioner Young. [12:14 p.m.]

Commissioner Cushnie moved to appoint Commissioner Young, Commissioner Aquino, and Lindsay Kamm to the PIG, investigating the chain of custody complaints and any other irregularities on Kauai. The motion was seconded by Commissioner Andrion and **carried** noting the excused absence of Commissioner Young. [12:18 p.m.]

YES: Andrion, Aquino, Cushnie, Kuwada, McAdam, Papalimu, Curtis

NO: Osterkamp

IX. Formal Complaint Regarding Signed Certificate before Certification [12:25 p.m.]

Tara Rojas provided testimony criticizing the commission for not listening to the public, calling the meetings unproductive and accusing members of bullying and shutting down opposing voices.

Wallyn Christian provided testimony criticizing Chair Curtis for appointing individuals that sway the commission in favor of one side and for not allowing people's voices to be heard, urging that board members should be elected, not appointed.

Keone Payton provided testimony criticizing Chair Mike Curtis for his handling of complaints, claiming he is not following proper procedures and is acting in a biased manner, urging his removal from the commission.

Jaerick Medeiros provided testimony expressing frustration with the commission's decisions, criticizing certain members for blocking progress, acting against the people, and making biased, unilateral choices.

Shelby Billionaire provided testimony expressing frustration with the commission's actions, criticizing political bias, corruption, and a lack of

adherence to laws and the state constitution, while urging for change to better serve the public.

Victoria provided testimony emphasizing the importance of consulting and ensuring qualifications for appointees, suggested offering the public an opportunity to apply, and recommended that voters should have a say in the appointments.

Wendy Balidoy provided testimony expressing frustration with the meeting's lack of participation, criticized Chair Curtis's leadership, and called for more attention to the people's concerns over party influence.

Nicole Berinobis provided testimony calling for the removal of Mr. Curtis, accusing him of corruption, bias, and obstructing transparency in the election process, and supported Ralph for his efforts in addressing these issues.

Lindsay Kamm provided testimony expressing uncertainty about her involvement in the committee, leaving the decision to the group, and noted that she was unsure of the proceedings.

Jenn Hunt provided testimony requesting that her formal complaint about chain of custody be moved to the proper category for review, as it was mistakenly filed under the wrong category.

Jessica Priya provided testimony expressing frustration with the meeting's conduct, criticizing the lack of accountability and responsiveness to the people's concerns, and called out the Chair for disregarding their voices.

Karl Dicks provided testimony emphasizing that while the Chair can appoint members to the committee, objections should lead to opening the floor for nominations, following Robert's rules of order.

Commissioner Cushnie moved to have the Deputy Attorney General answer Doug Pasnik's question if it was lawful for Scott Nago to certify an election before it was certified. The motion was seconded by Commissioner Andrion and **failed** noting the excused absence of Commissioner Young. [1:00 p.m.]

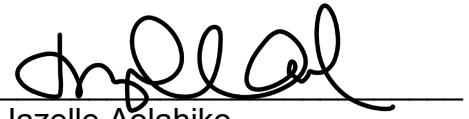
YES: Andrion, Aquino, Cushnie, Papalimu

NO: Kuwada, McAdam, Osterkamp, Curtis

X. Adjournment [1:04 p.m.]

Chair Curtis adjourned the meeting at 1:04 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jazelle Aolahiko', written over a horizontal line.

Jazelle Aolahiko  
Elections Commission Secretary

DRAFT



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IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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RALPH S. CUSHNIE and more than THIRTY VOTERS, Plaintiffs,

vs.

SCOTT NAGO, as Chief Elections Officer for the Office of  
Elections, State of Hawai‘i; and JADE FOUNTAIN-TANIGAWA, County  
Clerk for the County of Kaua‘i, Defendants.

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ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

This 2024 General Election contest is about overages. An overage occurs when the amount of ballots recorded in the official election results is more than what “documented usage” indicates.

Plaintiffs Ralph Cushnie (Cushnie) and thirty-two other voters (collectively, Plaintiffs) assert there is an overage in mail ballots that are sufficient in quantity to cause a difference in the results of the Kaua‘i County Councilmember race in the 2024 General Election.

However, the data that Plaintiffs rely on for “documented usage” contains a disclaimer that expressly states that the figures represent a manual count of envelopes and not the number of ballots counted. It is unreasonable to infer a ballot count from this data due to this disclaimer.

Plaintiffs’ December 12, 2024 Memorandum in Support also concedes that there is a difference of only 39 ballots when comparing Plaintiffs’ 27,036 envelope amount that was transferred to the state counting center and the 27,075 total mail ballots from the official results of the 2024 General Election in Kaua‘i County. This 39 ballot difference is less than the 108 vote difference between the seventh place and eighth place candidates in the 2024 General Election race for Kaua‘i County Councilmember.

We thus enter the following findings, conclusions, and Judgment in favor of the State and County, and against Plaintiffs. We also deny Plaintiffs’ motion for interrogatories.

#### **I. FINDINGS OF FACT**

According to the final printout, the 2024 General Election results for the Kaua‘i County Councilmember race were:

1. CARVALHO, Bernard P., Jr.	15,435	7.2%
2. RAPOZO, Mel	14,403	6.7%
3. KANESHIRO, Arryl J.	13,049	6.1%

4. BULOSAN, Addison	12,385	5.8%
5. COWDEN, Felicia	12,325	5.8%
6. KUALII, KipuKai	12,276	5.7%
7. HOLLAND, Fern Anuenue	12,041	5.6%
KAGAWA, Ross	11,933	5.6%
DECOSTA, Billy D.	9,977	4.7%
APILADO, Abe, Jr. (Aba-G)	5,964	2.8%
KEAHIOLALO, W. Butch	5,202	2.4%
CUMMINGS, Sherri	4,160	1.9%
NELSON, Jacquelyn (Jakki)	3,386	1.6%
THOMAS, Bart	3,296	1.5%
Blank Votes:	77,696	36.4%
Over Votes:	62	0.0%

A voter may vote for up to seven candidates in this race. Numbers are added to the above results to clearly identify the top seven candidates.

There is a 108 vote difference between the seventh-place candidate (Fern Anuenue Holland) and eighth place candidate (Ross Kagawa).

There were a total 27,075 mail ballots that were recorded in the final printout of the official 2024 General Election results for Kaua'i County.

On November 25, 2024, Plaintiffs filed an Election Complaint (Complaint) asserting there is an "overage of 3,772 voted ballots" that caused a difference in the 2024 General Election results for the Kaua'i County Councilmember race. Plaintiffs assert that a correct result cannot be determined for

this election "due to the provable overage," and this court's Judgment should invalidate the results of the Kaua'i County Councilmember race.

Plaintiffs submitted an information request under the Uniform Information Practices Act to the Kaua'i County Elections Division for chain-of-custody documentation relating to ballot collections and handling for the 2024 General Election.

Based on the information provided by County, Plaintiffs assert that the "documented usage for voted ballot envelopes was recorded as 23,303, and is the total number of voted ballots submitted by mail for the county." Plaintiffs assert their 23,303 number constitutes the "documented usage" for purposes of calculating an overage of mail ballots pursuant to Hawai'i Revised Statutes (HRS) § 11-153(a) (Supps. 2019 & 2021), Hawai'i Administrative Rules (HAR) § 3-177-750 (eff. 2020), and HAR § 3-177-769(b) (eff. 2020).

The documents attached to the Complaint that support Plaintiffs' 23,303 number all contain the following "Disclaimer" at the bottom of each page:

Figures on this form represent a manual count of envelopes - not the number of ballots counted. The manual counts were made for internal purposes to track election progress with the understanding that it would not match official election results.

Subtracting Plaintiffs' 23,303 figure from the total 27,075 mail ballots in Kaua'i County results in an overage of 3,772 mail

ballots. Plaintiffs assert that this 3,772 overage amount "cause[d] a difference in the election results for the county council race for the County of Kauai" because the "overage of 3,772 voted ballots exceeds the reported margin between candidates for the top nine candidates" in the Kaua'i County Councilmember race.

Plaintiffs' Complaint was signed by Cushnie and includes the signatures of Cushnie and thirty-two other voters from "Kauai District 17" under the following affirmation:

I am one of more than thirty voters from Kauai District 17 and am filing this election complaint pursuant to the Constitution for the State of Hawaii and Hawaii Revised Statutes for redress of grievances regarding the 2024 Hawaii General Election and as per the accompanying filing.

Motions to dismiss or for summary judgment were filed by Defendant Jade Fountain-Tanigawa, County Clerk for the County of Kaua'i (County), on December 4, 2024, and Defendant Scott Nago, Chief Elections Officer for the Office of Elections (the State or Nago), on December 5, 2024.

County's motion asserts that the data that Plaintiffs used to calculate the 3,772 overage ballot amount is wrong because Plaintiffs' data is based on ballot envelopes rather than ballots themselves, and the County "forms capturing ballot envelope counts are not used to calculate overages and underages pursuant to HRS § 11-153." Pointing to the Disclaimer at the

bottom of the County forms, County states that its forms capturing ballot envelope counts are used by County to

approximate the quantity of ballot envelopes collected and the quantity still outstanding and was meant to aide with projecting staffing needs and scheduling of staff overtime, with the understanding that the envelope counts would not equal the quantity of ballots counted and reported in official election results.

County also asserts that Plaintiffs miscalculated the ballot envelope amount due to missing data, and provided the missing data through Exhibit A to County's motion.

The State's motion to dismiss or for summary judgment asserts: (A) the Complaint should be dismissed for lack of standing pursuant to Cordery v. Ige, SCEC-22-0000734, because Cushnie is the only Plaintiff, or voter, in this election contest; (B) Plaintiffs disregard the disclaimer language on the County forms they rely on; (C) Plaintiffs also disregard return identification envelopes data that is also attached to their Complaint showing that 26,954 return identification envelopes were transferred to counting centers between October 26, 2024 and November 6, 2024; and (D) the State's data shows there are a total of 25 overage mail ballots in Kaua'i County, and this 25 overage mail ballots is not enough to cause a difference in the results of the 2024 General Election race for Kaua'i County Councilmember because the difference in votes between the seventh-place candidate and eighth-place candidate is 108 votes.

The State's 25 overage mail ballots is reflected by the following table:

D/P	Mail				In-Person			
	Adj. Mail Turnout	Prec. Report	Over (+)	Under (-)	Walk Turnout	Prec. Report	Over (+)	Under (-)
15-01	1,761	1,763	2	0	167	170	3	0
15-02	1,708	1,713	5	0	209	209	0	0
15-03	938	940	2	0	138	138	0	0
15-04	3,456	3,458	2	0	537	537	0	0
15-05	1,207	1,208	1	0	151	152	1	0
16-01	2,875	2,877	2	0	468	469	1	0
16-02	1,172	1,173	1	0	195	195	0	0
16-03	1,997	1,999	2	0	271	271	0	0
16-04	2,505	2,506	1	0	345	344	0	(1)
16-05	304	304	0	0	40	37	0	(3)
17-01	2,290	2,294	4	0	285	288	3	0
17-02	2,954	2,954	0	0	367	368	1	0
17-03	1,929	1,929	0	0	154	155	1	0
17-04	755	756	1	0	57	57	0	0
17-05	1,176	1,178	2	0	100	101	1	0
17-06	23	23	0	0	0	0	0	0
	<b>27,050</b>	<b>27,075</b>	<b>25</b>	<b>0</b>	<b>3,484</b>	<b>3,491</b>	<b>11</b>	<b>4</b>

The State's documented usage for mail ballots adds the amount of mail ballots with the amount of electronic ballots, and then reduces the sum by the amount of invalidated mail and electronic ballots. In other words: mail ballots + electronic ballots - invalidated mail and electronic ballots = documented usage.

Overage and underage is calculated on a precinct-by-precinct basis by comparing the documented usage (Adj. Mail Turnout in the above table) with the amount of precinct turnout for mail ballots (Prec. Report in the table).

Nago's Declaration states that the envelopes remain sealed and are not opened until the envelopes are transferred to a state-operated counting center. The envelopes are then opened at the state-operated counting center.

Plaintiffs filed an opposition to County's motion on December 5, 2024, and an opposition to the State's motion on December 9, 2024.

Plaintiffs' opposition to County's motion: (A) asserts Exhibit A of County's motion is unreliable as evidence because "chain of custody has been broken for the handling of 3,004 voted ballot envelopes reportedly received by the county from the US Postal Service and the validity of this new entry cannot be verified"; (B) continues to assert that "documented usage" is calculated by using the ballot envelope count in the County-provided forms with the Disclaimer; and (C) asserts there is an overage of 442 ballots rather than the 3,772 ballots asserted in their Complaint based on Exhibit A of County's motion.

Each page of Exhibit A of County's motion includes the same Disclaimer quoted above.

Plaintiffs' opposition to the State's motion: (A) attaches a list of addresses for the thirty-three voters in this general election contest; (B) asserts that the State has "frustrated all efforts to retrieve chain of custody documentation"; (C) continues to assert that Kaua'i County chain-of-custody documentation is the only physical verification of the quantity of mail in ballots collected and, based on Kaua'i County data, there is an overage of 442 mail ballots.



On December 4, 2024, Plaintiffs filed a motion for interrogatories that seeks answers to questions concerning certification of Councilmembers prior to the resolution of this election contest. According to Plaintiffs, the 2024 Kaua'i County Councilmember election is a contested election and cannot yet be certified.

Additional arguments were filed by County and Plaintiffs on December 9, 2024.

On December 10, 2024, Plaintiffs filed a "Memorandum in Support of Opposition to Motion to Dismiss/Summary Judgment Pursuant to HRCF Rule 7." Plaintiffs state that County informed them there were 219 uncured envelopes in the 2024 General Election, and assert that the 219 uncured envelopes constitute 219 more overage ballots that could have caused a difference in the Kaua'i County Councilmember race in the 2024 General Election.

On December 12, 2024, Plaintiffs filed a second Memorandum in Support that again asserts the 661 overage mail ballots based on the County forms, the uncured envelopes, and now Nago's "attestation to ballots transferred, and the States Summary Report for the County of Kauai." Notably, Plaintiffs' December 12 Memorandum now says that a total of 27,036 envelopes were transferred from County to the State counting center.

## II. CONCLUSIONS OF LAW

### A. Standing

When asked to decide whether a litigant is asserting legally recognized interests, personal and peculiar to that person, “we have spoken of standing[.]” Tax Found. of Hawai‘i v. State, 144 Hawai‘i 175, 191, 439 P.3d 127, 143 (2019).

Standing is that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated. And the crucial inquiry in its determination is “whether the plaintiff has ‘alleged such a personal stake in the outcome of the controversy’ as to warrant his invocation of . . . (the court’s) jurisdiction and to justify exercise of the court’s remedial powers on his behalf.”

Life of the Land v. Land Use Comm’n, 63 Haw. 166, 172, 623 P.2d 431, 438 (1981) (quoting Warth v. Seldin, 422 U.S. 490, 498-99 (1975)).

Standing requirements may be tempered or prescribed by legislative declarations policy. Tax Found., 144 Hawai‘i at 191, 439 P.3d at 143. HRS § 11-172 (Supp. 2021) states that an election complaint may be brought by “any thirty voters of any election district.”

Plaintiffs’ Complaint was signed by thirty-three voters, one of whom is Cushnie. Phone numbers and addresses of the thirty-three voters were also provided in the record.

The signature pages in the Complaint include the following affirmation:

I am one of more than thirty voters from Kaua'i District 17 and am filing this election complaint pursuant to the Constitution for the State of Hawaii and Hawaii Revised Statutes for redress of grievances regarding the 2024 Hawaii General Election and as per the accompanying filing.

Based on this record, Plaintiffs have satisfied the standing required by Cordery.

## **B. Summary Judgment**

When reviewing a request to dismiss a complaint, the court's review "is based on the contents of the complaint, the allegations of which [the court] accept[s] as true and construe[s] in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000) (quotation marks and citation omitted).

The court's consideration of matters outside the pleadings converts a motion to dismiss into one for summary judgment. Foytik v. Chandler, 88 Hawai'i 307, 313, 966 P.2d 619, 625 (1998).

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Estate of Doe v. Paul Revere Ins. Group, 86 Hawai'i 262, 269-70, 948 P.2d 1103, 1110-11 (1997).

A fact is material if proof of that fact would have the effect of establishing or refuting an essential element of a cause of action asserted by one of the parties. Winfrey v. GGP Ala Moana LLC, 130 Hawai‘i 262, 271, 308 P.3d 891, 900 (2013).

On a motion for summary judgment, this court must view the evidence in the light most favorable to the nonmoving party. State ex rel. Shikada v. Bristol-Myers Squibb Co., 152 Hawai‘i 418, 442, 526 P.3d 395, 419 (2023).

However, this “court is permitted to draw only those inferences of which the evidence is reasonably susceptible and it may not resort to speculation.” Winfrey, 130 Hawai‘i at 271, 308 P.3d at 900 (quoting Pioneer Mill Co. v. Dow, 90 Hawai‘i 289, 295, 978 P.2d 727, 733 (1999)).

Pursuant to HRS § 11-174.5(b) (Supp. 2021), this court’s Judgment may invalidate the general election contest for Kaua‘i County Councilmember “on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the voter service center officials; or decide that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected.”

An election complaint may allege an overage that could cause a difference in the election results of a race. See HRS § 11-172.

Plaintiffs' Complaint states a claim under HRS § 11-172 because Plaintiffs assert there is a mail ballot overage of 3,772 ballots that could cause a difference in the 2024 General Election results for Kaua'i County Councilmember. Plaintiffs later asserted there is an overage of 442 mail ballots using updated data provided by County, and then 661 mail ballots when adding uncured envelopes.

"Overage" and "underage" are defined by HRS § 11-153 (Supps. 2019 & 2021), which states in its entirety:

(a) If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage. The election officials or counting center employees responsible for the tabulation of ballots shall make a note of this fact on a form to be provided by the chief election officer. The form recording the overage or underage shall be sent directly to the chief election officer or the clerk in county elections separate and apart from the other election records.

(b) If the electronic voting system is being used in an election, the overage or underage shall be recorded after the tabulation of the ballots. In an election using the paper ballot voting system, the chief election officer or the chief election officer's designee shall proceed to count the votes cast for each candidate or on a question after recording the overage or underage.

(c) The chief election officer or the clerk shall make a list of all precincts in which an overage or underage occurred and the amount of the overage or underage. This list shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections.

An election contest may be brought under part XI, if the overage or underage in any precinct could affect the outcome of an election.

(Emphasis added.)

Overage and underage are also defined in HAR § 3-177-750, which states:

§3-177-750 Electronic voting systems; documentation of overages and underages; records. The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party or official observers. If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage. Any overages or underages in any district shall be documented. The list of any such overages or underages shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections. After all ballots have been tabulated, they shall be sealed in containers.

(Emphasis added.)

Additionally, HAR § 3-177-769 states:

§3-177-769 Reconciliation of voted ballots.  
(a) The clerk shall prepare a reconciliation of voted mail and voter service center ballots recorded on a form prescribed by the chief election officer. The form shall summarize the following totals by precinct:

- (1) Walk-in voter service center ballots;
- (2) Valid mail return identification envelopes; and
- (3) Invalidated mail ballots.

(b) If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage.

(Emphasis added.)

Reading “documented usage” in context with the plain language of the above statutes and administrative rules shows that “documented usage” refers to ballots (“[i]f there are more ballots than documented usage indicates”) and not ballot envelopes. See Tax Found., 144 Hawai‘i at 193, 439 P.3d at 145

(stating that, when construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself, and we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose).

With that in mind, Plaintiffs' reliance on the data used to calculate their 3,772 or 442 overage mail ballot amount is unavailing because Plaintiffs disregard the "Disclaimer" at the bottom of each page of the data they use. This "Disclaimer" appears on the County forms and expressly states that "[f]igures on this form represent a manual count of envelopes - not the number of ballots counted." (Emphases added.)

The Declaration attached to County's motion explained that this data is used for County's internal staffing needs. This data is not used to calculate overages and underages pursuant to HRS § 11-153.

Moreover, Nago's Declaration states that the envelopes remain sealed and are not opened until the envelopes are transferred to a state-operated counting center. The envelopes are then opened at the state-operated counting center.

It is thus unreasonable to infer an amount of overage ballots from these County forms. See Winfrey, 130 Hawai'i at 271, 308 P.3d at 900 (observing that this court is permitted to

draw only those inferences of which the evidence is reasonably susceptible and it may not resort to speculation).

HRS § 11-96 (2009), which Plaintiffs rely on, states:

Every record made pursuant to law by a board of registration of voters, or the precinct officials, shall be a prima facie evidence of the facts therein set forth, and shall be received as such in any court or tribunal in which the same is offered in evidence.

Even if HRS § 11-96 applies to the County forms, the County forms are prima facie evidence of the amount of envelopes. The County forms do not constitute prima facie evidence of the amount of ballots due to the Disclaimer appearing on those forms. See HRS § 11-96.

Plaintiffs' reliance on HRS § 11-104(d) (Supp. 2023) is similarly unavailing. HRS § 11-104(d) states: "Once a voter has returned a return identification envelope containing the secrecy envelope or secrecy sleeve with the marked ballot, that voter's ballot shall be deemed cast and may not be recast in the election." (Emphasis added.)

Even if the amount of envelopes recorded on the County forms were construed to be the amount of return identification envelopes, the County forms do not reflect whether those return identification envelopes contained a secrecy envelope or sleeve "with the marked ballot," see HRS § 11-104(d), because the disclaimer on the County forms expressly states that the County forms do not represent "the number of ballots counted."



Moreover, even if these County forms are prima facie evidence of ballots notwithstanding the Disclaimer, Plaintiffs' assertion that there is an overage amount that could have caused a difference in the election results is belied by Plaintiffs' December 12, 2024 Memorandum in Support that states there were 27,036 envelopes transferred from County to the State counting center. The difference between 27,075 ballots and 27,036 envelopes is 39, which is clearly less than the 108 vote difference between the seventh-place candidate (Fern Anuenue Holland) and eighth-place candidate (Ross Kagawa) in the 2024 General Election for Kaua'i County Councilmember.

According to the State's data, for all Kaua'i County precincts, there is a total of 25 overage mail ballots. The State's data confirms that the amount of overage for mail ballots will not cause a difference in the results of the Kaua'i County Councilmember race.

Even when viewing the evidence in a light most favorable to Plaintiffs, there is no genuine issue of material fact of an overage that could cause a difference in the 2024 General Election results for Kaua'i County Councilmember. See HRS § 11-172.

**C. Plaintiffs' Memoranda in Support**

Plaintiffs' December 10 and 12, 2024 Memoranda in Support is an attempt to amend its Complaint. Rather than rely only on

the County forms to assert that an overage exists, Plaintiffs now seek to rely on an email to assert there are 219 uncured envelopes in addition to the ballot envelope figures provided by the County forms. In doing so, Plaintiffs make no discernable argument explaining why the uncured ballots should be counted as an overage ballot.

Plaintiffs attached an email string to their December 10 Memorandum in Support with emails dated December 9, 2024. One of these emails appears to be from the Kaua'i County Elections Division and states: "The final number of uncured envelopes is 219 for the 2024 General election."

But the final number of uncured envelopes in Kaua'i County could have been discovered earlier, before the November 25, 2024 deadline to file a general election contest. See HRS § 11-106 (Supp. 2023) (stating in part that a voter "shall have five business days after the date of the election to cure the deficiency").

The General Election occurred on November 5, 2024. Plaintiffs' Complaint was filed on November 25, 2024. Rather than include the 219 uncured envelope argument in the Complaint, the Complaint instead states: "The records do not show that any number of voted ballot envelopes were separated for curing and not forwarded to the state counting center from the county."

County and the State filed their responses to the Complaint on December 4 and 5, 2024, respectively. Plaintiffs did not file a Memorandum in Support until December 10, 2024, or after County and State filed their responses to the Complaint.

"All pleadings in applications for writs or other relief, filed originally in the supreme court, shall conform to the requirements of Hawai'i Rules of Civil Procedure 7 through 15." Hawai'i Rules of Appellate Procedure Rule 16 (eff. 2000).

Rule 15(a)(1) of the Hawai'i Rules of Civil Procedure (HRCP) states that a party "may amend the party's pleading once as a matter of course at any time before a responsive pleading is served[.]" Otherwise, "[i]n all other cases, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." HRCP Rule 15(a)(2) (eff. 2012).

In civil lawsuits, this court applied HRCP Rule 15(a)(2) in a manner that "leave to amend a complaint shall be freely given and . . . undue delay alone is an insufficient basis for denying leave to amend a complaint." Carvalho v. AIG Hawai'i Ins. Co., Inc., 150 Hawai'i 381, 387, 502 P.3d 482, 488 (2022).

But this isn't an ordinary civil lawsuit. This is an election contest. This court must hear the general election complaint "as soon as it reasonably may be heard." HRS § 11-174.5(b) (Supp. 2021). In a primary election contest, this

court's decision must be issued within four days after the defendant's answer to the complaint is filed. See HRS § 11-173.5(b) (2009).

And the defendants are mandated with answering a complaint within ten days after service of the summons in a general election contest. HRS § 11-174.5(a) (2009). The defendants have five days after service of the summons to answer a primary election complaint. HRS § 11-173.5(a) (Supp. 2019) & Act 1 (March 5, 2024) (to be codified at HRS § 11-173.5(a)) (deleting language concerning primary election contests arising from a mandatory recount).

The election statutes are framed in a manner that mandates a quick resolution of each general and primary election complaint that is brought before this court. See HRS §§ 11-173.5, 11-174.5. As Plaintiffs themselves point out in their Motion for Interrogatories, certification of the results of a general election race is delayed due to a general election contest. See HRS § 11-174.5(b) (discussing the options that this court's Judgment may do to a general election); see also HRS § 11-155 (Supp. 2022) (certification).

Allowing amendments to an election complaint to be freely given under HRCF Rule 15(a)(2) is inconsistent with the quick decisions that this court is mandated to make on general and primary election complaints under HRS §§ 11-173.5 and 11-174.5,

and further delaying election certification due to an amended election complaint does not benefit the public's interest. We thus deny Plaintiffs' attempt to amend their Complaint through their December 10 and 12 Memoranda in Support.

**D. Motion for Interrogatories**

As for Plaintiffs' motion for interrogatories, an election contest is not intended to be used to delay certification of an election and thereafter raise issues concerning acts that may have been taken prior to certification. See HRS § 11-172 (concerning the basis of an election complaint).

Nor is an election contest intended to be used as a discovery device concerning the consequences of a delayed certification. See id.

Plaintiffs' motion for interrogatories is denied.

JUDGMENT

Based on the foregoing findings of fact and conclusions of law, Judgment is entered in favor of the State and County, and against Plaintiffs.

DATED: Honolulu, Hawai'i, December 20, 2024.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens



1 Ralph S. Cushnie, *pro se*.  
2 PO Box 864  
3 Kalaheo, Hawaii 96741  
4 Ph. 808 645-0955  
5 Email: ralphcushnieec@cushniecci.com

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6 IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT,  
7 STATE OF HAWAII

8  
9 RALPH S. CUSHNIE *pro se*.

10 *Petitioner,*

11 VS.

12 SCOTT T. NAGO, in his official capacity as  
13 Chief Elections Officer for the Office of  
14 Elections, State of Hawaii; JADE K.  
15 FOUNTAIN- TANIGAWA, County Clerk for  
the County of Kauai, State of Hawaii

*Respondents.*

CASE NO. \_\_\_\_\_

PETITION FOR DECLARATORY  
JUDGEMENT

16 COMES NOW the Petitioner, pursuant to Hawai'i Revised Statutes (HRS) Chapter  
17 632, and respectfully petitions this Court for a declaratory judgment, alleging as  
18 follows:

19 I. JURISDICTION AND VENUE

- 20 1. This action is brought under **HRS §632-1**, which authorizes courts of record  
21 to issue binding declaratory judgments in civil cases where an actual  
22 controversy exists between contending parties regarding legal rights or  
23 duties.
- 24 2. Venue is proper in this Court pursuant to **HRS §603-36**, as the cause of action  
25 arises within this Circuit.

26 II. PARTIES

- 27 3. **Petitioner** is a qualified elector and resident of the County of Kauai, State of  
28 Hawai'i, and a member on the Elections Commission established under **HRS**  
29 **§11-7**. As an elector, Petitioner has an interest in election integrity and  
30 transparency. As a commissioner, appointed pursuant to **HRS §11-7(a)**,  
31 Petitioner has a statutory duty under **HRS §11-7.5** to oversee election

## PETITION FOR DECLARATORY JUDGEMENT

administration, advise the Chief Election Officer, and ensure compliance with election laws and rules, including chain of custody requirements.

4. **Respondent**, the County Clerk for the County of Kauai, is the official responsible for administering elections within the County, including the initial receipt and tracking of marksense ballots, pursuant to **HRS §11-1**, **HRS §11-104(c)**, **HRS §11-109(d)**, and **HAR §3-177-453(b)**.
5. **Respondent**, the Chief Election Officer, oversees the conduct of elections statewide, establishes rules governing the chain of custody (e.g., **HAR Chapter 3-177**), and supervises county clerks, pursuant to **HRS §11-2** and **HRS §11-4**.

### III. STATEMENT OF FACTS

6. Hawaii's election process, governed by **HRS Chapter 11** and **HAR Chapter 3-177**, relies on a chain of custody to ensure the integrity of marksense ballots, submitted primarily via USPS and official drop boxes under **HRS §11-101**.
7. **HAR §3-177-453(b)** mandates that "[t]he clerk shall maintain a complete and current count of all marksense ballots issued, spoiled, and received in their county," raising the critical question of **when does chain of custody begin** and whether this count must be initiated at that point.
8. As an election commissioner, Petitioner has raised this issue in multiple commission meetings, seeking clarity on the chain of custody's starting point and the County Clerk's compliance with **HAR §3-177-453(b)**. The commission has failed to address or resolve this matter, impeding Petitioner's ability to fulfill their duties under **HRS §11-7.5(7)**.
9. The County Clerk for the County of Kauai has not clearly demonstrated that they maintain a "**complete and current count**" of ballots upon their receipt via USPS or drop boxes, creating uncertainty about when chain of custody begins and whether legal requirements are met at that stage.
10. This ambiguity, compounded by the Election Commission's inaction, affects Petitioner's dual interests: as an elector in ensuring transparent elections, and as a commissioner in discharging oversight duties, necessitating judicial clarification.

IV. LEGAL BASIS FOR RELIEF

11. **HRS §632-1** empowers this Court to resolve controversies over legal duties, such as when the chain of custody for ballots commences and whether a **"complete and current count"** is required at that point.

12. An actual controversy exists regarding whether the County Clerk must initiate a **complete and current count** of marksense ballots upon receipt, as the starting point of chain of custody, under applicable laws and rules, particularly given the Election Commission's failure to address this issue despite Petitioner's efforts.

A. Applicable Chain of Custody Laws and Rules

13. **HAR §3-177-453(b) – Accountability and security of ballots:** Requires the clerk to maintain a **"complete and current count"** of all marksense ballots **"received in their county,"** implying that chain of custody begins at receipt and necessitates an immediate tally to ensure accountability from the outset.

14. **HRS §11-104(c) – Ballot instructions; ballot return:** Mandates that ballots be mailed or delivered to the clerk, establishing receipt by the clerk as the initial custody point, supported by **HAR §3-177-53(b)** (custody taken at USPS or other locations).

15. **HAR §3-177-61 – Security of ballots and election supplies:** Requires secure containers with nonreusable seals and seal records upon receipt or transport, reinforcing that chain of custody begins when ballots enter county control.

16. **HRS §11-109(d) – Voter service centers; places of deposit:** Designates drop boxes for ballot receipt, with clerks ensuring security, indicating that custody—and thus tracking—starts upon deposit.

17. **HRS §11-108(a) – Counting of mail-in ballots:** Allows processing eighteen days before election day, distinguishing receipt from validation and supporting that a count under **HAR §3-177-453(b)** precedes later stages.

18. **HRS §11-4 – Rules:** Authorizes the Chief Election Officer to enact rules (e.g., **HAR Chapter 3-177**) ensuring ballot integrity, providing the framework for chain of custody requirements, including the initial count.

19. **HRS §11-7.5 – Duties of the elections commission:** Charges commissioners, including Petitioner, with advising on election matters and overseeing administration, a duty frustrated by the commission's inaction on this issue.



## PETITION FOR DECLARATORY JUDGEMENT

### B. Case Law Supporting Standing and Strict Compliance

20. **Kaho'ohanohano v. State**, 114 Haw. 302, 318, 162 P.3d 696, 712 (2007): The court recognized standing for parties asserting injury under the public trust doctrine due to state action, providing precedent for Petitioner, a commissioner, to claim standing where the commission's inaction impairs their ability to fulfill statutory duties.

21. **Akaka v. Yoshina**, 84 Hawai'i 383, 935 P.2d 98 (1997): Holds that election officials must strictly follow laws and rules, affirming that **HAR §3-177-453(b)**'s mandate for a count upon receipt is binding as the chain of custody begins.

22. **Taomae v. Lingle**, 108 Hawai'i 245, 118 P.3d 1188 (2005): Emphasizes transparency and statutory adherence as essential to public trust, bolstering Petitioner's dual interest in a verifiable count at the custody's start.

### C. Argument

23. As an election commissioner, Petitioner has a statutory duty under **HRS §11-7.5** to ensure election laws, including **HAR §3-177-453(b)**, are followed, a duty obstructed by the commission's repeated failure to address when chain of custody begins and whether a count is required then.

24. Chain of custody begins when ballots are "**received in their county**," as evidenced by **HRS §11-104(c)**, **HAR §3-177-53(b)**, and **HAR §3-177-61**, marking the point of entry via USPS or drop boxes under the County Clerk's control.

25. **HAR §3-177-453(b)** mandates a "**complete and current count**" of "**received**" ballots, imposing an immediate tally at this custody start, as **HRS §11-108(a)** distinguishes receipt from validation, per **Akaka v. Yoshina**.

26. The Chief Election Officer's rule-making and supervisory authority (**HRS §§11-4, 11-2**) requires their inclusion to ensure consistent interpretation and enforcement of this duty statewide.

27. As an elector and commissioner, Petitioner seeks to resolve this controversy to fulfill both personal and official interests in transparent, lawful elections, consistent with **Taomae v. Lingle**.

PETITION FOR DECLARATORY JUDGEMENT

V. REQUEST FOR DECLARATORY RELIEF

**WHEREFORE**, Petitioner respectfully requests that this Court enter a declaratory judgment:

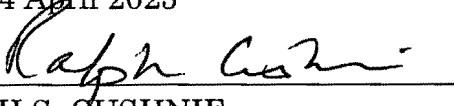
**A.** Declaring that under **HAR §3-177-453(b)**, supported by **HRS §§11-104, 11-108, 11-109**, and **HAR §§3-177-53, 3-177-61**, the chain of custody for marksense ballots begins upon their receipt by the County Clerk for the County of Kauai via USPS or official drop boxes, and that the County Clerk is legally required to maintain a **complete and current count** of all such ballots at that initial point;

**B.** Declaring that failure to maintain a **complete and current count** upon receipt violates applicable law and compromises the chain of custody's role in ensuring election integrity and transparency;

**C.** Ordering such other and further relief as the Court deems just and proper.

**Respectfully submitted,**

**Date:** 4 April 2025

By: 

RALPH S. CUSHNIE

Election Commissioner, State of Hawaii

Meeting Date	Movant	Motion	Status	Keywords
1/16/2024	Papalimu	Motion to amend the agenda to enter executive session to discuss the performance of the Chief Election Officer	Failed	Chief Election Officer
1/16/2024	Cushnie	Motion for the Elections Commission to investigate chain of custody	Failed	Chain of Custody
2/20/2024	Cushnie	Motion to request the chain of custody documents from the County Clerks to be provided to the Commission 7 days before the next meeting	Passed	Chain of Custody
2/20/2024	Cushnie	Motion to advise the Office of Elections to respond in writing to all written inquiries starting from the approval of the Commission within 15 business days in accordance with HAR 3-170-4 and HAR 3-170-5	Passed	HAR
2/20/2024	Cushnie	Motion to amend the original motion to investigate that HAR 3-177453 and HAR 3-177-61 are being followed as it relates to County of Kauai election	Failed	HAR
2/20/2024	Andrion	Motion for the Elections Commission to investigate chain of custody	Failed	Chain of Custody
2/20/2024	Cushnie	Motion for the Elections Commission to oppose joining ERIC	Passed	ERIC
2/20/2024	Andrion	Motion to not reappoint Scott Nago as Chief Election Officer	Failed	Chief Election Officer
3/19/2024	Cushnie	Motion to adopt a rule in accordance with HRS 11-7.5(3) that requires the county clerks and the chief election officer to individually certify under penalty of perjury that chain of custody was maintained in accordance with HAR 3-177-61 and HAR 3-177-453	Passed	HAR
3/19/2024	Takenaka	Motion to enter Executive Session to approve the minutes for the Executive Session for the meeting of February 20, 2024, and to discuss and evaluate the performance of and the reappointment of the chief election officer	Failed	Chief Election Officer
3/19/2024	Cushnie	Motion to postpone the motion to reappoint the chief election officer until a properly noticed public hearing has been held in accordance with HRS 11-7.5 and the chief election officer petitions the Elections Commission for reappointment in accordance with 111.6(f)	Failed	Chief Election Officer
3/19/2024	Takenaka	Motion to reappoint Scott Nago as chief election officer by a 2/3 vote	Failed	Chief Election Officer
3/19/2024	McAdam	Motion to reappoint Scott Nago to chief election officer effective February 1, 2024	Passed	Chief Election Officer
4/16/2024	Cushnie	Motion to request ballot box chain of custody procedures and documentation from the counties	Passed	Chain of Custody
4/16/2024	Cushnie	Motion to advise the Chief Election Officer to use voter verifiable paper audit trail to conduct all audits	Passed	Audit
4/16/2024	Cushnie	Motion to have CIO review pre-election audit and safety procedures and report to the Commission the effectiveness of the procedures to identify hacking or mistakes in the voting system	Passed	Audit
4/16/2024	Cushnie	Motion to investigate if there are any HAVA violations being committed by the Office of Elections	Failed	Investigations
4/16/2024	Cushnie	Motion to allow processing and counting of ballots to occur up to 3 days prior to election day	Failed	Counting
4/16/2024	Cushnie	Motion to eliminate early counting	Failed	Counting
4/16/2024	Cushnie	Motion to request log of signature sensitivity settings from the counties who are using signature machines	Passed	Signature Verification
4/16/2024	Andrion	Motion to randomly audit one precinct in House District 37 in accordance with HRS 16-42 b(3) using the voter verifiable paper audit trail counting all races on the ballots in accordance with Jamie Detwiler's request	Failed	Audit
4/16/2024	Cushnie	Motion to randomly audit one precinct in House District 37 in accordance with HRS 16-42b(3) using voter verifiable paper audit trail counting all races on the ballots in accordance with Jamie Detwiler's request	Passed	Audit
6/19/2024	Papalimu	Motion to send a letter from the commission on letterhead to the Governor letting him know that the Commission does not support ERIC for the State of Hawaii	Passed	ERIC
6/19/2024	Papalimu	Motion to initiate investigation on Adriel Lam's claim that "United States Hawaii" was registered as a voter and was allowed to vote in the last election with a vacant address	Passed	Investigations
6/19/2024	Papalimu	Motion to write a letter to Honolulu County regarding the investigation on "United States Hawaii"	Passed	Investigations
6/19/2024	Cushnie	Motion to investigate signature settings on signature verifying machines that are compared to signatures on the ballot. And Cushnie to write a letter to the county	Passed	Investigations
6/19/2024	Cushnie	Motion to have the Election Commission direct the Attorney General's office to answer his March 27 letter and Karl Dicks letter regarding these matters	Passed	Attorney General
6/19/2024	Cushnie	Motion to have Scott Nago respond to Jamie Detwiler's correspondence in writing and include a date for the scheduled audit in his response within 10 days	Passed	Audit
6/19/2024	Cushnie	Motion to save all election materials from 2022 election until proper audits are conducted	Passed	Audit
6/19/2024	Cushnie	Motion to have the Chair share all correspondence regarding Election Commission business with the Election Commission	Passed	Correspondence
6/19/2024	Papalimu	Motion to remove Scott Nago as Chief Election Officer pursuant to AnnMarie Hamilton's correspondence	4:3	Chief Election Officer
6/19/2024	Cushnie	Motion to have the status of motions be put on future agendas	Passed	Motions/Agendas
6/19/2024	Cushnie	Motion to have all communication and correspondence addressed to the Election Commission be distributed to Commissioners as its received	Passed	Correspondence
6/19/2024	Andrion	Motion to look at Corinne Solomon's suggestion for adopting a rule to allow for signature verification of ballot envelopes	Passed	Signature Verification
6/19/2024	Cushnie	Motion to adopt a rule to only use the signature on voters' registration to compare to the signature on the ballot envelope	Passed	Signature Verification

8/27/2024	Cushnie	Motion to have the Deputy Attorney General give his opinion on whether the Chief Election Officer has the authority to change the voting method from mail-in to day-of, in person voting, at the precinct with voter ID required	Passed	Voting Method
8/27/2024	Cushnie	Motion to request ballot box chain of custody documentation from the counties	Passed	Chain of Custody
8/27/2024	Cushnie	Motion to have all testifiers questions answered in writing by the chair within 15 days of the meeting and have it posted online	Failed	Correspondence
8/27/2024	Cushnie	Motion to have the Deputy Attorney General answer his email on the removal of Scott Nago	Failed	Attorney General
8/27/2024	Cushnie	Motion to censure the Chair	Failed	Chair
8/27/2024	Cushnie	Motion to assign a special master to the investigation into sensitivity settings	Failed	Investigations
8/27/2024	Cushnie	Motion to have Scott Nago explain the legal definition of a ballot image	Passed	Ballot Image
8/27/2024	Cushnie	Motion to have the Deputy Attorney General answer the question of ballot constitutionality in this meeting and follow up in writing	Passed	Attorney General
8/27/2024	Cushnie	Motion to put Scott Nago on probation for not responding to all inquiries within 14 business days	Failed	Chief Election Officer
8/27/2024	Cushnie	Motion to have Scott Nago tell the Commission about the 22-month rule and follow up with it in writing within 5 days	Passed	Chief Election Officer
8/27/2024	Cushnie	Motion to advise the Chief Elections Officer to forward to the legislature to have elections in person, one day, in the precincts, hand counting paper ballots	Passed	Chief Election Officer
8/27/2024	Cushnie	Motion to have the Chair and Secretary acknowledge receipt of documentation sent to them and tell the sender what action will be taken with the document	Failed	Correspondence
8/27/2024	Cushnie	Motion to have the Office of Elections follow HRS 16-42 as it is written, by auditing 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, counting all races on the ballots in accordance with HRS 11-125. No ballot images	Failed	Audit
8/27/2024	Cushnie	Motion to have the Deputy Attorney General answer in writing the legality of writing a certificate of election for the Governor and Lt. Governor prior to the 2022 election being certified	Passed	Attorney General, Certificate of Election
8/27/2024	Cushnie	Motion to recommend having the Chief Election Officer certify that the statutory requirements of HRS 11-155 are met prior to certifying an election	Failed	Chief Election Officer
8/27/2024	Cushnie	Motion to have the over under report be compared to how many ballots the county collected and handed the state, by precinct, using the chain of custody forms generated from the counties	Failed	Chain of Custody
10/8/2024	Osterkamp	Motion to admit to Sunshine Law violation at the last meeting	Failed	Sunshine Law
10/8/2024	Cushnie	Motion to vote on whether the Commission followed HRS 92-7(d) at the last meeting	Failed	HRS
12/18/2024	Aquino	Motion to rescind the request for the Deputy AG to give an opinion on whether the Chief Election Officer has the authority to change the voting method	Passed	Voting Method
12/18/2024	Andrion	Motion to invite Commissioner Cushnie back into the meeting	Failed	Commissioner
12/18/2024	Osterkamp	Motion to rescind having Scott Nago explain the legal definition of a ballot image	Passed	Ballot Image
12/18/2024	Osterkamp	Motion to rescind the request for the Deputy AG to give an opinion in writing on the legality of writing a certificate of election for the Governor and Lt. Governor prior to the 2022 Election being certified	Passed	Attorney General, Certificate of Election

Meeting Date	Movant	Motion	Status	Keywords
1/15/2025	Young	Motion to receive Communications & Correspondence	Passed	Correspondence
1/15/2025	Cushnie	Motion to address the OIP complaint and correct the minutes of the August 27 meeting and turn it in to OIP with a true reflection of what happened	Failed	OIP Complaint
1/15/2025	Osterkamp	Motion to go into executive session to have a direct discussion with Scott Nago regarding his performance evaluation and consideration of salary adjustment	Failed	Chief Election Officer
1/15/2025	Cushnie	Motion to remove Scott Nago	Failed	Chief Election Officer
1/15/2025	Andrion	Motion to investigate ballot box chain of custody from the Counties	Failed	Chain of Custody
1/15/2025	Young	Motion to recommend to the Legislature to create a bipartisan taskforce to resolve election issues raised by the Election Commission	Passed	Legislature
1/15/2025	Cushnie	Motion to ask the Counties for their chain of custody documentation	Passed	Chain of Custody
3/19/2025	McAdam	Motion to receive Communications & Correspondence	Failed	Correspondence
3/19/2025	Cushnie	Motion to receive and discuss the written Communications	Failed	Correspondence
3/19/2025	Cushnie	Motion to subpoena all ballot batch reports for the 2022 General Election	Failed	Ballot Batch Reports
3/19/2025	Cushnie	Motion to form a permitted interaction group (PIG) to investigate chain of custody complaints on Kauai and election results discrepancies on the Big Island	Passed	Permitted Interaction Group (PIG), Chain of Custody, Election Results
3/19/2025	Papalimu	Motion to limit the membership of the PIG to only Election Commissioners	Failed	Permitted Interaction Group (PIG)
3/19/2025	Cushnie	Motion to appoint Commissioners Osterkamp, McAdam, and Papalimu to the PIG, investigating election results discrepancies on the Big Island	Passed	Big Island, Permitted Interaction Group (PIG)
3/19/2025	Cushnie	Motion to appoint Commissioner Young, Commissioner Aquino, and Lindsay Kamm to the PIG, investigating the chain of custody complaints and any other irregularities on Kauai	Passed	Kauai, Permitted Interaction Group (PIG)
3/19/2025	Cushnie	Motion to have the Deputy Attorney General answer Doug Pasnik's question if it was lawful for Scott Nago to certify an election before it was certified	Failed	Deputy Attorney General, Certification of Election